

Foucault Studies

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ISSN: 1832-5203

Foucault Studies, No. 21, pp. 52-79, June 2016

Rituals of Conduct and Counter-Conduct

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ABSTRACT: This essay provides an account of the role of ritual in governmentality (or the conducting of conduct) through an analysis of key texts during the period roughly from 1973 through 1981. I claim that ritual plays an essential role in Foucault's analysis of juridical forms and sovereign power as well as conduct and counter-conduct understood as features of governmentality and political rationality.

Keywords: ritual, conduct, counter-conduct, governmentality, veridiction

Foucault devises a number of enduring concepts that have proven useful both for understanding and critiquing our present.¹ Indeed, at various points in his career he understands his work as 'historian of the present' in precisely this way: as an analyst of concepts that individuals and groups might use as tools to understand and act within their present. Concepts such as 'discipline,' 'power,' and 'episteme' have become key concepts for theorists across a wide variety of fields as they attempt to make sense of our neoliberal present. The twin concepts of conduct and counter-conduct, while not as central to his work as these others, are also of vital importance for understanding and critiquing the present. While 'governmentality' has received the lion's share of attention, relatively few have noticed the term that Foucault claims constitutes this notion, i.e. conduct (governmentality is the conducting of conduct, and power has more to do

¹ Foucault articulates his project in terms of a critique of the present in a number of places. See e.g. the recently published interview, originally conducted in May of 1981, in which he states: "It seems to me that if there is a certain coherence in what I do, it is perhaps tied more to a situation that we all share, one and other, of which we are all a part, than to any [...] fundamental intuition or systematic reflection. It is true, if you will [...] it seems to me that modern philosophy, perhaps since Kant asked the question "What is Enlightenment?" —that is to say, "What is our current situation? What is happening around us? What is our present?" —it seems to me that at that moment, philosophy acquired a new dimension, or it opened itself up to a certain task that it had ignored that had not previously existed, which is to state who we are, to explain our present, what it is, today" (Michel Foucault, "Interview with André Bertin," in *Wrong-Doing, Truth-Telling: The Function of Avowal in Justice* (Chicago: University of Chicago Press, 2014), 236. Foucault goes on to identify this project with the likes of Hegel and Nietzsche in addition to Kant. Of course, this characterization of Kant's conception of Enlightenment figures prominently in Foucault's final published essay, "What is Enlightenment" from 1984.

with governmentality than it does with coercion or a confrontation between adversaries, Foucault notes in “The Subject and Power”).² This paper shows that Foucault also conceives of ritual practices as forms of conduct and counter-conduct that can exemplify specific rational forms of governmentality as well as contest them.

In addition to such basic concepts as “discipline,” “power,” and “governmentality,” Foucault’s works evince a clear concern for a loosely related set of concepts clustered around what we might term the dramatic dimension of experience: concepts such as ritual, spectacle, dramaturgy, theatricality, visibility and invisibility (what’s visually manifest and what isn’t), the symbolic, and the performative dimension of language.³ Granted, this set of concepts is more diffused throughout his work, which may be the reason that these various dramatic concepts have not received the same amount of sustained attention from readers of Foucault’s work as concepts such as ‘power’ and ‘episteme’ have. Yet this cluster of dramatic concepts pervades his work, from his earliest published writings until his final lecture courses. For example, his earliest works are most obviously concerned with visibility and invisibility and the various roles that these concepts play in the constitution of regimes of knowledge such as medicine and psychiatry: *The Birth of Clinic* construes visibility as constitutive of modern medicine, and the visibility of the mad (i.e. the various ways that one can spot a mad individual and distinguish her from others) is thematized in *History of Madness* as well. His later works continue this preoccupation with the visible and invisible. For instance, *Discipline and Punish* traces the various transformations undergone by technologies of power, from a sovereign power that is visible, concentrated, and profligate, focusing its action on a single individual in a fixed point in time and space, to a disciplinary power matrix in which power relations are suffused throughout society and thereby rendered largely (though not exclusively) invisible.⁴ That is, an important aspect of Foucault’s

² Michel Foucault, “The Subject and Power,” in James D. Faubion (ed.), *Essential Works of Foucault 1954-1984, Volume 3: Power* (NY: New Press, 1997), esp. 340-341

³ Already in his first lecture course at the Collège de France, Foucault begins to distinguish two rituals for ascertaining questions of justice. The first extends back to archaic Greece and consists of ritual ordeals meant to discover the truth; this contest proceeds without the judicial apparatus adopted by later rituals of justice—witnesses, judges, and so forth. Instead, two contestants square off in combat to determine who is right. Later additions will include the judge and witnesses in order to make the ritual of justice more objective. See also Foucault’s discussion in his Rio de Janeiro lectures of 1975, “Truth and Juridical Forms,” in James D. Faubion (ed.), *The Essential Writings of Michel Foucault, Volume Three: Power* (NY: New Press, 2000). In “Truth and Juridical Forms,” Foucault offers an extended reading of Sophocles’ *Oedipus Rex*, and argues that the play “is a kind of compendium of the history of Greek law. Several of Sophocles’ plays, such as *Antigone* and *Electra*, are a kind of theatrical ritualization of the history of law. This dramatization of the history of Greek law offers us a summary of one of the great conquests of Athenian democracy: the story of the process through which the people took possession of the right to judge, of the right to tell the truth, to set the truth against their own masters, to judge those who governed them” (33).

⁴ In addition to the analysis of Sophocles cited above, Foucault explicitly links theatre with the exercise of sovereign power in “*Society Must Be Defended*”: *Lectures at the Collège de France 1975-1976*, edited by Mauro

project in *Discipline and Punish* consists in tracing the transformation from largely visible to largely invisible regimes of power relations, from sovereign power to disciplinary power. Consequently, Foucault's works help us to see various relationships between power, knowledge, and the visible and invisible as they trace the various ways that power relations manifest themselves, whether as seen and felt, or unseen yet nonetheless effective.

