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## BEYOND DISCIPLINE AND PUNISH: FOUCAULT'S CHALLENGE TO CRIMINOLOGY

Published in English thirty years ago, Discipline and punish has exercised a profound and lasting influence on criminological thinking and research (Foucault 1978). Appearing when Marxist criminology was beginning to decline, Foucault's book, and subsequent accounts and uses of Foucault's ideas, breathed new life into critical criminology at a time when --apart from feminism-- there was little by way of exciting new ideas.

This article will not attempt to document exactly where and how Discipline and punish was taken up, though some rather general comments about the book's influence will be presented in the following section. Instead, my main aim is to show that if progressive criminologists, instead of taking just a couple of ideas from one book, read and digested Foucault's work as a whole, we would be in a position to move beyond the by now rather tired projects of criticizing administrative criminology and/or trying to displace it. A more comprehensive reading of Foucault's work could inspire a radical rethinking of the questions that concern us (which are by no means reducible to crime and criminal justice) and of the tools we use to research those questions. Borrowing a few terms (from Foucault, in this case) to add some shine to existing research agendas and established ways of thinking does a disservice to the promise of the 'critical' part of 'critical criminology'. Furthermore, limiting our reading to works that happen to discuss standard criminological topics such as prisons is increasingly out of phase not only with the 'critical' stance but also with the substance of 'criminology'-- since influential criminologists now study all manner of novel entities, from private security to peacekeeping work to insurance companies.

Discipline and Punish was originally read by criminologists who would otherwise not read Foucault for the obvious reason that the book is largely concerned with the emergence of imprisonment as the default punishment, a key criminological question. But an analogy may help to the problem of selective reading. If people interested in using Freud to understand child abuse and incest confine their reading to those bits of Freud's work (e.g. the 'Dora' case history) that explicitly mention incest and child sexuality, they could get the impression that Freud was not too bothered by adults who molest children (and indeed, many feminists have read Freud in this one-sided manner). Freud's increasingly tragic view of the profound, structural contradictions of the European bourgeois 'civilization' project, however, is the underlying reason for Freud's attitude towards his case histories. And in the end, it is Freud's larger vision that

continues to be relevant as a theoretical resource, whereas his comments on his female patients are, for the most part, best forgotten.

Along these lines, I want to challenge the criminological habit of reading Discipline and Punish in isolation, and the related practice of using this book only to answer existing criminological questions. Foucault's research on the history of prisons did not come out of criminological interests, after all, but rather from a sense that prisons were important laboratories for many of the new techniques of governance used in modern industrial societies after the mid-nineteenth century. In other work he documented and analyzed other governance 'laboratories': physician's consulting rooms, government census bureaus, the texts of economists, the autobiographical musings of Greco-Roman gentlemen, and the ambitions of early public health reformers, to name a few. Each research project gave rise to new ideas that are not general concepts but whose utility is by no means limited to the context giving rise to them. Since many influential criminologists are currently advocating a move beyond the traditional sphere of 'crime' and 'criminal justice', and instead taking up the broader perspective of 'security' and 'the governance of security' (Loader 2007, Shearing and Johnston 2006, Ericson 2007), it makes sense to see whether hitherto neglected parts of Foucault's work may help us to think about the dilemmas of security and the recurring contradictions of liberal legal governance. Reflecting on Foucault's work without having our reading blinkered by past habits could effect a profound change in the questions we ask, and, correspondingly, in the tools we use to answer them.

I should underline that I do not wish to argue that Foucault is correct and some other perspective is incorrect: the abstract and normative arguments that make up much of what the academy calls 'theory' are completely at odds with Foucault's tactical and site-specific conceptual bricolage. What I wish to point out is that, whether or not we end up finding Foucault's insights and methods useful – something that can only be determined in respect to a particular question or problem– we would very much benefit from knowing more about his work as a whole.

A preliminary note about the critical criminology project is in order, however, before we proceed. It would be misleading to write about Foucault's work and its impact without first noting that the mainstream administrative criminology that had flourished in the 1950s and 1960s, in the US and in other locations (e.g. the Cambridge Institute of Criminology), has managed to greatly expand its reach and its institutional strength over the last three decades without having to make significant concessions to **any** of the strains of critical criminology that became available at various times. The success of non-critical criminology in the academy as well as in correctional settings is the 'macro' criminological research story of the past three decades, and other subplots (e.g. Foucault's influence or lack of it) need to be understood within this larger context.

When critical criminology first developed (e.g. in the British National Deviancy Conference, active between 1968 and 1978), the broader political and governmental context was more hospitable to social-welfare approaches. Today, by contrast, administrative approaches promoting a mixture of incapacitation and risk management

and treating 'crime' as an isolated concern dominate the field (Garland 2001, Harcourt 2007). Welfarist solutions still exist, even in the US: but they are largely confined to individually oriented therapy and self-help, rather than to collective justice. Given the marginalization of social inequality concerns that characterizes the recent history of the correctional field (and recent fashions in government programs more generally), it may be pointless for critical criminology to continue arguing against mainstream administrative criminologists. Administrative criminologists were not listening to their critics then and are still not listening today; but critical criminology was in any case not really addressed to them. The relevant difference is that thirty years ago critical insights from criminologists and allies were sometimes heard by sectors within government, and by the informed, voting public: whereas, with some exceptions, that is not the case today. To put it somewhat dramatically, the battle for the soul of criminology that began with the rise of critical criminology in the 1960s has been lost<sup>1</sup>.

