Dany Lacombe

Reforming Foucault: a critique of the social control thesis

ABSTRACT

Foucault's work on the prison radically transformed the way social scientists conceive the institutional regulation of life. Drawing on Foucault's thesis about the gradual refinement and expansion of mechanisms of control and discipline in modern society, they quickly began to reveal all the micro-powers and technologies of control at work both inside and outside the criminal justice system. It soon became obvious that every attempt to reform society, to give people more freedom ineluctably becomes its opposite – a technique of domination. No matter where or when, it is the same as it ever was – social control. I challenge this thesis by demonstrating that Foucault's concept of power is not only inscribed in practices of normalization, but, most importantly, in practices of liberation. In light of his work on bio-powers and bio-politics, the constitution of the modern subject through power relations is understood in terms of a 'governmentality' that maximizes life. Hence Foucault's notion of power is better understood as a 'mechanism for life' that includes strategies of self-development that both constrain and enable agency.

For the past fifteen years, Michel Foucault's groundbreaking account of the birth of the prison has exerted a powerful influence on the social sciences. Indeed, 'to write today about punishment and classification without Foucault' says criminologist Stanley Cohen 'is like talking about the unconscious without Freud' (1985: 10). In *Discipline and Punish: the Birth of the Prison* (1979), Foucault provided concepts that radically transformed the discourse in which penal reform was typically thought (e.g. Garland 1986). These concepts – 'power/knowledge', 'disciplinary society', 'micro-powers' – have allowed analysts to deconstruct both the liberal conception of the birth of the prison as a humanistic advance over the brutal punishments administered in pre-modern societies, and the Marxist conception of penality as an epiphenomenon of the mode of production. Under Foucault's influence, scholars have rewritten the history of penal reform as the history of the dispersion of a new mode of domination called 'disciplinary power', a power exercised through techniques of objectification, classification and normalization, a power deployed through the whole social body.

Moreover, Foucault's concepts have enabled criminology and the sociology of law to study the way various welfare state institutions 'regulate life'. Thus analysts have shown not only how 'coercive' institutions (the prison, the asylum, and the courts) discipline society, but also how other institutions that on the surface simply facilitate everyday life (education, health, social security, etc.) actually also have a disciplinary function. Simply put, these analysts have studied the way these institutions control and objectify the individual. However, most of their work is marred by its simplistic understanding of Foucault. While their studies are ostensibly based on Foucault's concept of penality as a *productive* technique of power/knowledge, at bottom, they simply reinscribe a functionalist and instrumentalist account of law reform.[1] Hence, in the social sciences, we witness a surfeit of studies glibly demonstrating that all attempts to ameliorate the social system, in particular the criminal justice system, only lead to the dispersion and extension of social control.[2]

In this article, I evaluate this conventional knowledge of law reform. I ask the question: If we accept that law reforms are not 'enlightened' solutions to the management of deviance as an empirical fact,[3] why is it that we then conceive their failure in terms of an ever deepening penetration of a mechanism of control into the social body? And does this account of law reform do justice to Foucault's concepts – particularly his concept of power – or have analysts simply repackaged functionalism in a Foucauldian box? Historian David Garland suggests that the concepts of *Discipline and Punish* have contributed to the development of a conception of modern society's techniques of normalization as unambiguously oppressive

> The story which *Discipline and Punish* tells – and the one which most influences current work in the sociology of punishment – is one of meticulous domination and thoroughgoing control, so that we are left with the distinct impression that society's practices of normalization – its imposition of standards upon conduct – are oppressive in all their aspects. Despite Foucault's later stress upon 'subjectification', *Discipline and Punish* tells the story of objectification of human beings through the use of power-knowledge, and its critique of power and society is largely an extension of this imagery of dehumanizing domination. (1990: 169–70)

While I partly agree with Garland's critique, I think that sociologists today doing work on punishment, law reform, or any other topics cannot limit their appreciation of Foucault's innovative approach to power to a single text, especially when he spent his career developing this approach! The emphasis on the micro-techniques of objectification, so prevalent in *Discipline and Punish*, gave way in Foucault's subsequent work to different problematics: namely, subjectification[4] and resistance. In this work, Foucault concentrates on the different modes by which in our society human beings are made into subjects. In an article specially written as an

afterward to Dreyfus and Rabinow's (1982) analysis of his work, for example, Foucault makes clear that he studied power in order to understand the constitution of the subject. 'The goal of my work during the last twenty years' he claims

> has not been to analyse the phenomena of power, nor to elaborate the foundations of such an analysis. My objective, instead, has been to create a history of the different modes by which, in our culture, human beings are made subjects. (. . .) Thus it is not power, but the subject, which is the general theme of my research. (1982: 208–9)

In the same article Foucault affirms that in his then current work he sought to study 'the way a human being turns him – or herself into a subject' (1982: 208). In light of this claim and his work on sexuality and governmentality, I examine how Foucault's productive notion of power, already outlined in *Discipline and Punish*, should not be reduced to a claim for the production of social control. Instead, I will suggest that it is best understood in terms of a 'mechanism for life' that includes strategies for self-development that both constrain – through objectifying techniques – and enable – through subjectifying techniques – agency. Furthermore, this conception of power is not only inscribed in practices of normaliz-ation, but, most significantly, in practices of *liberation* (Foucault 1988, 1991). In fact, Foucault gradually understood the constitution of the modern subject not in terms of strategies of domination, but rather, in terms of a 'governmentality' to maximize life. This conception of power and the subject facilitates an understanding of law reform that does not reduce it to a structure that simply reproduces the dominant social order. On the contrary, Foucault's concept of power, understood in the context of 'governmentality', allows us to begin to reconfigure the complex relationship between structure and agency.