This concern with visibility and invisibility is a specific instance of a more general concern with dramatic concepts in Foucault's work. The main concern of my essay will be to trace practices of ritual and the various ways that ritual functions to structure the field of conduct and counter-conduct. That is, ritual is understood as both a feature of governmental rationalities and an attempt to contest the specific forms that these rationalities take, for example, in the military, medicine, or the judicial institutions and practices. Rather than focusing on the specific roles that the visible and invisible play in the constitution of various regimes of knowledge such as medicine, psychiatry, and criminology, during the nineteen-seventies Foucault becomes increasingly interested in the ritual dimension of knowledge and power in certain kinds of institutions such as the juridical, the medical, the political, and the penal and the role that these institutions play in the constitution of various kinds of subjects. This can be clearly seen in the treatment of rituals of punishment under sovereign regimes of power, which are spectacular and intense exercises of power localized on a specific body for all to see, as in the gruesome spectacle of the regicide Damiens' execution that opens *Discipline and Punish*. Foucault refers to punishment as a ritual throughout *Discipline and Punish*, both in reference to modes of punishment under sovereign and disciplinary regimes. One of the key questions Foucault pursues in *Discipline and Punish* concerns the various ways that power is enacted: how do power relations become effective on specific bodies during specific times and in specific places, and how are these specific enactments, these rituals of power, transformed when we are looking at regimes of sovereign power, disciplinary power, and, later, biopower?

Tracing these various dramaturgical concepts through Foucault's corpus isn't my primary aim in this essay, although a brief survey will be necessary in order to provide the context for the main question I wish to examine, which concerns how these various dramatic concepts relate to the concepts of conduct and counter-conduct that Foucault begins to examine in texts such as "The Subject and Power," *Security, Territory, and Population* and the recently published *Wrong-*

Bertani and Alessandro Fontana, and Translated by David Macey (NY: Picador, 2003). In the 25 February 1976 lecture, Foucault makes the following claim:

It should not be forgotten that in the seventeenth century, and not only in France, tragedy was one of the great ritual forms in which public right was displayed and in which its problems were discussed. Well, Shakespeare's "historical" tragedies are tragedies about right and the king, and they are essentially centered on the problem of the usurper and dethronement, of the murder of kings and the birth of the new being who is constituted by the coronation of a king [...] I think that Shakespearean tragedy is, at least in terms of one of its axes, a sort of ceremony, a sort of rememorialization of the problem of public right (pp. 124-125).

Doing, Truth-Telling. In other words, what roles do the concepts of ritual and drama play in Foucault's elaboration of conduct and counter-conduct? This question is textual; it provides an initial attempt to make sense of ideas that have hitherto received little attention among Foucault scholars. As a result, the aim of this paper is to follow this particular thread of ritual through some of his writings, focusing primarily on "Truth and Juridical Forms" (1973); *Security, Territory, Population* (1979); and *Wrong-Doing, Truth-Telling: The Function of Avowal in Justice* (1981). The first section traces the transformations in juridical power from the practice of the ordeal in the early Middle Ages through the proliferation of techniques of inquiry in the late middle ages. I claim that this proliferation of techniques of inquiry parallels the proliferation of techniques of governmentality Foucault analyzes later, among other places, in *Security, Territory, Population*. Both the juridical form of inquiry and techniques of governmentality, understood as the conduct of conduct, develop rationally prescriptive rules that Foucault characterizes in terms of ritual.

Once Foucault conceptualizes power relations in terms of the conducting of conduct, it becomes possible to analyze the various ways that the conduct of individuals and groups is conducted across a wide variety of institutional fields. One such field is that constituted by judicial rationality and practices, which were of particular interest for Foucault during the period spanning from *Discipline and Punish* through the Louvain lectures recently published as *Wrong-Doing, Truth-Telling* (roughly the period from 1973-1981). Limiting the interpretive scope of this paper to the period from "Truth and Juridical Forms" to *Wrong-Doing, Truth-Telling* is not arbitrary, for in these texts Foucault highlights the ritual exercise of justice and the various ways that judicial institutions conduct the conduct of individuals and groups. The rational institution of juridical procedures is one dimension of the broader phenomena of rational forms of governmentality. Judicial institutions are sites where elaborate rituals of rationality are enacted.⁵

Foucault traces the complex of practices and theoretical disciplines that aimed to provide a new hermeneutics of the criminal subject and thereby lead the criminal's conduct according to these purportedly objectively rational demands, demands satisfied through the disciplines of psychiatry, criminal anthropology, criminology, and the like. According to Foucault, representatives of psychiatry and its allied disciplines gained access to the ritual space of the courtroom for quite a simple reason: the courts had been met with a set of crimes seemingly without reason and a series of criminals who refused to avow the truth of themselves as criminals. As a result, one sees over a relatively short period of time the introduction of psychiatric expertise into criminal proceedings, which sought to remedy this problem of the obstinately unreasonable criminal who refuses to avow the truth of her crime and her nature as a criminal. Certain experts wanted to take this rationalization further so that one might account for an individual's criminal responsibility before the act through probability and the assessment of risk, thereby governing populations and individuals according to the actuarial risk that they

⁵ I develop this claim in the second section of this essay.

represent.⁶ Individual self-avowal is replaced with the testimony of experts and the central role of avowal is displaced in criminal proceedings in favor of the modern hermeneutics of the subject. The criminal subject must now either reveal who he is through self-avowal or be subject to these various disciplinary techniques that will reveal his nature regardless of his will to do so. The courtroom becomes a site where a highly ritualized game of truth occurs.

But what of counter-conduct and its various ritual forms? Foucault does not provide us with a theory of counter-conduct such that we could divine its essential character for all time, but his work does provide us with the tools to analyze specific contexts of counter-conduct. For example, in one of the few places where he deals explicitly with counter-conduct, he considers it within the context of dissidence in the Soviet Union. He initially proposes identifying counter-conduct with the practice of dissidence itself before quickly rejecting this possibility both due to the inherent limitations of the term (for example, dissidents are typically considered heroes, but such hero-worship does not apply to the insane or the delinquent, who can also practice counter-conduct) and its narrow application to events regarding intellectual dissidence in the Soviet Union.⁷ Still, dissidence is clearly a kind of counter-conduct, one that follows a clear ritual form, for one couldn't be too obvious in one's objections to the ruling Communist party; one had to discreetly show one's dissent. If you were a dissident, you had to know how to play the game—the ritualized game of dissidence.