It is telling that feminism, emerging alongside and in alliance with critical criminology in the late sixties, has managed to gain considerable institutional credibility not only in the academy but also in numerous government and global governance structures: but by and large, feminism has been isolated and marginalized in criminology by being seen as relevant only to women's imprisonment issues. The great potential that feminist criminology had to develop new understandings of masculine patterns of behaviour associated with violence and criminality has been completely ignored by administratively oriented researchers (and indeed even by more progressive criminological thinkers, such as David Garland<sup>2</sup>, though that is a separate story). If even feminism, a powerful and large movement that has proven itself compatible with virtually all methodological approaches, and enjoying the political advantage of speaking in the name of a majority of the population, has had virtually no impact on conventional penological and delinquency-oriented criminological research, it is not surprising that perspectives demanding profound theoretical shifts, such as Foucault's, have only succeeded in creating a few academic islands. The impunity with which critical perspectives continue to be excluded from practitioner circles and from most academic environments suggests that any discussions amongst criminological researchers who have read Foucault (or, more expansively, who feel a certain obligation to pay attention to those who cite and use Foucault) are subcultural interactions that are unlikely to ever have an impact on what we can call the ASC ocean<sup>3</sup>. Given this context, it may not be overly pessimistic to

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<sup>1</sup> Who won the battle is not a question that has the same answer across different countries (and even different systems within the same country). Critical criminology often denounces popular punitiveness as if this element were everywhere victorious. But it seems to me that Harcourt's recent work demonstrates that administrative risk-management logics are the real winners of the criminological struggles of the past thirty years, because their approaches can survive electoral shifts from punitive neoconservatism to neoliberal social democracy (Harcourt 2007).

<sup>2</sup> Garland's influential 2001 work has a comprehensive index that does not list 'feminism' or even 'gender'.

<sup>3</sup> The American Society of Criminology does not encompass the whole English-speaking world, of course, but it is significant that while it has not actively excluded critical and theoretical

suggest that using Foucault's work to go beyond criminology altogether may be the best option for the current situation.

Having established the stakes of critical reflection on the history of progressive criminology, let us now proceed by quickly reviewing the fate of Discipline and Punish, before we go on to examine other insights developed by Foucault elsewhere in his work that I will argue should inspire us to go beyond the critical criminology of the second half of the twentieth century.

### **'Discipline' and 'panopticon': inventions that succeeded too well**

It could be argued that Discipline and punish appeared just in time to save critical criminology, at a time of the great existential crisis posed by the rapid decline of 1970s Western Marxism. It is telling that the highly influential criminologist Stan Cohen, a self-proclaimed humanist and thus not a fan of any post-structuralist ideas, stated in his best-selling 1985 Visions of social control that 'to write today about punishment and classification without Foucault, is like talking about the unconscious without Freud' (Cohen 1985, 10).

The inclusion of the word 'classification' in Cohen's remark is very significant. One of the factors that elevated Discipline and punish to the critical criminological canon was precisely that Foucault's analysis of modern penalty was in harmony not only with left critiques of punishment but also with the critical work being done in the 1970s on psychiatric practices and other forms of classification and confinement. 'Social control' is a fundamentally pre-Foucaultian term, since it connotes top-down power, in contrast to Foucault's emphasis on power as a constantly shifting array of flows in which tactical advantage, not structural domination, is the ruling principle. But despite this key difference on the status and the workings of 'power', Foucault's analysis of what he called 'discipline' was helpful to people like Cohen insofar as it highlighted the commonalities among various forms of 'labelling' and various kinds of 'control'. The effort made by Cohen and others to break with the tradition that considered criminal justice to be a distinct field, in favour of a broader focus on what was then called 'deviance and social control', was facilitated – or perhaps justified after the fact – by Foucault's insistence that the prison may have epitomized certain modern practices for governing populations and individuals, but that our analytic gaze had to focus on practices – e.g. the examination, the normalizing judgement – that circulated quite easily among institutions and that should be studied independently from the study of specific institutions.

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perspectives, these have remained isolated in small numbers of 'preaching to the choir' sessions. The European Society of Criminology, on its part, is also largely dominated by administrative criminology, even if welfarist approaches are more integrated into that mainstream. The British Society of Criminology seems to have a larger critical component – keynote addresses are usually given by left-of-centre scholars, for example, and its association journal is very inclusive. But British criminology's numbers pale by comparison with the ASC, which draws a much larger number of international scholars.

There was therefore an important convergence between the ‘social control’ scholars and Foucault’s Discipline and punish: both rejected the lazy academic habit of limiting one’s scope to existing fields of governance (with criminology as the intellectual reflection on ‘crime’ and ‘criminal justice’). In line with this anti-internalist approach, which challenged scholars to explore whatever relationships seem to be empirically important instead of falling into the habit of saying ‘but I only study crime’, David Garland furthered the critical agenda greatly through his 1985 book, Punishment and welfare (Garland 1985). This work, which is now rarely cited<sup>4</sup>, constituted a sustained and thorough effort to document how institutions previously regarded as distinct (eugenics, social insurance, corrections) had in fact developed intertwined with one another and drawing on the same logics and the same knowledges. It gave English-speaking criminology a new sense of itself by giving it a new history, one which was ‘critical’ not because of a normative agenda but rather because it de-centred the criminal justice system – while avoiding the vagueness and abstract over-inclusiveness of ‘social control’.