PENAL REFORMS AND THE THESIS OF THE DISPERSION OF SOCIAL CONTROL

> The question remains, why do things go so terribly wrong?
> (Cohen 1985: 95)

Revisionist accounts of the 'enlightened' penal policies that swept Europe and North America at the turn of the nineteenth century have had a tremendous impact on the way analysts of contemporary law reform undertake their research (Rusche and Kircheimer 1968; Roth-man 1971, 1980; Ignatieff 1978, 1983; Melossi and Pavarani 1981; Garland 1985). The realization that the prison was far from the enlightened, rational and humane solution to the barbaric system of punishment preceding it led analysts of contemporary reforms to distrust all attempts to 'do good'. As the prison was at its birth, contemporary reforms are often celebrated by their makers as progressive: according to

them, we move from barbarism to enlightenment, from ignorance to guided intervention, from cruel to humane treatment. Analysts of contemporary reforms try to deconstruct this narrative of humanitarianism, benevolence and improvement. In its place they present a story of failure: alternatives to prison or the asylum neither ameliorate nor humanize – whatever that would mean. In fact, the result of those reforms are gloomy, with more and more people becoming enmeshed in new forms of control and regulation. The realization that not only past but contemporary attempts to reform the law have failed to bring social justice encouraged the following grim academic consensus: rather than modifying the oppressive practices of the social system, law reforms simply reproduce (or 're-form') those practices in ways that are less obvious. In other words, when it comes to law reform 'nothing works!'

Stanley Cohen succinctly describes the failure of new penal policies and agencies to transform the criminal justice system: 'the most fundamental fact about what is going on in the new agencies is that it is much the same as what went on and is still going on in the old system' (1985: 79). Cohen refers, here, to the failure of recent prison alternatives, such as half-way houses, probation and parole, to radically change the way our society punishes criminal activity. 'What is going on' nowadays, however, for Cohen is more than a simple failure to adequately punish and redeem the criminal. Drawing on Foucault's thesis about the gradual refinement and expansion of mechanisms of control and discipline in modern society, Cohen argues that contemporary penal reforms result in the 'blurring' of the boundaries between formal and informal social control (1979, 1983, 1985). Consequently, alternatives to the social control system result in 'a gradual expansion and intensification of the system; a dispersal of its mechanisms from more closed to more open sites and a consequent increase in the invisibility of social control and the degree of its penetration into the social body'. (1985: 83–4). Following Foucault, Cohen describes modern penal reform as a 'technology of power', a mechanism producing a type of control that becomes more and more difficult to grasp, that blurs the boundary between formal and informal control. Thus law reform is a paradoxical process, involving both 'the thinning of the mesh' and the 'widening of the net' of social control (Cohen, 1983, 1985).

The thesis of the dispersion of control in the whole of the social body – best encapsulated in the idea of the 'disciplinary society' – has expanded the field of criminology and the sociology of law beyond the study of formal control. Their object of study became the larger society, understood, however, in terms of a 'carceral' body. Analysts in those fields quickly began to reveal all the micro-powers and technologies of control at work both inside and outside the criminal justice system. For example, Ericson and Baranek (1982), in their analysis of the accused in the criminal justice system, compare his/her position of total dependency to that of the ordinary citizen in relationship to the law: human rights,

justice, and 'due process' are all reduced to technologies of power reproducing social control (see also McBarnett 1981). Ericson (1985, 1987) subsequently affirms that law reform is nothing more than a rhetorical tool ('reform talk') used to ensure the reproduction of the necessarily oppressive 'order of things'. In his analysis, the *Canadian Charter of Rights and Freedom* amounts to 'social control talk' promulgated by the state to produce social control.[5] Similarly, but from a feminist perspective, Carol Smart (1989) cautions women against resorting to law to fight current gender inequalities because of law's 'androcentric' and 'juridogenic' mechanisms of control. In other words, law's logic of control simply reproduces strategies of patriarchal domination. It subverts the original intent of feminist demands and de-radicalizes women's efforts to gain equality. Conceived as a technology of patriarchal power, or power *tout court*, law appears as simply a weapon to deceive and oppress people. The implication is that we would be better off without it.

Drawing on Foucault, then, analysts have constructed a knowledge of law reform founded in a specific conception of power, as an energy that fatally deploys itself throughout the social body. Hence, every attempt to reform society, to give people more freedom ineluctably becomes its opposite – a technique of domination. No matter where or when, it is the same as it ever was – social control.

The conventional wisdom about law reform is based on a circular logic: on the one hand law reform produces control, and on the other hand, the social control system needs law reform to perpetuate itself. This logic is made possible by an essentialist conception of the social world. Most accounts of law reform conceive society as a totality controlled by the state or some dominant group that, amoeba-like, regenerates itself through perpetual absorption. In this story, 'power' is simply repressive and, law reform, as a technique of power, produces only practices of domination. As stated above, this view of law reform is based on an essentialist reading of the work of Foucault that must be abandoned. While *Discipline and Punish* describes a 'police state' shot through with disciplinary techniques and normalizing practices, Foucault does not simply reduce the 'police' and disciplinary techniques in general to apparatuses used in the maintenance of order. In fact, he rejects such an idea describing the 'police' as an ensemble of mechanisms insuring the 'public good'.

> The sum of means which need to be put into practice in order to ensure the 'public good' in a way which goes beyond the maintenance of peace and good order is, in general terms, that which in Germany and France is called the 'police'. 'The sum of laws and regulations which concern the interior of a State, which tends to strengthen and increase its power, to make good use of its strengths and to procure the happiness of its subjects' (J. Von Justi). Understood in this way, the police extend their domain beyond that of surveillance and the maintenance of order. They look to the abundance of population . . . to the elementary

necessities of life and its preservation . . . to the activities of individuals . . . to the movement of things and people. . . It can be seen that the police force is the whole management of the social body. This term 'body' should not be understood in a simply metaphorical way, for it deals with a complex and multiple materiality . . . the police force, as an institutional grouping and as a modality of intervention, takes charge of the physical element of the social body. At the same period attempts were being made to find ways of thinking about juridical status of the materiality of this civil society. (Foucault, quoted in Barret-Kriegel 1992: 194)

Later we will see how the mechanisms for the management of the population are extremely central in Foucault's conception of power. For the moment, I want to demonstrate how using Foucault's work, we can repudiate the view of power as unidimensionally repressive. While power certainly produces control, it also produces other things.