Instead of the specific instance of Soviet counter-conduct (or dissidence), Foucault returns to the Middle Ages and revolts against pastoral power that were the typical forms of counter-conduct during this period. The story that Foucault tells here is one that he will basically repeat a few years later in *Wrong-Doing, Truth-Telling*. According to this story, pastoral revolts of counter-conduct coalesce around the introduction of the juridical techniques of confession into the pastorate during the eleventh and twelfth centuries.⁸ Here we see the connection between the development of rational and symbolic judicial procedures (my focus in the first section below) and the development of rational techniques of governmentality (the focus of the second). Foucault notes five characteristics that these pastoral counter-conducts share, and they all have strongly ritualized elements. The first is asceticism of a particular kind—one that denied the monastic head absolute authority precisely because this *askesis* was also a technology of the self, “an exercise of the self on the self [...] in which the authority, presence, and gaze of someone else is, if not impossible, at least unnecessary.”⁹ This counter-conduct *askesis* hearkens back to more ancient practices of the self that will become the focus of Foucault's final lecture courses and writings. These ascetic practices follow strict rules for the direction of the body and the will, but

⁶ Here we can see a link between disciplinary power, which seeks to manage risky individuals, and biopower, which seeks to manage risk in populations.

⁷ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977-1978*, edited by Michel Snellart, and Translated by Graham Burchell (NY: Palgrave Macmillan, 2007), 200. Foucault's remarks about dissidence and hero-worship can be found on page 202.

⁸ *Ibid.*, pp. 203-204.

⁹ *Ibid.*, p. 205.

they are rules that the individual practitioner imposes upon himself, independent of any extrinsic rules of obedience. Foucault traces these ascetic rituals of counter-conduct understood as practices of the self upon the self, independent of the various ecclesiastical demands of ritualized conduct which seek ultimate submission to another's will. These ascetic rituals of counter-conduct occur within the context of the pastoral institutions themselves.

The importance of this genealogy of pastoral power in Foucault's account of conduct and counter-conduct cannot be overstated. In *Wrong-Doing, Truth-Telling*, Foucault argues that, as medieval pastoral institutions become replaced in the early modern period by juridical ones, we do not see a decline in the ritualization of conduct and counter-conduct. On the contrary, although the significance and the roles of these various rituals of conduct and counter-conduct change, there is a remarkable continuity throughout this process of juridical secularization. Ultimately it is this process of secularization in the rituals of justice that is of primary interest in this essay. Judicial conduct remains highly ritualized, despite the secularization undergone by juridical institutions beginning in the early modern period. Similarly, the various revolts of counter-conduct remain highly ritualized as well. In the conclusion, I consider several contemporary examples of this ritualized counter-conduct as a way of testing Foucault's analysis of conduct and counter-conduct as it relates to judicial institutions (the focus of the first section) and technologies of government (the focus of the second).

As noted at the outset of this introduction, few scholars have analyzed the role that ritual plays in Foucault's work, although analyses of the visual dimension of his work have provided the focus of several fine studies.¹⁰ One reason for this may be that ritual is a concept that does not really seem to belong among Foucault's working concepts, for it was so important to early sociologists such as Emile Durkheim and for various members of the *Annales* School who had been influenced by Durkheim's use of the concept. Foucault seeks to distance himself from both Durkheim and the *Annales* school.¹¹ My essay traces some of the uses of this dramaturgical concept, so it is useful to consider both what Foucault means by the term and what he does not mean at the outset. He does not provide readers with a tidy definition of the term, but the way that he uses it differs from the cultural and historical uses prevalent among French sociologists and historians. Instead of helping to define the cultural *milieu* in which individuals reside or particular historical *mentalités*, ritual practices are rule-bound acts that either conform to political rationalities characteristic of governmental forms or contest them. Political rationalities can be understood as both a feature of Foucault's analytic and a historical category between the large-

¹⁰ See e.g. Gary Shapiro, *Archaeologies of Vision: Foucault and Nietzsche on Seeing and Saying* (Chicago: University of Chicago Press, 2005).

¹¹ For a general overview of the *Annales* school, see Georg G. Iggers, *Historiography in the Twentieth Century: From Scientific Objectivity to the Postmodern Challenge* (Middletown: Wesleyan University Press, 1997), esp. Chapter 5. Mitchell Dean focuses on the relationship between Foucault and the *Annales* School in his *Critical and Effective Histories: Foucault's Method and Historical Sociology* (London: Routledge, 1994), esp. Chapter 2. I am grateful to Kevin Thompson for advice regarding the relationship between Foucault and *Annales* school

scale level of state politics and the individual politics of the self. Mitchell Dean notes that contemporary political rationality has a complex genealogy:

In addition to the juridical-political problem of citizenship, and the disciplinary problems of utility and docility, the present forms of political rationality have roots in ancient Christian notions of pastorship, and in the twin political doctrines of the seventeenth and eighteenth centuries, *reason of state* and *police*. As Foucault glosses, this genealogy of the problem of the state is one which leads to a 'strange game whose elements are life, death, truth, obedience, individuals, self-identity.'¹²

This essay begins to examine the role that rituals of conduct and counter-conduct play in this "strange game" whose genealogy accounts for both the constitution of the modern state and the modern individual, rituals here understood as rule-bound acts that individuals and groups perform to either identify with reigning political rationalities or to contest them. Rituals on my account do not provide the hidden key for understanding the whole of Foucault's work; instead, their modern significance lies in their status as specific practices that illuminate the political rationalities characteristic of forms of governmentality. Foucault's work traces these various forms of ritual, from the spectacular sovereign rituals of punishment, to the inquisitive rituals of the examination, and, finally, to the rituals of governmentality.

Spectacles of Juridical Power: Rituals of Justice Prior to *Security, Territory, Population*

Foucault's interest in the ritual dimension of power relations predates his concern with conduct and its relationship to political rationality and governmentality, though one finds references to conduct intermittently in various texts prior to 1977. One finds scattered uses of term in the 1974-1975 lecture course *Abnormal*, but it only becomes an explicit concern two years later, in *Security, Territory, Population*. This first section historically reconstructs Foucault's interest in ritual as it relates to juridical forms, which will provide a basis for my subsequent analysis of the ritual dimensions of conduct and counter-conduct both in the narrower judicial contexts and the broader contexts of governmentality.¹³

¹²Dean, *Critical and Effective Histories*, 183. The Foucault citation toward the end of Dean's passage is from "Politics and Reason," in L.D. Kritzman (ed.), *Politics, Philosophy, Culture: Interviews and Other Writings 1974-1984* (NY: Routledge, 1988). Gary Wilder provides a nice summary of the concept and utilizes it in his analysis of French colonialism and the struggle against it between World Wars One and Two in his book *The French Imperial Nation-State: Negritude and Colonial Humanism: Negritude and Colonial Humanism between the Two World Wars* (Chicago: University of Chicago Press, 2005), 44-50.