Both Discipline and Punish and Garland’s Punishment and welfare were replete with information about the practices of governance that historically constituted the modern soul and simultaneously built knowledge-based institutions. But their thick descriptions of particular practices tended to fade into the background in most works produced by later critical criminologists. Instead of being inspired to produce new, empirically rich accounts of the governance of social ‘problems’, left criminologists tended to seize the rather general and dangerously abstract term ‘discipline’ and wield it as a classic Platonic Idea – with the real world of governance being largely reduced to the status of ‘examples’ of ‘discipline’. Generations of graduate students (and even more mature scholars) published papers which began with a general description of Foucault’s argument about sovereignty and discipline and went on to then use ‘discipline’ as a cookie cutter. Kindergartens, physicians’ offices, even university classrooms were all reduced to what Hegel would call a ‘night in which all cats are grey’ sameness by being described as examples of discipline.

‘Discipline’, the key conceptual innovation of Foucault’s book, thus met with great success precisely because it could be taken up to renovate the content of one’s analyses but without forcing a wholesale rethinking of the intellectual habits of the past. While avoiding class reductionism, the description of correctional disciplinary practices provided in Discipline and Punish verged on the kind of functionalism that was in the air we all (including Foucault) breathed in the 1970s – in stark contrast to the Nietzsche-inspired radically anti-functionalist perspectives found elsewhere in Foucault’s work. In other words, ‘discipline’ looked like a traditional sociological ‘concept’ – a term

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<sup>4</sup> Garland’s later books were researched and written in a more conventional manner and were thus received as proper ‘theory’. By contrast, Punishment and welfare used a more Foucaultian methodology, involving large amounts of primary historical research. It is a telling sign of the superficial take-up of Foucault’s work that even scholars who have read Foucault continue to expect ‘theory’ books to be researched and written in a conventional manner.

acknowledged as having a particular historical origin but treated in scholarly practice as a Platonic Idea. One could thus borrow this new term, which had the virtue of being more specific than 'social control' but just barely, in order to produce analyses that were relatively new in content while remaining (for the most part) traditional in form. By contrast, 'governmentality', a term that Foucault had indeed used but in loose and somewhat contradictory ways, could not be so easily recuperated as a traditional sociological concept: the 'governmentality literature' certainly prospered for a decade or so, and much of this did indeed turn 'governmentality' into another conceptual cookie-cutter; but 'governmentality' is a somewhat more ambiguous and problematic term (Rose, O'Malley and Valverde 2006).

Foucault's account of 'discipline', therefore, resonated with the methodological and political preferences that already existed among critical criminologists beginning to find Marxism either tired or insufficient but wishing to maintain a left-wing stance. Discipline was clearly linked by Foucault to the rise of the industrial proletariat and bourgeois society's need for working bodies with standardized capacities; but the Discipline and Punish story carefully avoided making capital the motor force of history. Thus, Foucault's ideas could be used by the sizeable number of intellectuals who remained on the political left – and who had a lot of trouble breaking out of functionalist habits of thought– but who no longer found Marxist theory intellectually satisfying.

An additional factor that explains why Foucault's work itself became the victim of the success of 'discipline' concerns Foucault's analysis of the relation between knowledges and powers, which in Discipline and Punish was not as clearly distinguished from the 'critique of ideology' approach as would be the case in later work, on governmentality/security and on sexuality and ethics. That supposedly neutral knowledges such as psychology or social work wield a great deal of power even when used benevolently was already an accepted point of view in the 1970s, in the left at any rate (and it must be recalled that the left was then, relatively, much larger than it is today). Foucault's analysis of the role of expert knowledges in the formation and implementation of disciplinary apparatuses was thus not completely novel. Many readers of Discipline and Punish missed the fact that Foucault took the critical view of knowledge and power one crucial step further: instead of focusing on the ways in which knowledge systems could function as delivery systems for 'ideology', Foucault argued more radically that knowledges **are** themselves forms of power.

Few 1970s intellectuals (outside of a small group of Lacanian psychoanalytic film theorists) would have said that the act of looking, the act of recording data, and the act of writing are themselves exercises of power. Since Foucault's book dealt exclusively with forms of knowledge embodied in oppressive institutions, his critique of the power effects of those knowledges could be easily recuperated for 'critique of ideology' approaches. In the work of Louis Althusser and other influential 'critique of ideology' intellectuals, observation, data gathering, and classification were seen as problematic insofar as they were imbricated in class structures and state institutions; but the act of observing was not itself problematized. While Althusser and his allies avoided singing the praises of proletarian knowledge as the Stalinists did, nevertheless, the Marxism of

the 1970s implicitly held that in a future just society knowledge would indeed be free from power – that knowledge would become purely technical, and government would be the administration of things rather than the government of men.

That all knowledges including critical or ‘resistant’ knowledges are also forms of power was thus a truly radical insight going well beyond the intellectual toolbox of the 1970s left. This insight was largely absent from Discipline and Punish but was explored by Foucault in some later work (though admittedly, without ever subjecting his own work to reflexive critique), most importantly in the critical analysis of sexual liberation discourse with which The History of Sexuality, Volume I opens (Foucault 1980). It is perhaps not surprising that the wing of critical criminology that actively pursues ‘liberation’ for offenders and others has not spent much time wondering how Foucault’s critique of vulgar-Freudian liberation discourse might be reflexively used.