FOUCAULT'S PRODUCTIVE AND RELATIONAL CONCEPTION OF POWER

a) *Discipline and Punish and Power-knowledge*

Power in the substantive sense, *'le' pouvoir*, doesn't exist. What I mean is this. The idea that there is either located at – or emanating from – a given point something which is a 'power' seems to me to be based on a misguided analysis, one which at all events fails to account for a considerable number of phenomena. In reality power means relations, a more-or-less organised, hierarchical, co-ordinated cluster of re-lations. (Foucault 1980c: 198)

Foucault asserts that to understand how power operates in modern society we must concentrate on its productive effects. This implies a new challenge

we must cease once and for all to describe the effects of power in negative terms: it 'excludes', it 'represses', it 'censors', it 'abstracts', it 'masks', it 'conceals'. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production. (Foucault 1979: 194)

In *Discipline and Punish* (1979) Foucault demonstrates this productive aspect of power through an analysis of the relationship between pun-ishment, a technology of power, and the development of the social sciences. He demonstrates that out of the modern practices of pun-ishment (observation, examination, measurement, classification, surveil-lance, record keeping, etc.) emerged a systematic knowledge of individ-uals that provided the seed for the development of the human sciences

(psychology, criminology, sociology, etc.), a knowledge that allowed for the exercise of power and control over those individuals. Foucault's analysis, therefore, reveals how knowledge, as forms of thought and action, is intricately connected to the operation of power. Indeed, power and knowledge are intimately linked by a process of mutual constitution; one implies the other. Hence Foucault coined the expression 'power-knowledge' and set out to investigate the relationship that linked the two practices: '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'. (Foucault 1979: 27) 'Power-knowledge' implies that there can be no assertion without a field of power, or stated differently, that there is no truth without a politics of truth. This concept has methodological implications for the way we approach the study of power. Rather than trying to determine why power exists, which would lead us to define it in terms of an essence, the concept 'power-knowledge' invites us to inquire about how power operates, that is about the strategies and procedures through which power is exercised. As Ewald (1975) indicates in his review of *Discipline and Punish*, Foucault approaches the truth claims of the prison reform movements and the discourses they emanate from in a descriptive fashion: Which strategy of production do they come from? Which relations of power do you proceed from? What kinds of subjection or liberation do you produce? (Ewald 1975: 1230)

Recent Foucault-inspired accounts of law reform have ignored Foucault's method of investigating truth claims. While *Discipline and Punish* argues for the existence of a deployment of a micro-physics of power, Foucault does not reify a system of domination. In fact, Foucault's conceptualization of the penal sphere avoids implying a pre-conceived social structure. 'Foucault's whole mode of theorizing,' Garland states, 'seeks to avoid any suggestion that society is a coherent totality which can be analysed by means of structural models or global conceptions' (1990: 133). In an interview preceding the 1977 re-edition of Bentham's *Panopticon*, Foucault is unequivocal about the impossibility of determining power, of revealing its origin

> But if you ask me, 'Does this new technology of power takes its historical origin from an identifiable individual or group of individuals who decide to implement it so as to further their interests or facilitate their utilisation of the social body?' then I would say 'No'. These tactics were invented and organised from the starting points of local conditions and particular needs. They took shape in piecemeal fashion, prior to any class strategy designed to weld them into vast, coherent ensembles. It should also be noted that these ensembles don't consist in a homogenisation, but rather of a complex play of supports in mutual engagement [of] different mechanisms of power which retain all their specific character. (Foucault 1980a: 159)[6]

Foucault's refusal to think power in terms of its determination, its origin, or its essence implies, Deleuze (1975) argues, that power is not a property localized in an institution (the state), subordinated to a structure (the economy), whose mode of action would be instrumental, repressive and constraining. For Foucault, power is a strategy involving relations of truth, one that is exercised through techniques that constitute both individuals and knowledges.

In order to appreciate better the non-essentialist and non-unitary conception of Foucault's notion of power, it is useful to examine *The History of Sexuality: an Introduction* (1980b). His critique of the 'repressive hypothesis' is crucial to understanding how, for him, the constitution of individuals through power is not inscribed in a logic of domination. As we will see, he argues that power is better conceived as a strategy that both constrains and enables action.

b) The History of Sexuality: Subjectification and Resistance

> For their part, the working classes managed for a long time to escape the deployment of 'sexuality'. (Foucault 1980b: 121)

In *The History of Sexuality* Foucault takes issue with the 'repressive hypothesis'; a view according to which Europeans repressed sexuality, which had hitherto been treated with relative openness. Hence sex, in the Victorian era, became joyless and utilitarian, concealed in the nuclear family and for the reproduction of the species. This narrative is attractive, Foucault argues, because it allows us to associate sexual repression with the rise of capitalism and the bourgeois. In the Victorian era, the argument goes, sex was repressed because it undermined capitalism, which necessitated at this time that all energies be directed toward production rather than pleasure. Sexuality was repressed by the dominant group, by the powers that were.

Rejecting the idea that modern society has somehow dominated sexuality, Foucault argues that over the last three centuries 'around and apropos of sex, one sees a veritable discursive explosion' (Foucault 1980b: 17). Rather than silence, we witness more and more talk about sex meant to 'yield multiple effects of displacement, intensification, reorientation, and modification of desire itself' (Foucault 1980b: 23). This deployment of discourses on sex has less to do with domination of the masses than to do with a maximization of the public good. In modern society, sexuality has become a thing to classify, specify, categorize and quantify – in short, to optimize.

> Sex was not something one simply judged; it was a thing one administered. It was in the nature of a public potential; it called for management procedures; it had to be taken charge of by analytical discourses. (Foucault 1980b: 24)

The deployment of sexuality took place in various discursive sites, such as psychiatry, medicine, demography, biology, politics, and many others. Power operated simultaneously in a number of fields, without originating in anyone in particular. Consequently, for Foucault, it makes little sense to talk of power in terms of an expansionary logic of social control.

> So it is not simply in terms of a continual extension that we must speak of this discursive growth; it should be seen rather as a dispersion of centers from which discourses emanated, a diversification of their forms, and the complex deployment of the network connecting them. (1980b: 34)

Foucault's resistance to conceiving power in terms of a continual extension of a single discourse can be partly explained by his refusal to locate power in a specific entity such as 'the state'. He rejects the analytical importance Marxists in particular give to 'the state'. In practice, Foucault contends, 'the state' is far from being the determining entity. While Foucault's critique is directed at Marxist theories of 'the state', it applies equally to accounts of law reform which are founded in a unitary concept of social control centred in 'the state'.