¹³ Throughout this paper, I shall distinguish between the juridical mode of power relations on the one hand and judicial institutions on the other, following Foucault's methodological distinction. Basically, juridical power proceeds via prohibitions, while disciplinary power is primarily productive rather than simply negative. One finds judicial institutions under both regimes of power, of course, although their modalities differ based on their deployment under these various regimes.

Stuart Elden points out a report written on a little-known lecture that Foucault gave in Minneapolis in April, 1972. The lecture was entitled “Cérémonie, théâtre et politique au XVII^e siècle,” though unfortunately there seems to be no transcript of the actual lecture. Nevertheless, the summary by Stephen Davidson remains a good place to begin to think about the relationship between ritual, power, and justice in Foucault’s work of the early 1970s.¹⁴ Apparently, Foucault conceived of the lecture somewhat theatrically, dividing it into five acts. Elden points out that the lecture deals with material on measure and justice from *The Lectures on the Will to Know* as well as material from the 1972 lecture course *Théories et institutions pénales*. In his lecture on ceremony, theatre, and politics in the seventeenth century, Foucault focuses on what he will later term revolts of counter-conduct. He focuses on the revolt of the *Nu-Pieds* in Normandy of 1639-1640:

Before attempting the specific analysis, Mr. Foucault explained that this analysis of the political ceremony in the Seventeenth Century would ultimately become part of a larger study of the ceremonial manifestations of political power from the debates in the Greek and Roman agoras to the ceremonies at the end of the Eighteenth Century. This will be a study of how political power takes on visible or theatrical forms and imprints itself on the imagination or behavior of a people. It would really be an ethnology of the manifestations of political power, a study of the system of demarcation of power within a society.¹⁵

Of course, Foucault never writes a study devoted to how “power takes on visible or theatrical forms and imprints itself on the imagination and the behavior of a people,” but the intent to do so provides an important context for Foucault’s discussion of the specific rituals attending the exercise of sovereign power. The concern with what Foucault later terms “revolts of counter-conduct” dates to the early 1970s as well, for the lecture concerns a specific French peasant revolt in 1639-1640 and the rituals of sovereign power that serve to re-establish power once the revolt was crushed:

This ceremony is particularly interesting because it takes place almost immediately after the military defeat of the rioting factions. Each element of the ceremony was thus extremely important, for each had polemic and strategic value. Beneath the ritual forms of the etiquette a total redistribution of monarchical power was taking place, a vast centralization of power

¹⁴ Stuart Elden provides a link to Davidson’s summary here:

<https://progressivegeographies.files.wordpress.com/2013/10/foucault-ceremonie-theatre-et-politique.pdf>

He discusses the text and the place of the lecture in the development of Foucault’s thought in two further posts. In the first one (<http://progressivegeographies.com/2013/10/04/an-almost-unknown-1972-summary-of-a-lecture-by-foucault/>), he speculates, based on the summary, on the place of this text within Foucault’s work of the early 1970s, while the second post (<http://progressivegeographies.com/2013/10/10/foucaults-1972-lecture-at-minnesota-summary-now-available/>) discusses some further details concerning the lecture.

¹⁵ Stephen Davidson, “Ceremonie, Theatre, Et Politique Au Xvll^e Siecle by Michel Foucault, College de France, Paris,” <file:///C:/Users/USER/Dropbox/foucault-ceremonie-theatre-et-politique.pdf>, 20.

creating new Institutions and profoundly modifying old ones. The ceremony was like a prefiguration in microcosm of what the monarchical regime would be under Louis XIV (what is roughly called 'absolute monarchy').¹⁶

Foucault distinguishes five elements or "acts" to this ceremonial re-assertion of monarchical authority. First comes military repression, which prepares the ground for the ceremony. The rioters are treated as enemies of the state, despite the rioters insistence on distinguishing between the King's fiscal agents and the King himself. This distinction is not recognized by the army, which slaughters members of the rebellion. Next, the representatives of the political, administrative, and religious authorities in Rouen are forced to submit to the king's power, although they seek to assert the three traditional checks on monarchical authority (the political, the judiciary, and the administrative or police checks), but these assertions are denied by the king's minister enacting the ceremony of judicial power, Séguier. It is unfortunate that there seems to be no extant transcript of the lecture, but the summary suggests that ritual was an important dimension of the exercise of power and the resistance to it. Clearly, ritual is important to the exercise of sovereign power, but, as I shall argue in the next section, it is vital for contemporary forms of governmentality (i.e. the 'conduct of conduct') as well.

Once one becomes attuned to Foucault's concern with ritual, one begins to see that its role in his analytics of power relations remains an abiding concern. Here I shall analyze two texts that highlight the relationship between the exercise of power and judicial institutions. I first analyze the role of ritual and juridical power in Foucault's May 1973 Rio de Janeiro lectures before turning to the ritual exercise of sovereign power in *Discipline and Punish*.¹⁷

"Truth and Juridical Forms" develops key concepts from Foucault's 1971-1972, *Lectures on The Will to Know*. Here, Foucault analyzes the institution of two successive models of judicial power: the first is the ordeal, which is grounded in Germanic law and flourishes during the early Middle Ages and the second is the inquiry, with roots in both Carolingian state politics and ecclesiastical law. The inquiry will develop into a key mechanism of sovereign power in Europe beginning in the twelfth century. As Foucault announces at the beginning of these lectures, "Truth and Juridical Forms" is actually concerned with three juridical models. In addition to the ordeal and the inquiry is the examination, which provides both the focus for the fourth and fifth lectures and the key to understanding the techniques of disciplinary power as they are developed in the nineteenth century (and the focus of *Discipline and Punish*). The three forms roughly succeed each other, for the ordeal is the characteristic form of the eighth and ninth centuries C.E. with inquiry gradually superseding it in the eleventh and twelfth centuries, though the inquiry and examination incorporate aspects of the previous forms.

¹⁶ Ibid.