If ‘discipline’ was the Foucaultian term with the greatest influence and success in criminology, the silver medal undoubtedly belongs to the related term ‘panopticon’. The panopticon image addressed many of the concerns and research interests of critical scholars, but detached the critique of state institutions from the class-reductionist Marxist theoretical edifice underlying those critiques. Like Foucault’s critique of disciplinary knowledges, then, Foucault’s interest in Bentham’s panopticon could be read two different ways. The more radical and less common reading is interested in the panopticon as a novel technique, but does not demonize it, since – from a Nietzschean perspective – there is no ‘innocent’ knowledge; thus, this reading would not hold out any hope that abolishing panopticons and prisons and surveillance would in itself create freedom. However, the panopticon allegory is more commonly interpreted from a quasi-Marxist perspective, in which knowledges are seen as corrupt if and insofar as they are imbricated in oppressive institutions. Foucault’s Discipline and Punish account does not preclude either reading, since nothing is said about whether prisoners themselves and prison abolitionists also engage in practices of knowledge that are simultaneously practices of power. That crucial ambiguity probably contributed a great deal to the success of the panopticon image.

A second crucial ambiguity is that while in Discipline and Punish Bentham’s panopticon is rendered as a chapter in the history of disciplinary governance, elsewhere Foucault pointed out that the panopticon is, from another perspective, “the oldest dream of the most ancient sovereign” (Foucault 2004, 68 [translation MV]) – since it embodies the inherently sovereign desire to not ever lose sight of any subjects. That offhand remark about the panopticon in the governmentality lectures shows that for Foucault there is no one-to-one relation between a particular architectural technique and discipline as such – and that, more generally, modes of power-knowledge are highly mobile, flexible, creative, and historically variable. As Paul Veyne has repeatedly reminded us, in the end, for Foucault it is actual practices of governance that are the object of analysis, not generalized notions (such as ‘discipline’) that have much heuristic utility but are inherently oversimplifying (Veyne 2008).

The panopticon theme would later gain new life in the ‘surveillance studies’ literature.

Much of this literature owes more to George Orwell's humanist quest to free humans from surveillance than to Foucault's Nietzschean critique of the ways in which the free human subject of liberal society is itself the product of governance (rather than a 'born free' individual who only needs to have Big Brother dethroned to regain his natural freedom). Thus, just as current critiques of medicine and other expert knowledges cite and use Foucault's 'discipline' to denounce the kind of abuses of power that any liberal humanist would also condemn, so too, the current fascination with CCTV cameras, security systems, and computerized surveillance of data provides intellectuals with numerous opportunities to cite Foucault's famous chapter on the panopticon, but without having to go on to question the status of 'liberatory' discourses including those from the critical academy.

### **Missing criminological pieces: biopolitics, security, practices of self**

David Garland's erudite and largely sympathetic account in Punishment and Modern Society (Garland, 1990) was and remains a highly sophisticated account of Discipline and Punish precisely because it did not limit itself to explaining 'discipline' in sociological fashion. Keenly aware of Foucault's Nietzschean roots, Garland stated that Foucault gives criminology three "fundamental concepts: power, knowledge, and the body" (137, 139). The elevation of 'the body' to the same level as power and knowledge is said to be justified because, in Garland's reading, Foucault's work on punishment and discipline shares Nietzsche's interest in embodiment, an interest used by thinkers such as Deleuze to distance themselves from all forms of idealism.

However plausible this account may be as regards Discipline and Punish – a book which admittedly spends a great deal of time describing techniques for producing the right souls and minds by disciplining and training bodies, and which was also novel in taking specific techniques for punishing the body as a serious object of analysis–, as a commentary on Foucault's importance for criminology this three-point summary of key "concepts" is misleading<sup>5</sup>. Explaining why the body's prominent role in Garland's account is somewhat problematic will provide us with an opportunity to consider some insights and analytical tools that have been largely neglected or ignored by criminologists: biopolitics, security, and 'techniques of self'.

First let us consider 'biopolitics' – a term designed to capture the collective governance of humans that Foucault argues only became possible with the emergence of 'population' and 'populations'. Biopolitical strategies, from birth control programs to social security to genocide, often exist alongside disciplinary programs designed to normalize individuals and generate uniform, disciplined bodies of citizens; but they work at a different level, since their target is neither the individual nor the political collectivity

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<sup>5</sup> It should be noted that when Garland was writing that book, none of the 'governmentality' texts and none of the College de France lectures were available, which partly explains Garland's limited account – though The History of Sexuality was available, and could certainly have been creatively used.

but rather the more or less biologized entity that is 'population'. War waged by a sovereign against a political enemy may well inflict large-scale death: but it is qualitatively different, Foucault argues, from the kind of twentieth century warfare waged on behalf of and in the name of a race or a people (Foucault 1980, 134) 'Biopolitics' has in recent years become another successful cookie-cutter, with proliferating 'examples' of biopolitics being uncovered within the sociology of health and medicine, postcolonial studies, and in theory circles generally. Here, however, we will limit our discussion to biopolitics' relationship to 'discipline' and the reasons for the relative dearth of 'biopolitical' citations in the criminological literature.

Foucault's neologism 'biopolitics' was presented to the public, orally, in the first of the 1978 lectures at the College de France (the 'governmentality' lectures (Foucault, 2004). Very briefly, '*bio-pouvoir*' is said to be the name Foucault plans to use to cover a series of strategies for bringing biological phenomena (or rather, human activity thought of biologically) within the scope of political power, although in fact later lectures did not explore biopolitics in any detail. Perhaps because it remained largely undeveloped, biopolitics then became the title of the next year's set of lectures, Naissance de la biopolitique, given in January-March of 1979 (Foucault 2005). But these lectures too turned out to barely mention biopolitics, being almost wholly devoted to lengthy analyses of German post-war liberalism and Anglo-American neoliberal economics.