> We all know the fascination which the love, or horror, of the state exercises today; we know how much attention is paid to the genesis of the state, its history, its advance, its power and abuses, etc. The excessive value attributed to the problem of the state is expressed, basically, in two ways: the one form, immediate, affective and tragic, is the lyricism of the *monstre froid* we see confronting us; but there is a second way of over-valuing the problem of the state, one which is paradoxical because apparently reductionist: it is the form of analysis that consists in reducing the state to a certain number of functions, such as the development of productive forces and the reproduction of relations of production, and yet this reductionist vision of the relative importance of the state's role nevertheless invariably renders it absolutely essential as a target needing to be attacked and a privileged position needing to be occupied. But the state, no more probably today than at any other time in its history, does not have this unity, this individuality, this rigorous functionality, nor, to speak frankly, this importance; maybe, after all, the state is no more than a composite reality and a mythicized abstraction, whose importance is a lot more limited than many of us think. Maybe what is really important for our modernity – that is, for our present – is not so much the étatisation of society, as the 'governmentalization' of the state. (Foucault 1991: 103 emphasis in original)

I will return to this idea of 'governmentalization' later. For the moment I want to return to a problem of central importance for Foucault, the constitution of individuals.

While *Discipline and Punish* (Foucault 1979) illustrates the constitution

of individuals through mechanisms of objectification – in the sense of subjection to a norm – *The History of Sexuality: an Introduction* (1980) examines how the individual constitutes him or herself through a process of subjectification[7] – in the sense of resistance to a norm. Foucault contends that the discourses on sex deployed at the end of the eighteenth century were not used initially to repress and regulate the masses. Rather these discourses were a strategy for the self-affirmation of the emerging bourgeoisie. Through discourses on sex, the bourgeoisie gradually established itself as a body, as a class distinct from both the decadent aristocracy and the ignorant masses.

> It seems to me that the deployment of sexuality was not established as a principle of limitation of the pleasures of others by what have traditionally been called the 'ruling classes.' Rather it appears to me that they first tried it on themselves. [. . .] The primary concern was not repression of the sex of the classes to be exploited, but rather the body, vigor, longevity, progeniture, and descent of the classes that 'ruled.' This was the purpose for which the deployment of sexuality was first established, as a new distribution of pleasures, discourses, truths, and powers; it has to be seen as the self-affirmation of one class rather than the enslavement of another. (Foucault 1980b: 123)

It is clear from Foucault's observation that the deployment of discourses on sexuality did not result simply in the enhancement of social control. In fact, Foucault talks about the production of bio-power: mechanisms that invest, problematize, and manage life so as to maximize it (Foucault 1980b: 143–7). Hence the bourgeoisie, through the organization and elaboration of procedures of 'power-knowledge' on sex, not only controlled its own body but 'positively' transformed it; the bourgeoisie provided itself with a body which needed to be maximized. The bourgeois subject maximized his or her body by caring for it, preserving it, cultivating it and protecting it from the other so that it would retain its specificity, status, and value (Foucault 1980b: 123).[8]

Foucault's discussion of peripheral sexualities, in *The History of Sexuality: an Introduction* best illustrates how power is implicated in the mechanism by which identity and resistance are constructed and expressed. He argues that the concern for peripheral sexualities underwent a major shift in the nineteenth century. For example, the act of sodomy, according to the ancient civil code, was prohibited because it belonged to a category of forbidden acts. The emphasis on wrongdoing was directed at the act rather than at the perpetrator, who was nothing more or nothing less than the person who engaged in the prohibited act, a sodomite. Foucault contends that this classical vision of sodomy as an act was transformed in the nineteenth century with the emergence of a legal subjectivity embodied in 'the perpetrator' of the act. The sodomite gradually became a type of person; he acquired a subjectivity, a case history, a morphology, an anatomy and a curious physiology: he was a 'homosexual'. As Foucault

astutely puts it, a new creature was born: 'the sodomite had been a temporary aberration; the homosexual was now a species.' (1980b: 43).

This new species was made intelligible through a variety of power-knowledge strategies that objectified and subjugated. While he was now at the mercy of powerful discourses that named his condition, the homosexual was, nevertheless, in a position to resist these discourses. Foucault contends that once he acquires his new life, the homosexual can use his special positionality and assert his new identity in a variety of ways. He can show off, scandalize, resist – or passively accept that he is sick. The growth of the perversions, of the unorthodox sexualities is therefore, for Foucault, 'the real product of the encroachment of a type of power on bodies and their pleasures'. (1980b: 48) It is in that sense, then, that Foucault asserts that power is neither an institution nor a structure but 'the name that one attributes to a complex strategical situation in a particular society'. (Foucault 1980b: 93) This conception of power is different from the thesis of the enhancement and intensification of social control. Power, for Foucault, implies a network of relations of force between individuals. This relation of force does not suggest confinement; rather, power is a mechanism that both constrains and enables action. In fact, resistance is at the heart of power

> Where there is power, there is resistance, and yet, or rather conse-
> quently, this resistance is never in a position of exteriority in relation to
> power. (. . .) [O]ne is always 'inside' power, there is no 'escaping it'.
> (Foucault 1980b: 95)

Foucault does not negate that power produces control. The effects of this control, however, are neither unifying nor unitary. Inherent in power relations is a 'strategic reversibility': power-knowledge strategies function both as instruments to control and as points of resistance. Foucault uses the nineteenth century's discursive construction of homosexuality to show power's dual movement.

> There is no question that the appearance in nineteenth century
> psychiatry, jurisprudence, and literature of a whole series of discourses
> on the species and subspecies of homosexuality, inversion, pederasty,
> and 'psychic hermaphrodism' made possible a strong advance of social
> controls into this area of 'perversity'; but it also made possible the
> formation of a 'reverse' discourse: homosexuality began to speak in its
> own behalf, to demand that its legitimacy or 'naturality' be acknow-
> ledged, often in the same vocabulary, using the same categories by
> which it was medically disqualified. There is not, on the one side, a
> discourse of power, and opposite it, another discourse that runs
> counter to it. Discourses are tactical elements or blocks operating in the
> field of force relations. (Foucault 1980b: 101–2)

Foucault's important contention that there are no relations of power without resistance is not adequately substantiated, however, in his work

on madness, the prison – or, even, sexuality. While he asserts that people resist, his explanation as to how this happens is weak. For example, let us examine what he says apropos of the resistance of homosexuals to discourses naming their condition. In an interview after the French publication of *The History of Sexuality* (1980a), Foucault asserts that since the problematization of the homosexual in the nineteenth century (as a libertine, a delinquent, a pervert, etc.), we have all come to see him as displaying forms of physical or sexual or mental sickness. The homosexual himself internalizes the stigma of illness. However, having done so, he is able to resist.