¹⁷ Once again, Stuart Elden contextualizes these lectures, the first of two series of lectures that Foucault gave in Rio. "Truth and Juridical Forms" was followed the next year by a series of lectures on Social Medicine. See "Foucault in Rio 1973-1974," <https://progressivegeographies.com/2013/07/30/foucault-in-rio-1973-74/>

Foucault wants to determine what form power takes in various judicial contexts. In other words:

Judicial practices, the manner in which wrongs and responsibilities are settled between men, the mode by which, in the history of the West, society conceived and defined the way men could be judged in terms of wrongs committed, the way in which compensation for some actions and punishment for others were imposed on specific individuals—all those rules, or, if you will, all these practices that were indeed governed by rules but also constantly modified through the course of history, seem to me to be one of the forms by which our society defined types of subjectivity, forms of knowledge, and, consequently, relations between man and truth which deserve to be studied.¹⁸

Juridical forms bring together relations of knowledge, truth, and power that serve to subjectify individuals as particular kinds of legal subjects.

Foucault begins “Truth and Juridical Forms” with a methodological discussion of Nietzsche’s thought before turning to a discussion of *Oedipus Rex*, a play which he had analyzed the previous year, and to which he will return in upcoming years.¹⁹ He begins with a reading of *Oedipus Rex* because it anticipates the juridical form of inquiry developed in the twelfth century, while the heroic society of archaic Greece found in the Homeric epic anticipates the ordeal.²⁰ The third part of the text, corresponding to the third Rio lecture, turns to the juridical model of the ordeal. The ritual component of juridical practices is most pronounced in the ordeal, and it is the focus of Foucault’s analysis. The ordeal is the form that justice takes in Germanic pre-state societies. In these societies, trials take the form of physical ordeals between two individuals. This “Germanic judicial drama,” as Foucault terms it, has three constitutive elements.²¹ First, the trial takes the form of a duel between two adversaries that could be individuals, with the victim challenging the individual who had wronged him. Foucault emphasizes that the lack of a public

¹⁸ Michel Foucault, “Truth and Juridical Forms,” in James D. Faubion (ed.), Robert Hurley *et al.* (trans.), *Essential Works of Foucault, 1954-1984* (NY: The New Press, 1997), 4.

¹⁹Indeed, it would be interesting to trace the role that *Oedipus Rex* plays in Foucault’s various writings. For example, in “Truth and Juridical Forms” as well as *The Will to Know*, Sophocles’ play functions as a kind of inquiry, although different in significant ways from the late Medieval conception of inquiry. In the 1979-1980 lecture course *On the Government of the Living*, Foucault begins the lecture of 16 January 1980 with an analysis of the play that claims that Oedipus, like all Greek tragedies, is an alethurgy or a ritual manifestation of truth: “Of course, every Greek tragedy is an alethurgy, that is to say, a ritual manifestation of truth; an alethurgy in the completely general sense of the term, since tragedy, of course, makes truth audible and visible through the myths and heroes, through the actors and their masks” (*On the Government of the Living: Lectures at the Collège de France 1979-1980*, edited by Michael Snellart, translated by Graham Burchell (NY: Palgrave Macmillan, 2014), 23). Finally, in the *The Government of Self and Others*, Oedipus figures as an exemplary *parresiast*. See for example *The Government of Self and Others: Lectures at the Collège de France 1982-1983*, edited by Frédéric Gros, translated by Graham Burchell (NY: Palgrave Macmillan, 2010), 51.

²⁰ Without, however, implying any sort of progressive or teleological view of history.

²¹ The remainder of this paragraph draws on pages 34-36 of “Truth and Juridical Forms.”

authority to mediate between these parties.²² The second condition is that the ordeal took the form of war between the individual claiming to have been wronged and his adversary who purportedly wronged him. War and justice were identified; “[l]aw was thus a regulated way of making war,” but this justice understood as war by other means was both regulated and ritualized.²³ Germanic law takes the form of *lex talionis*, in which individuals have the right to retaliate when they are wronged, but the terms of this retaliation are strictly regulated.²⁴ As Foucault writes,

If the killer had committed the crime in such-and-such a manner, it would be necessary to kill him by cutting him to pieces or by cutting his head off and placing it on a stake at the entrance to his house. These acts would ritualize the gesture of revenge and characterize it as judicial revenge. Law, then, was the ritual form of war.²⁵

Foucault next claims that this Germanic legal form of the ordeal provided the basis for feudal law, for feudal law saw legal disputes as a test between two individuals in which truth was not at stake.²⁶ Regardless of whether disputes were settled through the ordeal or the test, feudal law was a matter of compensation rather than revenge. The main difference between the Germanic ordeal and the feudal test was that the test was refined and purified of the violence attending the ordeal. As William Ian Miller points out in his study of *lex talionis*, when legal, literary, and Biblical sources tell of a pound of flesh or an eye for an eye, these formulations were typically taken literally rather than metaphorically, although these body parts function in legal discourse as a means of exchange and quickly come to be understood figuratively as a result. The test, by contrast, renders this literal compensation (“an eye for an eye”) into a social and verbal ritual. Foucault cites as an example the legal code of eleventh-century Burgundy in which an individual

²² Although he names as exceptions cases of treason and homosexuality—these were crimes in which the whole community was considered to have been wronged. See “Truth and Judicial Forms,” 35.

²³ *Ibid.*

²⁴ In his engaging study of societies that exemplify *lex talionis*, William Ian Miller shows how these societies, including ancient Judaic society as well as archaic Greek and medieval German and Scandinavian societies, share many features, the most salient being that they are societies in which honor plays a prominent role. See *An Eye for an Eye* (Cambridge: Cambridge University Press, 2006), esp. Chapters Two and Three. Although he does not cite Foucault, his methods are congenial to Foucault’s, for he wants to focus on the actual practices of justice characteristic of these societies’ judicial institutions and the role that justice as retaliation (i.e. *talion*) plays in them.

²⁵ Foucault, “Truth and Judicial Forms,” *Power*, 35. The relationship between politics and war will of course be a key topic in Foucault’s upcoming lecture course, “*Society Must Be Defended*”: *Lectures at the Collège de France 1975-1976*, translated by David Macey (NY: Picador, 2003). See especially the lectures of 7 January 1976 and 21 January 1976, where Foucault analyzes Clausewitz’s well-known maxim that war is a continuation of politics by other means. Foucault will invert this and say that politics is a continuation of war, which bears more than a passing resemblance to the formulation here that Germanic law is the ritual form of war.