In terms of work published during Foucault's lifetime, the main discussion of biopolitics occurs in the final chapter of the first volume of the History of Sexuality (Foucault 1980), which had appeared in French in 1976. There the point is made that old-fashioned sovereignty wages war against those who are political rivals and competitors for territory, whereas modern governments wage war – sometimes against internal minorities more vigorously than against foreigners– in the name of the health of the nation, using the metaphor of cleansing the population rather than speaking the traditional sovereign language of loyalty, treason, and enmity. The 'governmentality' lectures develop this point somewhat, as did the previous (1976) set of lectures, Society must be defended (Foucault 2003). This latter set of lectures noted that racism was the key mechanism that enabled modern states to combine 'positive' biopolitical projects for maximizing the health of populations, from vaccination to clean water supplies, with 'negative' biopolitical projects such as compulsory sterilization, collective discrimination, and genocide.

Clearly, then, 'biopolitics' was – along with 'governmentality', which will be discussed shortly– a key preoccupation for Foucault immediately after the 1975 publication of Surveiller et punir, even if he never produced the systematic account that two different sets of lectures promised. While 'discipline' was a term meant to help us understand the domestic governance of those seen as in need of normalization, from schoolchildren to prisoners, 'biopolitics' was presented as an umbrella term for strategies that governed both domestic and international relations by treating human beings not as individual bodies in need of training but rather from the aggregate point of view, as 'populations' (rather than royal subjects, offenders, souls, or modern individuals). And biopolitics is said to be linked to the rise of biological knowledges -- although the discussion of

'population' in the governmentality lectures does not address this explicitly.

Biopolitics is a term that has been very heavily used in social studies of medicine, as well as in postcolonial studies of the governance of colonial populations and/or racialized subjects at home. But it has been rarely used in criminological work. One could argue, however, that some current law-and-order campaigns, namely those that see particular types of criminality as a quasi-biological threat to the health of the nation/population, could be illuminated by the use of this term and the related literature. It may prove useful to distinguish between those law-and-order campaigns that seek to discipline citizens (say, young white males) and those campaigns that have little or no disciplinary aim but that instead use an essentialized notion of ethnicity to promote the 'health' of what is perceived as the 'good' population through the exclusion or expulsion of the threatening populations. Given the resurgence of ethnic identifications that have little to do with expert-driven disciplinary projects, the term 'biopolitics' could be made to do some useful work in analyzing how certain kinds of collective criminality are targeted differently than the non-racialized delinquent of Discipline and Punish.

Nevertheless, 'biopolitics' too can become a victim of its own success (as is happening in circles influenced by Agamben's ahistorical approach to questions of sovereignty and the right of death). In addition, to properly deploy 'biopolitics' to analyze some of today's ethnic identifications one would have to think hard about the ways in which cultural 'essences' have in many instances replaced biological knowledges. In general, the post-World War II shift away from biological dividing lines and toward culturalist explanations of differences among groups (e.g. the rise of 'culture of poverty' arguments, and more recently, 'cultural difference' discourse) suggests that 'biopolitics', while remaining useful, may need adjusting and revising. Biological knowledges are no longer the main resource for drawing essentialized distinctions among human groups.

This brief discussion of biopolitics raises a more general point, namely that there are few terms – if any-- that cannot be turned into simplifying mechanisms that reduce the complexity of the world and attempt to turn temporal flows into static entities. By and large, terms that are treated statically in one's analysis (as in conventional theorizing that demands a 'rigorous' definition of each term) also have the effect of treating the world as if it were static. Thus, while arguing that 'biopolitics' could be useful to criminologists, and more generally showing that some terms drawn from Foucault are overused while others are under-used, the more crucial point of this article is to show that all terms borrowed from Foucault's work have been misused by being turned into familiar entities, i.e. sociological 'concepts'.

If biopolitics is already becoming somewhat trendy even though it is not much in use in criminology, 'security', on its part, remains unknown – not surprisingly since it is a term that was almost never used in the works Foucault published during his lifetime. Indeed, even in the set of lectures entitled Security, territory, population, the term is only used in the first few lectures, with Foucault changing his mind halfway through the course and declaring that 'governmentality' is a better term to designate the same thing (Foucault 2004, 67). Governmentality has certainly been deployed by criminologists –especially

those studying neoliberal techniques for 'empowering' people in trouble with the law (cf. Rose, O'Malley and Valverde 2006). By contrast, 'security' has not, despite its obvious relevance to current work that argues that criminologists ought to focus on the governance of security rather than on crime.

How could this term be used? It is crucial to first note that Foucault contrasts *securité* to *sûreté*, a distinction that cannot be easily rendered in English. *Securité*, in Foucault's lectures and also in ordinary French usage, does not exclude coercive institutions, but encompasses 'social security' and other projects to increase the prosperity and wellbeing of the citizens. By contrast, *sûreté* is associated with the more Hobbesian focus on the wellbeing and security of the sovereign (which of course for Hobbes as for authoritarian government generally, is seen as the only assured means to protect citizens from the insecurity of human interactions). Foucault explains the difference between the logic of sovereignty-punishment and the logic of security-governmentality with a criminological example: while a theft is treated by the system of sovereign criminal law as an act to be punished, security strategies insert the phenomenon of theft – turned into an aggregate, something that is facilitated by the emergence of 'populations' – into a series of probable events (Foucault 2004, 7-8). Security is future-oriented and mainly preventive, and works on individuals only indirectly, through aggregate data collection, through incentive mechanisms, through what we would now call risk management, and through policies aimed at populations.