> But taking such discourses literally, and thereby turning them around, we see responses arising in the form of defiance: 'All right, we are the same as you, by nature sick or perverse, whichever you want. And so if we are, let us be so, and if you want to know what we are, we can tell you better than you can.' (Foucault 1988: 115)

Ambiguous in Foucault's comment is *how* the homosexual is capable of appropriating the objectifying discourse and turning it to his own advantage. Indeed, his narrative of empowerment begs the question: What mechanisms allow the subject of a population to claim for himself or herself the right to self-determination? What mechanisms allow the 'strategic reversibility' of power relations?

c) Power-knowledge and Government

> Power is not a substance. Neither is it a mysterious property whose origin must be delved into. Power is only a certain type of relation between individuals. Such relations are specific, that is, they have nothing to do with exchange, production, communication, even though they combine with them. The characteristic feature of power is that some men can more or less entirely determine other men's conduct – but never exhaustively or coercively. A man who is chained up and beaten is subject to force being exerted over him. Not power. But if he can be induced to speak, when his ultimate recourse could have been to hold his tongue, preferring death, then he has been caused to behave in a certain way. His freedom has been subjected to power. *He has been submitted to government*. If an individual can remain free, however little his freedom may be, power can subject him to government. There is no power without potential refusal or revolt. (Foucault 1988: 84 emphasis added)

Foucault nowhere addressed the question of contemporary struggles for rights at any length. Early in his career, he was dismissive of the transformative potential of rights. In his 'Two lectures', presented in Italy in 1976, Foucault affirms that power-knowledge relations are formally delimited by 'the rule of right' (1980c: 93). He does not pay much attention to this triangle of power-knowledge-right, except to reduce the

rule of right to an ideology that conceals 'the element of domination inherent in its techniques' (1980c: 105). Foucault's conception of rights as concealing domination is in some ways similar to that of Marx, although for the latter rights camouflage the power of private property. French political philosopher Claude Lefort criticizes this view of rights as concealment, developing an impressive analysis of the radical indeterminacy of rights in its place (1986: 239–306, 1988: 7–45). While Lefort agrees with Marx that it is not arbitrary to regard the right to property as the only right in the French *Declaration of Rights* of 1791 that is sacred, and the one on which all the others are based, he criticizes Marx for what he is unable to see in the 'rights of man'

> Marx falls into and draws us into a trap, which on other occasions and for other purposes, he was very skilful in dismantling: that of ideology. He allows himself to become the prisoner of the ideological version of rights, without examining what they mean in practice, what profound changes they bring to social life. And, as a result, he becomes blind to what, in the very text of the Declaration, appears on the margins of ideology. (Lefort 1986: 248)

Marx is blind to the question of the rights of man, in particular to their symbolic function, because, ironically, he accepts bourgeois ideology. For him, the system of law has no other meaning, therefore, than that which the bourgeois gives to it. Foucault can be accused of similar reductionism. In the lectures of 1976, the system of law in the West has no other meaning than that which he assigns to the theory of sovereignty, that is, a juridical representation of power.

> Right in the West is the King's right. (. . .) I believe that the King remains the central personage in the whole legal edifice of the West. When it comes to the general organisation of the legal system in the West, it is essentially with the King, his rights, his power and its eventual limitations, that one is dealing. (. . .) The system of right is centred entirely upon the King, and it is therefore designed to eliminate the fact of domination and its consequences. (Foucault 1980c: 94–5)

For Foucault the rule of right represents the monarchy, a social system where power, knowledge and right are fused in the body of the sovereign. He suggests that in order to resist disciplinary power one should not invoke the notion of right, but turn instead, 'towards the possibility of a new form of right, one which must indeed be anti-disciplinarian, but at the same time liberated from the principle of Sovereignty' (Foucault 1980c: 108).

The search for a new form of right seems futile, however, in light of the fact that our modernity is based on the separation of power, knowledge and law from the King's body. The democratic revolution, Lefort

contends, involves the quietus of the King's body, which was the ultimate foundation of power, knowledge and law (1986: 256).

> Once power ceases to manifest the principle which generates and organizes a social body, once it ceases to condense within it virtues deriving from transcendent reason and justice, law and knowledge assert themselves as separate from and irreducible to power. And just as the figure of power in its materiality and its substantiality disappears, just as the exercise of power proves to be bound up with the temporality of its reproduction and to be subordinated to the conflict of collective wills, so the autonomy of law is bound up with the impossibility of establishing its essence. (Lefort 1988: 17–8)

By virtue of the *Declaration of the Rights of Man*, then, law becomes deprived of an absolute centre; endowing itself instead with a new point of fixation, 'man', whose nature is uncontrollable. For in democratic society, man's 'essence is to declare his rights' (Lefort 1986: 257). It follows that the content of the rights of 'man' is equally indeterminate, always open to interpretations

> the rights of man reduce right to a basis which, despite its name, is *without shape*, is given as inferior to itself and, for this reason, eludes all power which would claim to take hold of it. (. . .) Consequently, these rights go beyond any particular formulation which has been given of them; and this means that their formulation contains the demand for their reformulation, or that acquired rights are not necessarily called upon to support new rights. (. . .) From the moment when the rights of man are posited as the ultimate reference, established right is open to question. (Lefort 1986: 19).

The radical indeterminacy of power, knowledge and law brought about by the advent of democracy inaugurated a society without clearly defined boundaries, a society without ultimate foundations. In short, democratic society is characterized by the 'dissolution of the markers of certainty' (Lefort 1988: 19).

To reduce the question of democratic right to the concealment of either capitalist economic relations, as Marxists often do, or of juridical notions of power and domination, as Foucauldians often do, is to gloss over the radical transformation 'the rights of man' had on a society that was once embodied by the King. Under democracy, power may limit and sometimes deny right, but as Lefort argues 'it is incapable of depriving itself of its reference to it' (1986: 260). It is because of this awareness of rights, then, that people make demands to change existing conditions under which they live. Following Lefort, we should admit that rights are

> affirmed by virtue of an awareness of right, without objective guarantee, and equally with reference to publicly recognized principles which

are partly embodied in laws and which must be mobilized in order to destroy the legal limits that restrict them. (1986: 262)

In the name of rights we witness the rise of competing and novel demands to reform the law in order to validate a particular identity. It could be argued that the symbolic dimension of rights is constitutive of politics. It follows that to understand political action, or resistance, we must pay attention to the relation an individual establishes with the political and legal order.