²⁶ “Truth and Juridical Forms,” 37.

accused of murder had to find twelve relatives to testify to his good name (a procedure known as compurgation). Unlike modern jury trials, this testimony did not serve to establish the guilt or innocence of the suspect. Rather, it proves that the individual's clout within the community, for the accused could find twelve individuals to attest to his good character.²⁷ Such juridical tests have an explicitly social character, in that they are not meant to establish the guilt or innocence of the accused based on a jury trial; rather, the strength of the social bonds and familial bond of the accused determine her guilt or innocence.

One finds verbal tests or oath-taking codified into various early medieval legal codes as well. An individual accused of a crime had to reply to this accusation with certain ritual formulas or oaths. These verbal formulas served to establish the guilt of the accused, but not in a way that anyone familiar with modern judicial procedures would find satisfying. Early twentieth-century legal scholar Frederick Pollock aptly describes the ritual form of this oath-taking:

[T]he oath-taker and his helpers, when they have begun, must perform their parts exactly, not only in word, but in gesture. A hand held up must not be lowered, a hand laid on relics, or on a sword, or on the oath helpers' hands, must not be moved until the oath is fully spoken? If nothing goes wrong in the solemnity, if all the right words are said in the right order, if all hands and fingers keep their right station, and if, all being duly done, the customary pause has elapsed without any one being visibly smitten by the divine wrath for perjury, then the proof is not only complete but conclusive.²⁸

Guilt was established once the individual (or her surrogate if she were a woman or minor) failed to utter the verbal formula in precisely the correct manner; a single slip would be sufficient to establish the guilt of the accused. Both the social test and the verbal test developed into highly ritualized forms, with elaborate preparations necessary prior to the actual trial. Vestiges of these verbal formulae remain in the modern ritual by which witnesses swear to tell the truth, although this is a reminder of the gulf that separates contemporary judicial rituals from these medieval ones. After all, medieval verbal tests were not part of a ritual game of truth.²⁹

Finally, within the broader social and verbal structure of the medieval judicial test, one finds the physical ordeal instituted in the narrower, Germanic sense as well. In northern France during the Carolingian Empire, individuals who were accused of murder had to walk over a bed of hot coals and if they still had scars two days later, they lost their case.³⁰ Foucault mentions other ordeals in this context, including the water ordeal in which innocence was established if the accused drowned after having been cast into the water with her right hand bound to her left foot,

²⁷ *Ibid.*

²⁸ Frederick Pollock, "The Genius of the Common Law II. The Giants and the Gods," *Columbia Law Review*, vol. 12, no. 4 (April 1912), 294.

²⁹ Foucault traces this concern with truth to the revival of Greek judicial forms that leads to the development of the inquiry, which becomes a game of truth with far-reaching consequences.

³⁰ *Ibid.*, 38.

for apparently water accepts the innocent and rejects the guilty.³¹ Additionally, physical combat according to strict rules was common to adjudicate property disputes and murder, with an audience present to ensure that the rules were observed.³²

It is noteworthy that in each of these early medieval judicial tests, either avowal or conduct is at stake, although Foucault will not introduce these terms into his analytics of power relations until somewhat later. In the social case of compurgation, the accused individual's relatives had to make an oath on behalf of the accused, while the highly ritualized form of the oath requires the accused to memorize and pass a verbal test. Finally, in the ordeal the accused must conduct herself successfully through a grinding physical ordeal. Foucault here characterizes these judicial procedures as "games with a binary structure," that do not seek to establish the truth in the same way that later judicial procedures will. "The judicial test was a way of ritualizing war or of transposing it symbolically. It was a way of giving it a certain number of secondary, theatrical forms, so that the stronger would be designated thereby as the one who was right."³³ Judicial tests were war waged symbolically. Victory or defeat were the only options for establishing guilt or innocence, and justice was done according to this opposition rather than in terms of the criteria of evidence meant to establish guilt beyond a reasonable doubt that characterizes our contemporary judicial forms.³⁴

Today's judicial criteria of evidence have their roots in the juridical form that began to supplant the test in the later Middle Ages. Beginning in the twelfth century, the juridical form of the ordeal began to be supplanted by that of inquiry. In order to understand judicial institutions during this period, it is important to see that their functions cannot be neatly separated from concerns of commerce and war. Judicial procedures were a continuation of war because the development of an independent judiciary power that serves state interests is an innovation of the modern period. Still, one can begin to see the changes that will later define judicial power beginning to manifest themselves in the twelfth century. Innovations such as a judiciary that exists independently of the individual disputants, a prosecutor who is the representative of the sovereign and represents his interests, a novel concept called the 'infraction,' and, finally, a fourth invention "just as diabolical as that of the prosecutor and the infraction" demanded compensation as a result of the injury inflicted upon him by the criminal's deed.³⁵ This leads to the practice of property confiscation as a means for the sovereign to enrich his or her land holdings. "These confiscations of property were one of the chief means for the great emerging monarchies to enrich and enlarge their holdings. The Western monarchies were founded on the appropriation of the judicial system, which enabled them to apply these mechanisms of confiscation."³⁶ These four

³¹ *Ibid.*, 39.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*, 38-39.

³⁵ *Ibid.*, p. 45.

³⁶ *Ibid.* Incidentally, these procedures are now known in the United States as civil forfeiture laws, and they are one of the key ways that local law enforcement agencies enrich themselves. For a consideration of these laws

innovations mark the transition from an earlier to a later feudal juridical form in which the monarch has a stake in all judicial proceedings (though not yet the state, which comes later).³⁷

The problem for the monarch was to find a ritualized procedure by which he could distance himself from the proceedings and yet still benefit from them without the threat of bodily harm to him or his representative. The method developed to deal with this problem was that of inquiry.³⁸ The inquiry was a political ritual developed during the Carolingian period that was expanded to serve the interests of the sovereign in judicial proceedings. During the Carolingian period, “[w]hen the representatives of the sovereign had to resolve a problem of law, of power, or a question of taxes, morals, ground rent or ownership, they initiated something that was perfectly ritualized and regular—the *inquisitio*, the inquiry.”³⁹ Secular judicial procedures during this period followed the mode of the trial analyzed above, while the Church kept the procedures of inquiry modified from the Greeks alive during the early medieval period. This leads Foucault to hypothesize a double origin for the modern method of judicial inquiry, an ecclesiastical one and an administrative one. In other words, inquiry has both secular and sacred origins.⁴⁰ As for the former, during the Carolingian period the sovereign would gather his advisors and require them to take an oath to tell the truth before they deliberated about particular problems facing the realm.⁴¹ However, the transformation from the juridical form of the ordeal to that of the inquiry was not a result of the rationalization of the process. Rather, truth and sovereign power become implicated within the juridical matrix when the political procedures of inquiry are adopted as a juridical form. Juridical form proceeds from the simple force of the ordeal to force mixed with symbolic social norms and avowal to, finally with the development of techniques of inquiry in the twelfth century, the juridical form as a manifestation of sovereign power as inquiry.