It is clear even from this very brief description that 'security' and 'biopolitics' shade into one another in practice, even though security/governmentality is said to operate largely through economic logics rather than through biological or quasi-biological distinctions among populations. In keeping with his usual methodology – which is driven by the practices being studied and not by existing concepts, and which therefore thoroughly revises the conceptual apparatus as the problem to be analyzed demands – Foucault does not address how 'security' relates to 'biopolitics' in general. But if one were for heuristic purposes to compare 'security' to 'biopolitics' in the manner of conventional, concept-driven theory, it would be appropriate to say that biopolitics is one type of security governance – that which proceeds by biologizing or quasi-biologizing 'populations' and differentiating them, for example by promoting the perceived health of one group by excluding another. This distinction does not do very much work, however. In some texts Foucault identifies 'governmentality' with liberal political economy and subsequent techniques of governance that are modelled on it – governmentality is said to govern through incentives and indirect pressure rather than through coercion, for example (Foucault 2004, 352-4). However, it is also plausible to take security/governmentality to encompass both liberal techniques of incentivization and resource maximization and biopolitical projects of all kinds, both negative (including ethnic exclusion and genocide) and positive (such as public health). In this latter reading, which I prefer because it emphasizes the illiberal conditions of liberal subjectivity (Valverde 1996), security/governmentality practices, while acknowledged to have much affinity for certain liberal techniques (especially liberal political economy), are seen as also present in nondemocratic states that, whether they govern the economy liberally or not, govern persons and populations in highly illiberal ways.

Mechanisms of security and biopolitics both focus on aggregates. In that sense they work at a very different level than 'discipline', which targets the shaping of individual bodies and souls (even though individualization and the formation of 'normal' populations are of course two sides of the same coin). But there is another strand in Foucault's work that is very directly concerned with individualization: his work on 'techniques of self' and ethics. Foucault's insights on ethical self-governance were developed mainly by reading classical Greek and Roman texts and the work of early Christian intellectuals: it may be that because of the constant references to people like Seneca and Saint Augustine, this work has not been seen as relevant to contemporary criminology, but in my view the array of insights about ethical practices of self developed through Foucault's extensive study of classical and Christian sources is highly relevant to today's neoliberal correctionalism. A word about the context of these writings is necessary before proceeding to the more substantive argument.

In the years after Discipline and punish, Foucault pursued two very different lines of inquiry. One line – developed mainly in the lectures given every year at the College de France rather than in publications– concerned the rise of liberal political economy and the genealogy of modern state governance. This research agenda produced some highly nuanced analyses of law and sovereignty that have yet to be fully explored by legal and sociolegal scholars – as will be discussed in the next section of the paper– and that shed an interesting light on the conceptual and empirical limitations of Discipline and Punish. At the level of publications, however, Foucault concentrated on the 'history of sexuality' project, whose main publication was a peculiar trilogy in which the second and third volumes have little to do with the first one (Foucault 1980, 1985, 1986). It is the last two volumes of the trilogy, as well as related work developed mainly in a series of lectures given at Berkeley (Foucault 2001) and in interviews, that could be usefully mined by those working on the sociology of punishment. Why? Because in these works Foucault went beyond the somewhat functionalist and 'social-control-ish' account of bodily training and spiritual discipline that is contained in Discipline and punish and began to concentrate instead on practices of governance developed by and for 'free' subjects, practices now found throughout the governmental apparatus, including programs for 'at risk youth', probationers, abused women, etc<sup>6</sup>.

In Foucault's work on the governance of the self, the ethical governance of the self by the self is carefully distinguished from the top-down governance of the populace by moral authorities and moral codes. This is important because Discipline and punish, in keeping with the social-control mentality of the 1970s, emphasized how children and soldiers and prisoners are governed by various institutional practices – but little time was spent capturing the thoughts of the governed or reflecting on self-discipline and self-development. By contrast, Foucault's writings on ethics carefully analyze practices such as diary-writing, self-reflection, and the kind of intimate friendship among free citizens that used to be the privilege – and the burden– of the leisured, educated

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<sup>6</sup> Dawn Moore's recent study of Canadian criminal justice approaches to 'drug addiction' does make extensive use Foucault's work on ethics and the governance of self (Moore 2007).

classes but is now expected of everyone.

It could be plausibly argued that while panopticon-style surveillance remains important, and while the old-fashioned discipline that insists on uniformity has by no means disappeared, other, post-disciplinary techniques have come to play a much larger role not only in the governance of 'problem' populations but in inciting all citizens to monitor and govern our our problems in particular ways.

An example may be helpful. In previous work I examined the practices of self developed by Alcoholics Anonymous and related programs, drawing on the work of Foucault and other scholars influenced by Foucault (Valverde 1998 chapter 5). I showed that Alcoholics Anonymous cannot be properly understood under the banner of 'discipline': the alcoholic self of AA is not a totalizing identity developed by experts but rather a pragmatic assemblage in which the self, not the expert, is the primary authority on the self and its habits. While in that work I did not examine criminal justice settings, the relevance is obvious, particularly for the US, where psychiatric help is rarely provided for people in trouble with the law but self-help support groups, self-help manuals and peer counselling are common. Whether our particular goal is to understand how women who are victims of sexual abuse are helped, how non-psychiatric addiction counselling works, or how violent male partners are 'retrained', Foucault's work on the ethical governance of the self by the self is bound to be a useful resource.

### **Foucault on law and sovereignty: revising 'Foucault's expulsion of law'**

Since the basic plot of Discipline and Punish concerns the rise and dissemination of disciplinary practices, sovereignty – which in that work is not clearly distinguished from what Foucault calls 'juridical power' – is both undertheorized and underdocumented. Sovereignty appears mainly as a foil to modern discipline and is not properly analyzed; and the legal system is in that work treated mainly as an embodiment of sovereignty that is fated to be increasingly dominated by disciplinary practices and subordinated to what Ewald influentially called 'the logic of the norm' (Ewald 1990, 104-5). Similarly, in Discipline and Punish, the constitutional apparatus of the 'Rights of Man' is given very short shrift, in keeping with the then prevailing left-wing view that equal rights is but a veneer for bourgeois domination.