The nature of the relation between the individual and the political order concerned Foucault in his studies of 'bio-power' and 'bio-politics'. In this work, he implicitly negates his earlier claims that rights in the West were unequivocally linked to the sovereign (1980b, 1988, 1991). Foucault introduced the notion of 'bio-power' in his work on sexuality to designate the proliferation of a technology of power-knowledge primarily concerned with life. Bio-power was a mechanism that took charge of life by 'investing the body, health, modes of subsistence and habitation, living conditions, *the whole space of existence*' (Foucault 1980b: 143–44, emphasis added). The notion of bio-power is useful for our understanding of the phenomenon of resistance because while it represents a totalizing or universal mechanism – one that interpellates the subject as a member of a population – it also contains the seed for a counter-power or a counter-politics because that mechanism individualizes the subject of a population. It is this aspect of bio-power, its simultaneous totalizing and individualizing tendencies, that is of importance in understanding the strategies by which individual subjects can claim the right to self-determination. Foucault explains that

> against this [bio-]power that was still new in the nineteenth century, the forces that resisted relied for support on the very thing it invested, that is, on life and man as a living being. Since the last century, the great struggles that have challenged the general system of power were not guided by the belief in a return to former rights, or by the age-old dream of a cycle of time or a Golden Age. (. . .) [W]hat was demanded and what served as an objective was life, understood as the basic needs, man's concrete essence, the realization of his potential, a plentitude of the possible. Whether or not it was Utopia that was wanted is of little importance; what we have seen has been a very real process of struggle; life as a political object was in a sense taken at face value and turned back against the system that was bent on controlling it. It was life more than the law that became the issue of political struggles, even if the latter were formulated through affirmations concerning rights. The 'right' to life, to one's body, to health, to happiness, to the satisfaction of needs, and beyond all the oppressions or 'alienations,' the 'right' to rediscover what one is and all that one can be, this 'right' (. . .) was the political response to all these new procedures of power which did not derive, either, from the traditional right of sovereignty. (Foucault 1980b: 144–5)

If life, understood here as 'man's concrete essence', is affirmed through rights claims, then, like Foucault we can no longer conceive law as necessarily linked to the sovereign. It must be linked to a different political rationality, one I believe, in which human rights are at the centre.

While Foucault never specifically addressed the question of human rights, his lectures on 'bio-politics' (at the Collège de France between 1978 and 1979) suggest that struggles for life and for self-determination are to be understood in the context of liberalism. In his lectures, he explores the relation between bio-power – the mechanisms taking charge of life – and the emergence of bio-politics, by which he means

> the way in which a rationalization was attempted, dating from the eighteenth century, for the problems posed to governmental practice by the phenomena specific to an ensemble of living beings: health, hygiene, birthrate, longevity, races . . . (1981: 353)

Foucault's statement is significant because it suggests that we cannot dissociate the problems posed by the question of population (bio-power) from the political rationality within which they emerged, liberalism. Far from conceiving it as a political theory or a representation of society, Foucault understands liberalism as an 'art of government', that is, as a particular practice, activity and rationality used to administer, shape, and direct the conduct of people (1981: 358). As a rationality of government – a 'governmentality' – liberalism, towards the beginning of the eighteenth century, breaks from reason of state (*la raison d'état*) which since the sixteenth century had sought to 'justify the growing exercise of government' (Foucault 1981: 354). What distinguishes liberalism from reason of state as an art of government is that for liberalism 'there is always too much government' (Foucault 1981: 354–5). In fact, far from being organized around the principle of a strong state, liberalism upholds the principle of maximal economy with minimal government (Foucault 1981: 354).

The question of liberalism, that of 'too much governing,' regulates itself, according to Foucault, 'by means of a continuing reflection' (1981: 354). The idea of reflexivity here is significant because it refers to a mechanism of self-critique, and self-limitation, inherent in liberalism. Foucault claims that

> Liberalism (. . .) constitutes – and this is the reason both for its polymorphous character and for its recurrences – an instrument for the criticism of reality. Liberalism criticizes an earlier functioning government from which one tries to escape; it examines an actual practice of government that one attempts to reform and to rationalize by a fundamental analysis; it criticizes a practice of government to which one is opposed and whose abuses one wishes to curb. As a result of this, one can discover liberalism under different but simultaneous forms, both as a schema for the regulation of governmental practice

and as a theme for sometimes radical opposition to such practice. (Foucault 1981: 356)

What allows liberalism to oppose state power, then, is not the principle of sovereignty or the idea of a natural right external to the state; rather it is a rationality, a governmentality of life that takes on 'the character of a challenge' (Foucault 1981: 353). People resist the conditions under which they live, they make claims for or against the state, because they have been submitted to government. In other words, the political technologies that seek to render us governable as a population (bio-power and bio-politics) simultaneously make possible the critique of these same technologies.[9]

There are similarities between Lefort's claim that democratic rights are constitutive of politics and the 'nature of man', and Foucault's claim that liberalism is a political practice for the critique of reality or of 'what is'. First, both emphasize the indeterminate or polymorphous quality of the rationality by which we are constituted as governed subjects, and both locate this rationality in the freedom and knowledge of those who are to be governed rather than in the power of the sovereign.[10] Second, both argue that power, knowledge and law are without absolute foundation or final legitimation. Finally, Foucault and Lefort emphasize the role of political liberalism in the constitution of politics, resistance, and identity.

CONCLUSION

We are by now far away from the critique of the conventional knowledge on law reform in criminology and sociology of law. Hence it might be useful to conclude this paper by considering how on the basis of Foucault's work on power-knowledge and government we can avoid reproducing the overstated thesis that when it comes down to law reform 'nothing works'. Foucault has often remarked that his work should not be construed as a theory to be applied to a particular case study, but rather as *'des boîtes à outils'*, as tool boxes one can use to approach our present. Consequently, what we can learn from Foucault stems from his method-ology. While I have not explicitly discussed any methodological prin-ciples, we can easily infer some from the analysis I have presented.

Foucault approaches his object – whether it be madness, the prison, sexuality, liberalism – in a way that accounts for the constitution of subjects and their knowledges through power-knowledge strategies that are specifically historical. This approach – Foucault's genealogy – is a method that takes seriously the truth claims people make regarding the knowledge they have of themselves while, at the same time, understand-ing such knowledge as a relation of power. Genealogy is

a form of history which can account for the constitution of knowledges, discourses, domains of objects, etc., without having to make reference

> to a subject which is either transcendental in relation to the field of events or runs in its empty sameness throughout the course of history (Foucault 1980c: 117).