In a move that anticipates his later analysis of the various forms of governmentality that proliferate in the seventeenth century, Foucault sees the influence of these juridical forms during this earlier period eventually extending far beyond the confines of judicial institutions and procedures. “Judicial inquiry spreads into many areas of social and economic practice and domains of knowledge. From the thirteenth century onward, based on the model of the judicial inquiries conducted by the king’s prosecutor, a series of new forms of inquiry procedure was propagated.”⁴² The transformation from ordeal to inquiry and the proliferation of the inquiry as a method for knowledge acquisition has far-reaching effects. It leads eventually both to the development of the modern scientific method and what Foucault terms “a technique of voyage,”

and their devastating effects on African-American individuals and communities in particular, see Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (NY: The New Press, 2010), 78-83.

³⁷ Perry Anderson provides an excellent Marxist account of the rise of the modern state in *Lineages of the Absolutist State* (NY: Verso, 2013 [1974]).

³⁸ *Ibid.*, 44.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, 41.

⁴¹ *Ibid.*, 45.

⁴² *Ibid.*, 49.

described as “a political, power-exercising venture and a curiosity-driven, knowledge acquiring venture—that ultimately led to the discovery of America.”⁴³ Torture remains a part of inquiry as a mixed form, adopting ritual aspects of both physical ordeal and verbal inquiry. Certainly metaphors of torture are regularly deployed by philosophers and scientists during the early modern period—take, for example, Bacon’s famous claim that what’s needed is to put nature on the rack.⁴⁴ Torture remains a key technique of subjugation in the “technique of voyage” as well, for the enslavement and subjugation of peoples entailed by imperialism could not exist without these ritual techniques of pain.⁴⁵

Ritual techniques of pain take center stage in the opening pages of *Discipline and Punish* as Foucault analyzes punishment under regimes of sovereign power. Few readers can easily forget the gruesome details of Damiens’ punishment, so I will not rehearse them here. However, it is important to recall that Damiens’ execution is the culmination of a complicated ceremony of ritual punishment that provides the focus for Chapter Two, “The Spectacle of the Scaffold.” Punishment under the *ancien régime* is a celebration, in which the sentence is inscribed upon the body of the condemned. “The public execution is to be understood not only as a judicial, but also as a political ritual. It belongs, even in minor cases, to the ceremonies by which power is manifested.”⁴⁶ Foucault adheres to Nietzsche’s claim in *The Genealogy of Morals* that there is invariably a festive dimension to sovereign displays of punishment.

To see others does one good, to make others suffer even more: this is a hard saying, but ancient, mighty, human, all-too-human principle to which even the apes might subscribe; for it has been said that in devising bizarre cruelties they anticipate man and are, as it were, his “prelude.” Without cruelty there is no festival: thus the longest and most ancient part of human history teaches—and in punishment there is so much that is *festive!*—⁴⁷

⁴³ Ibid.

⁴⁴ Pierre Hadot analyzes the various ways that nature has been understood in the West from the Greeks to the mid-twentieth century in *The Veil of Isis: An Essay on the History of the Idea of Nature*, translated by Michael Chase (Cambridge: Harvard University Press, 2008). Hadot distinguishes two main attitudes characteristic of natural knowledge, the Orphic and Promethean attitudes. While the former is grounded in an aesthetic attitude, the latter seeks to force nature to divulge her secrets, usually by force. While valuable as a history of ideas, from a Foucaultian perspective it gives short shrift to the relationship between the ideas and attitudes and the practices that both inform and are informed by them.

⁴⁵ Ann Laura Stoler analyzes and critiques Foucault from a post-colonial perspective in her book *Foucault and the Education of Desire: Foucault and the Colonial Order of Things* (Durham, NC: Duke University Press, 1995). Her book is one of the first to provide a critique of the role of race in Foucault’s work, focusing primarily on the first volume of the *History of Sexuality* and “*Society Must Be Defended*” prior to its publication. Her basic claim is the Foucault’s discourse of race focuses too much on Western Europe at the expense of providing a fuller picture of how power relations structure European colonial administration.

⁴⁶ Michel Foucault, *Discipline and Punish: The Birth of the Modern Prison*, translated by Alan Sheridan (NY: Vintage Books, 1977 [1975]), 47.

⁴⁷ Friedrich Nietzsche, *Genealogy of Morals and Ecce Homo*, translated by Walter Kaufmann (NY: Vintage, 1967 [1887]), 67.

Foucault makes an important modification to Nietzsche's claim, however, for while such public ritual festivals of cruelty are key to the exercise of sovereign power, ritual continues to play a role in subsequent *dispositifs* of power. The role of ritual changes, and while it is less public, it is not absent: Less spectacular, perhaps, but just as ritualized. Instead of ritual games of sovereign might, disciplinary power manifests itself through ritual games of truth through the rational and scientific techniques of the examination, a continuation of inquiry by other means:

The examination as the fixing, at once ritual and 'scientific', of individual differences, as the pinning down of each individual in his own particularity (in contrast with the ceremony in which status, birth, privilege, function are manifested with all the spectacle of their marks) clearly indicates the appearance of a new modality of power in which each individual receives as his status his own individuality, and in which he is linked by his status to the features, the measurements, the gaps, the 'marks' that characterize him and make him a case.⁴⁸

Instead of a ritual reinforcing of the individual's status as a member of kinship group through the medieval judicial test of compurgation, or the spectacular rituals of sovereign power, examinations are rationalized scientific rituals that fix the individual as an object of knowledge. In this sense, they become basic technologies in the various 'rituals of truth' that power produces. "In fact, power produces reality; it produces domains of objects rituals of truth. The individual and the knowledge that may be gained belong to this production."⁴⁹ The next section continues this analysis of various ways that ritual functions to undergird specific practices for disciplining individuals and regulating populations.