These absences or distortions were specific to that book and its rather dualistic argument about discipline and sovereignty. But unfortunately for later legal scholarship, they were taken to be inherent features of Foucault's thought as such. An influential formulation of this view was Alan Hunt's claim about 'Foucault's expulsion of law' (Hunt 1993, Hunt and Wickham 1994).

I have elsewhere argued that this formulation is somewhat misleading even about Foucault's published work (Rose and Valverde 1998, Valverde 1998). But the expulsion of law thesis has to now be completely abandoned, in the light of posthumously published works and especially the College de France lectures. In both the 1976 and

1978 lectures, Foucault spoke at great length about the rise of modern sovereignty and provided a rich texture and a historical context for this term. The 1976 lectures spent much time drawing a contrast between the 'sixteenth-century jurists who collated the monuments of public right' and an older tradition of epic history writing, a genre used by aristocratic writers (and much later, by nostalgic accounts of lost national/ethnic glories, such as Walter Scott's best-selling myths of Anglo-Saxon virtue) to describe the glories of a particular lineage or people. The 'monuments of public right' elaborated by Jean Bodin, Hobbes, Locke, and others – which go unmentioned in Discipline and Punish, since in that work 'sovereignty' appears only as a foil to discipline and is not itself investigated– are discussed at length, in lectures that among other things show Foucault knew quite a bit about the history of English political-legal thought (e.g. Foucault 2003, 98-104). It is thus clear that when the focus of his writing shifted away from 'discipline', Foucault was able to recognize the importance and the persistence of legal and sovereign forms of power and knowledge. The 1976 lectures also demonstrated how the particular historical context of the emergence of legalized central sovereignty shaped works of political theory (Locke, Hobbes) that are traditionally regarded as grand rational beginnings rather than as weapons wielded by monarchs against barons.

Most importantly, the 'thickening' of Foucault's understanding of sovereign governance came not by building a conceptual edifice around a transhistorical 'sovereignty' (in the manner of Giorgio Agamben) but rather by focusing on particular historical struggles, such as the sixteenth-century transnational effort to put monarchical power on a solid secular conceptual basis that did not require divine right and canon law to support it<sup>7</sup>.

Elsewhere, in a 1973 lecture entitled "Truth and juridical forms" – whose content did not make it into Discipline and Punish– Foucault made an argument that completely undermines the 'expulsion of law' thesis. Using evidence from the history of medieval law, he argues that juridical practices of investigation and guilt determination in fact laid the basis for later scientific endeavours. Disciplinary knowledges, which are among the nineteenth-century descendants of seventeenth-century science, are thus seen here as borrowing their basic knowledge moves from the realm of the judicial. It is worth quoting this text at some length, since as far as I know its great potential for legal studies has remained undeveloped despite the fact that it's been widely available in French since 1994 and in English since 2000:

Among the social practices whose historical analysis enables one to locate the emergence of new forms of subjectivity, it seemed to me that **the most important ones** (emphasis MV) are juridical practices... For what is called the *inquiry* (emphasis in original) – the inquiry as practiced by philosophers of the fifteenth to the eighteenth century, and also by scientists, whether they were geographers, botanists, zoologists, or economists – is a rather characteristic form of truth in our societies.

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<sup>7</sup> Unfortunately Foucault never addressed the modernization of sovereignty under the banner of 'the rights of Man' and, later, democracy.

Now where does one find the origin of the inquiry? One finds it in political and administrative practice, which I'm going to talk about; one also finds it in judicial practice. The inquiry made its appearance as a form of search for truth within the judicial order in the middle of the medieval era. It was in order to know exactly who did what, under what conditions, and at what moment, that the West devised complex techniques of inquiry which later were to be used in the scientific realm and in the realm of philosophical reflection. In the same way, other forms of analysis were invented in the nineteenth century, from the starting point of juridical, judicial, and penal problems – rather curious and particular forms of analysis that I shall call the *examination* (emphasis in original), in contradistinction to the inquiry. (Foucault 2000, 4-5).

The passage just cited presents a very different picture of the rise of modern modes of power-knowledge than the somewhat epochal and binary perspective made famous by Discipline and Punish. The 'expulsion of law' thesis was rather simplistic; but to be fair to Alan Hunt, it was not without basis in the text of Discipline and Punish. Reading more widely in Foucault's work, however, definitively shows that 'discipline' is not a sociological concept with a fixed content that is part of a generalized abstract model of 'modernization'. Even though Foucault does state that the disciplines have colonized the legal apparatus, especially the criminal law apparatus, there is no general thesis about discipline replacing sovereignty.

'Discipline' can be usefully regarded as a tactical and even polemical invention that served an important purpose in the 1970s, a time in which expert knowledges of all kinds were for the first time coming under serious scrutiny, from patients' rights groups, feminists, historians, and other sources. Discipline and Punish presented a rather simplified and dualistic argument, however; this had the effect of creating an extremely successful but rather partial view of the highly complex, always changing and site-specific relations among different modes of power-knowledge<sup>8</sup>.