This approach dispenses with the transcendental subject of phenomenology, the meaning-giving, thinking, willing subject of liberal humanism, and the empty subject of structuralism. Instead, as we have seen earlier, Foucault proposes a view of the subject as constituted through mechanisms of objectification and subjectification in which freedom is central

> I believe (. . .) that the subject is constituted through practices of subjection, or, in a more autonomous way, through practices of liberation, of liberty, as in Antiquity, on the basis, of course, of a number of rules, styles, inventions to be found in the cultural environment. (1988: 50–1)

Foucault's approach to the constitution of the subject within a historical framework is also based on the rejection of the '*grand récit*' (Lyotard 1984). He resists the desire to formulate a global, systematic, overarching theory of power or knowledge which holds everything in place. Instead, Foucault's genealogies analyse the specificity of mechanisms of power-knowledge relations by tracing the network of relationships which provides the conditions for the formation of specific orders, identities, and knowledges.

The strength of this approach is that it overcomes the impasse law reform accounts reached through systematically conceiving society in terms of the continual reproduction of a structure of control and domination. Law reform, thus conceived, appears like the passive support of a structure that is independent from the actions of social actors. Foucault's genealogy cautions us against conceiving the social world in binary oppositions, for example, the social structure versus the social actor. To the structure/agency dichotomy Foucault proposes a relational and productive conception of the social world.

Foucault understands the social world specifically in terms of power-knowledge strategies constitutive of and constituting subjectivity. Thus his approach conceptualizes structure and agency as mutually constitutive. Power-knowledge strategies, as we have seen, produce totalizing effects – as is the case with norms objectifying action – as well as individualizing effects – as is the case with the resistance to norms. Following Foucault then, we must concentrate on the way structure and agency are articulated in strategies of power-knowledge that are never determined but always contingent, that enable as well as constrain.

Dany Lacombe
School of Criminology
Simon Fraser University

ACKNOWLEDGEMENTS

Dany Lacombe is an assistant professor at the School of Criminology
and at the Department of Sociology/Anthropology, Simon Fraser Univer-
sity,   Burnaby,   British   Columbia,   Canada,   V5A 1S6   (email:
Lacombe@sfu.ca).

NOTES

1. Historian David Garland em-
phasizes this phenomenon in accounts of
prison reform: 'Foucault's emphatic de-
piction of punishment as a technology of
power-knowledge and his primarily
political account of its historical develop-
ment have produced an instrumental and
functionalist conception of punishment
in which penal practice is always shaped
exclusively by the requirements of social
control and in which its design is always
calculated to maximize control effects'
(Garland 1990: 193).

2. Cohen 1979, 1983, 1985; Ericson
1985, 1987; Ericson and Baranek 1982;
Chan and Ericson 1981; Giffen and
Lambert 1988; Ben-Yehuda 1985; Small
1988; Smart 1989; Watney 1987.

3. Most accounts of law reform in
western countries justify the failure of
recent prison alternatives – half way
houses, probation, parole, etc. – by
empirically demonstrating that the
prison population does not decrease with
the implementation of those pro-
grammes. Consequently, with the emerg-
ence of penal policies more people are
controlled by the correctional system.
This fact has encouraged the view that
prison reforms do not work. Of signifi-
cance here is that most analysts of law
reform take the empirical research for
granted and refer to each other's re-
search to support the thesis that reforms
lead to the penetration of control in the
social body. For a critique of this ap-
proach see McMahon's (1992) analysis of
the prison in Canada. Her research
indicates that in the case of Ontario, an
ideal-type case referred to in most penal

law reform accounts, the increase in the
number of people in the correctional
system is not statistically founded.

4. Foucault used the French word
'subjectivation' which is translated either
as 'subjectification' or 'subjectivization'.
In either case, it is used to refer to the
procedure by which the individual consti-
tute him or herself as his or her own
master.

5. Ericson has since modified his
'instrumentalist' account of power. See R.
V. Ericson, P. Baranek and J. Chan
(1987), (1989) and (1991).

6. I added 'of' to the last sentence
because I find the translation awkward.
In French it reads: 'Il faut noter d'ailleurs
que ces ensembles ne consistent pas en
une homogénéisation mais bien plûtot en
un jeu complexe d'appuis que prennent
les uns sur les autres, les différents
mécanismes de pouvoir, qui restent bien
spécifiques' (Foucault 1977b: 124).

7. See footnote 4

8. Throughout much of his early
career Foucault explored the relationship
between subjectification and power. In
Madness and Civilization (1967), Foucault
contends that the creation of the mad as a
special category distinct from the crimi-
nal was not initially the result of a
mechanism designed to oppress 'the
other', but corresponded instead to a shift
in the practice of confinement and
exclusion. In the nineteenth century a
new practice of confining insane and
criminal people together emerged. Out
of this practice, the confined criminals
experienced, Foucault claims, an acute
sense of difference, antagonism, and

injustice, which in turn led to a strategy of resistance on their part. It was in the name of their differences that the 'libertines', the 'debauched', and the 'prodigal sons' called attention to the *mélange* of categories and demanded their separation from the insane. The criminals resisted the association with the mad because madness, as Foucault demonstrated, became 'the specter of the internees, the very image of their humiliation, of their reason vanquished and reduced to silence' (1967: 224–5). What is significant from the point of view of the exercise of power and resistance is that the criminal class demanded *for itself* a separation from 'the other'. Far from being a strategy of repression, the separation of the sane from the mad was part of a strategy to maximize life, in this case the life of an influential criminal nobility which defined itself as sane.

9. Burchell similarly argues for the centrality of resistance in Foucault's views on liberalism: 'it is in the name of forms of existence which have been shaped by political technologies of *government* that we, as individuals and groups, make claims on or against the state' (1991: 217 emphasis in original).

10. Foucault's citation on page 343 of this article clearly indicates that his notion of power presupposes the freedom of those individuals upon which power is exercised; conversely it also presupposes the capacity of individuals as agents (Gordon 1991: 5). See also Burchell (1991: 139).