## CONCLUSION

In the 1970s, when Discipline and Punish appeared, it was not completely utopian to think that progressive criminology might actually change the criminal justice system. Despite the fact that crime rates were on the rise, the death penalty was abolished in most jurisdictions even as imprisonment was also coming under scrutiny; and social inequality, regarded by most as a key cause of crime, was being addressed through a host of complementary government programs. People on the left including Foucault had the luxury of being critical of both rehabilitation and punishment, of psychiatry as well as of hanging judges. Today we are in a different situation and we thus need to re-evaluate

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<sup>8</sup> I have explored this crucial methodological issue elsewhere: "habituated to theoretical edifices built out of large-scale concepts, many of Foucault's contemporaries read his work as if the protagonists of his genealogies were modes of power-knowledge, seen as succeeding each other in the same way that capitalism replaced feudalism. Such a reading misses the methodological revolution brought about by focusing on practices of governance..." (Valverde 2007, 160).

how we use Foucault's accounts. While it is of course still necessary and feasible to speak out for humanitarian and justice-oriented approaches –especially in the US, with its skyrocketing imprisonment rate-- critical criminology is rarely able to bring anything to the policy arena that sensible practitioners do not already know. Liberal-minded humanists, especially those who have practical experience with criminal justice, are in a better position than theorists to denounce law-and-order campaigns and the over-use of imprisonment. We should support the continuing campaigns to make the criminal justice system less inhumane, of course; but intellectually it is not clear that we have anything revolutionary or even mildly useful to contribute. It may now be time to take up Weber's advice and distinguish our political action as citizens, in which a Foucaultian theorist and the most old-fashioned humanist can easily work together, from our scholarly work as intellectuals, which may have to proceed in the hope that in a different future there may be a wider audience for it.

Another way of putting the current dilemma is to say that we (critical criminologists) have been roundly defeated anyway, at least in regard to the battles started in the 1970s. We should of course continue to do advocacy and political work alongside other progressive forces in our community, since there is no reason why we should not wield whatever meager authority the 'criminologist' label may bring us: but when engaged in non-policy oriented intellectual work I would suggest that it is futile to continue fighting for the soul of criminology. Especially if we take a broader perspective – as scholars like Stan Cohen did years ago– it makes more sense to give up on 'criminology', by which I mean stop treating criminal justice as a separate domain, in favour of a more broadly defined and more creative research agenda.

What this post-critical criminology agenda may be is not for me or any one person to decide. Some have argued that we should redefine our focus as 'the governance of security' (Shearing and Johnston 2003), which is one possible option, one that goes beyond criminology by paying close attention to community mediation, non-state security and peacekeeping. This has the virtue of shifting the scholarly gaze away from 'crime' and focusing it more creatively on why crime remains a great source of concern and fear, namely, persistent insecurity, and examining security and safety more broadly to include questions of peace and war, state corruption, economic security, and gender inequality. While Johnston and Shearing are not using 'security' in Foucault's sense, nevertheless, their focus on governing security and through security has decided resonances with Foucault's work, particularly his lectures on governmentality and security.

Others may want to emphasize that many of the perpetual dilemmas of criminal justice are at bottom the dilemmas of all regulatory systems, and pursue studies that explore how mechanisms used successfully to regulate economic activity or civil disputes might be used to replace the old-fashioned sovereign coercion of the criminal law. John Braithwaite and many others, such as scholars affiliated with the "RegNet" research network, are pursuing this research agenda at the moment, and it is certainly one that has a great deal of promise, at least at the practical end.

Others yet may try to bring back 'justice studies' in the old-fashioned, social justice sense of the term, and explore social inequality and the insecurities it produces. Many feminists working in and around criminal justice, as well as legal scholars working on aboriginality and colonialism, find 'justice' to be a useful and inspiring concept, one that goes far beyond and is in fact in contradiction to 'criminal justice'.

Whichever path is chosen, there is no doubt that these various post-criminological research agendas could benefit from a broader and deeper reading of Foucault's work, though of course inspiration will and should be sought from a broad range of sources.

On my part, I am not now and have never been a criminologist, so for me the task is not to find a post-criminological agenda but rather to continually negotiate my conflicted relationship to criminological research institutions, such as the one that has employed me for 15 years. Currently my main empirical interest is studying 'minor' mechanisms of municipal governance – an arena in which one can learn a great deal about everyday experiences of security and insecurity, belonging and alienation, citizenship and exclusion. In this current work I do sometimes use substantive ideas drawn from Foucault's work, but not very often, simply because that has not seemed appropriate, empirically. The methodological revolution that Foucault brought about, however, continues to be crucial in all my work, not so much because I apply Foucault's ideas but because it is always inspiring to re-read the work of someone who constantly challenged all conventional ways of making distinctions and sorting out entities – someone who questioned both conventional practices of governance and conventional habits of theorizing. As I became an adult and learned how to think, in the mid-1970s, I was constantly inspired by the Marxian notion of 'praxis', which seemed the right slogan for a philosophy student of radical tendencies: but eventually I came to see that despite its lip service to practice, Marxist theory was as concept-driven as any academic philosophy. By rejecting the formats and the habits of all philosophy including Marxist philosophy, while validating the *philia* of *sophia*, the love of knowledge, Foucault's work helps to keep me on my toes as I constantly attempt to question the ground on which I stand.

As Nietzsche taught us, there is no post-ideological future toward which we can strive, no innocent knowledge or perspective-free neutral position. Being constantly on one's toes, on the ground that we happen to have inherited but whose contours we ought never to take for granted, is, it seems to me, the only 'authentic' intellectual position available to those of us who have given up believing in 'humanity' and 'truth' but who still hope that our patient inquiries into how the world was made as it was will eventually feed into a (non-utopian, historically informed) exercise of the human collective capacity to imagine the world otherwise.

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