BIBLIOGRAPHY

Barret-Kriegel, B. 1992 'Michel Foucault and the police state' in *Michel Foucault Philosopher*, trans T. J. Armstrong, Hertfordshire: Harvester Wheatsheaf.
Ben-Yehuda, N. 1985 *Deviance and Moral Boundaries*, Chicago: University of Chicago Press.
Burchell, G. 1991 'Peculiar Interests: Civil Society and Governing "The System of Natural Liberty"' in G. Burchell, C. Gordon, and P. Miller (eds) *The Foucault Effect: Studies in Governmentality*, Chicago: The University of Chicago Press.
Burchell, G., Gordon, C. and Miller, P. (eds) 1991 *The Foucault Effect: Studies in Governmentality*, Chicago: The University of Chicago Press.
Chan, J. and Ericson, R. V. 1981 *Decarceration and the Economy of Penal Reform*, Research Monograph No. 14, Toronto: Centre of Criminology, University of Toronto.
Cohen, S. 1979 'The Punitive City: Notes on the Dispersal of Social Control', *Contemporary Crisis* 3: 340–55.
—— 1983 'Social-Control Talk: Telling Stories About Correctional Change,' in D. Garland and P. Young (eds) *The Power to Punish: Penality and Social Analysis*, London:. Heinemann Educational Books.
—— 1985 *Visions of Social Control: Crime, Punishment and Classification*, Cambridge: Polity Press.
Deleuze, G. 1975 'Ecrivain non: un nouveau cartographe', *Critique* 31(343): 1207–27.
Dreyfus, H. L. and Rabinow, P. 1982 *Michel Foucault: Beyond Structuralism and Hermeneutics*, Sussex: The Harvester Press; Chicago: The University of Chicago Press.
Ericson, R. V. 1985 'Legal Inequality', *Research in Law, Deviance and Social Control* 7: 33–78.
—— 1987 'The State and Criminal Justice Reform,' in R. S. Ratner and J. L. McMullan (eds) *State Control: Criminal Justice Politics in Canada*, Vancouver: University of British Columbia Press.
Ericson, R. V. and Baranek, P. M. 1982 *The Ordering of Justice: a Study of Accused Persons as Dependants in the Criminal Process*, Toronto: University of Toronto Press.
Ericson, R. V., Baranek, P. and Chan, J. 1987 *Visualizing Deviance*, Toronto: University of Toronto Press and Milton Keynes: Open University Press.
—— 1989 *Negotiating Control*, Toronto: University of Toronto Press and Milton Keynes: Open University Press.
—— 1991 *Representing Order*, Toronto: University of Toronto Press and Milton Keynes: Open University Press.
Ewald, F. 1975 'Anatomie et corps politiques', *Critique* 31(343): 1228–65.
Foucault, M. 1967 *Madness and Civilization: A History of Insanity in the Age of*

Reason, trans. R. Howard, London: Tavistock Publications.

—— 1977b 'Non au sexe roi,' interview with Bernard-Henri Lévy, *Le Nouvel Observateur* 644, 12 March: 92–130.

—— 1979 *Discipline and Punish: the Birth of the Prison*, trans. A. M. Sheridan, Harmondwswoth: Penguin.

—— 1980a 'Two Lectures', in C. Gordon (ed.) *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, Sussex: The Harvester Press.

—— 1980b *The History of Sexuality Vol. 1: An Introduction*, New York: Vintage Books.

—— 1980c *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, (ed.) C. Gordon, New York: Pantheon Books.

—— 1981 'History of Systems of Thoughts, 1979', *Philosophy and Social Criticism* 8(3): 352–60.

—— 1982 'The Subject of Power,' in H. L. Dreyfus and P. Rabinow *Michel Foucault: Beyond Structuralism and Hermeneutics*, Sussex: The Harvester Press.

—— 1988 'An Aesthetics of Existence', in L. D. Kritzman (ed.) *Foucault: Politics, Philosophy, Culture. Interviews and Other Writings 1977–1984*, New York: Routledge, Chapman & Hall.

—— 1991 'Governmentality,' in G. Burchell, C. Gordon and P. Miller (eds) *The Foucault Effect: Studies in Governmentality*, Chicago: The University of Chicago Press.

Garland, D. 1985 *Punishment and Welfare: A History of Penal Strategies*. Aldershot: Gower.

—— 1986 'Foucault's *Discipline and Punish*, An Exposition and Critique', *American Bar Foundation Research Journal*: 847–81.

—— 1990 *Punishment and Modern Society: A Study in Social Theory*, Chicago: The University of Chicago Press.

Giffen, J. P. and Lambert, S. 1988 'What Happened on the Way to Law Reform?', in J. C. Blackwell and P. G. Erickson (eds) *Illicit Drugs in Canada A Risky Business*, Toronto: Nebon.

Gordon, C. 1991 'Governmental Rationality: An Introduction,' in G. Burchell, C. Gordon and P. Miller (eds) *The Foucault Effect: Studies in Governmentality*, Chicago: The University of Chicago Press.

Ignatieff, M. 1978 *A Just Measure of Pain: The Penitentiary in the Industrial Revolution*, New York: Pantheon Books.

—— 1983 'State, Civil Society and Total Institution: A Critique of Recent Social Histories of Punishment', in S. Cohen and A. T. Scull (eds) *Social Control and the State*, Oxford: Martin Robertson.

Lefort, C. 1986 *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism*, edited and introduced by John B. Thompson, Cambridge: The MIT Press.

—— 1988 *Democracy and Political Theory*, Minneapolis: University of Minnesota Press.

Lyotard, J. F. 1984 *The Postmodern Condition: A Report on Knowledge*, Minneapolis: University of Minnesota Press.

McBarnett, D. 1981 *Conviction: Law, the State and the Construction of Justice*, London: Macmillan.

McMahon, M. W. 1992 *The Persistent Prison? Rethinking Decarceration and Penal Reform*, Toronto: University of Toronto Press.

Melossi, D. and Pavarani, M. 1981 *The Prison and the Factory: The Origins of the Penitentiary System*, London: Macmillan.

Rothman, D. 1971 *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, Boston: Little Brown.

—— 1980 *Conscience and Convenience: The Asylum and its Alternatives in Progressive America*, Boston: Little Brown.

Rushe, G. and Kircheimer, O. 1968 *Punishment and Social Structure*, New York: Russell and Russell.

Small, N. 1988 'AIDS and Social Policy', *Critical Social Policy* 21: 9–29.

Smart, C. 1989 *Feminism and the Power of Law*, London: Routledge.

Watney, S. 1987 *Policing Desire: Pornography, AIDS and the Media*. London: Methuen.