Rituals of Conduct and Counter-Conduct and the Juridical Scene in *Security, Territory, Population and Wrong-Doing, Truth-Telling*

The first section focused on the role of ritual in Foucault's account of sovereign power through a careful reading of "Truth and Judicial Power" that culminated in the sovereign rituals of power, only to be supplanted by various games of disciplinary truth, such as the examination. But, one might object at this point, while it is obvious that rituals play an important role in the exercise of sovereign power and its various spectacles, one of the key differences between sovereign power and various other power regimes is that sovereign power is primarily visible power exercised through rules that prescribe its ritual exercise. Surely, one might object, visible ceremony and ritual are virtually nonexistent under regimes of disciplinary power simply because this power does not manifest itself so publicly and spectacularly. This view is partially correct: typically power no longer manifests itself so ostentatiously, but it does not follow from this relative disappearance of visible power relations in favor of techniques of governmentality that ritual is absent from them. This section examines the role that rituals of conduct and counter-conduct play

⁴⁸ Foucault, *Discipline and Punish*, 192.

⁴⁹ *Ibid.*, 194.

in Foucault's *Security, Territory Population* and *Wrong-Doing, Truth-Telling*. Even within non-sovereign power regimes, power relies upon ritual to conduct the conduct of individuals. But it is equally true that the various counter-conducts that contest these various techniques of governmentality rely upon elaborate rituals with prescribed rules as well.

On May 27, 1978, Foucault presented a lecture later published as "Qu'est-ce que la Critique/Critique et Aufklärung."⁵⁰ At the outset of this lecture, he claims that the seventeenth century witnessed what he calls "a veritable explosion of the art of government."⁵¹ This proliferation of the arts of government prompts a series of critical reactions that cultivate "the art[s] of not being governed so much." Foucault next delineates three spheres in which government and critique manifested themselves, that of religion, political right, and science. These various critiques (of power, of truth, and of the subject) structure various discourses, including that of juridical discourse.⁵²

This lecture glosses many of the same ideas that Foucault develops in *Security, Territory, Population*. At the beginning of the course, Foucault carefully distinguishes between sovereignty, discipline, and security as overlapping apparatuses of power that have different targets—sovereignty targets a territory, discipline targets individuals, and security targets populations.⁵³ He devotes the first three lectures to a discussion of security prior to considering government in the sixteenth century which results in contemporary biopolitical techniques meant to manage risk in populations in order to keep them safe. He justifies this turn to governmentality as an attempt to get outside the confines of the institution. While one can look at the institution in isolation, in order to examine the specific technologies of power that give rise to institutional structures such as the prison, hospital, and, finally, to the state itself, one must devise methods that will make sense of institutions as nexuses of power relations. "Can we talk of something like a 'governmentality' that would be to the state what techniques of segregation were to psychiatry, what techniques of discipline were to the penal system, what biopolitics was to medical institutions?"⁵⁴

Following this justification, Foucault proceeds to analyze the use of the term 'government.' Prior to the sixteenth century, government always refers to individuals and never to territories. One governs people, but never a state. There is an important distinction between this modern conception of government and ancient Greek conceptions of ruling. The Greeks typically think of the ruler as analogous to the captain of a ship of state (Foucault's example once more is *Oedipus Rex*). Whereas for the Greeks subjects are indirectly governed by the ruler, modern arts of government mandate direct intervention into the lives of individuals and populations. This

⁵⁰ "Qu'est-ce que la Critique/Critique et Aufklärung," *Bulletin de la Société française de Philosophie* vol. 84 (1990), 35-63. Subsequently translated as "What Is Critique?" in James Schmidt (ed.), *What Is Enlightenment? Eighteenth Century Answers and Twentieth Century Questions* (Berkeley: University of California Press, 1996), 382-398.

⁵¹ *Ibid.*, 383.

⁵² *Ibid.*, 385-386.

⁵³ *Security, Territory, Population*, (Lecture of 11 January 1978), 11.

⁵⁴ *Ibid.*, 120.

insight leads Foucault from a consideration of government to pastoral power, a fundamentally non-Greek conception of power.⁵⁵ The apparatuses and technologies of pastoral power parallel those of political power until quite late in the West—Foucault claims that the figures of Christ and Caesar remain distinct in the West in a way that they do not in the Russian Empire. The pastorate governs the *oikos*, humans in their private households—the management of families, private wealth, and the people within the household. The pastorate seeks to govern the economy of souls (the *oikonomia psuchōn*), though Foucault argues that this term would be better rendered “the conduct of souls.” It stands to reason that if conduct in this technical sense developed out of the early Christian notion of the *oikonomia psuchōn*, then it would adopt highly ritualized forms of expression.

Ritualized forms of conduct are rooted in the religious realm, within the procedures and technologies of pastoral power, and the same is true of counter-conduct. Foucault cites Luther as the instigator of the greatest revolt of counter-conduct, a religious revolt that was neither political nor economic.⁵⁶ Although these revolts of conduct were revolts against the Christian conduct of souls, they cut across other realms of society, often with political and economic ramifications.⁵⁷ Beginning in the seventeenth and eighteenth centuries, the conducting of conduct becomes increasingly a political task rather than simply a pastoral one, but the pastoral techniques of leading individuals that had developed over the course of millennia do not disappear; rather, they manifest themselves in the transformed techniques of the political government of individuals and populations.⁵⁸

Foucault cites three examples to illustrate the transformation that the arts of conducting conduct (the arts of government) that develop out of the pastoral techniques of managing individuals and groups undergo during the seventeenth and eighteenth centuries, and each prompts highly ritualized forms of counter-conduct. First is the conduct of war, and the resistance by individuals and groups to this conduct. Once armies become professionalized and disciplined in the early modern period, contesting this disciplining meant rejecting social norms mandating that one ought to give one’s life for one’s nation. This means rejecting the “obligatory relationship to the nation and the nation’s salvation.”⁵⁹ Deserters who were caught faced penalties, from ritual humiliation to hanging, and the rituals attending these judicial rituals were vital for re-establishing authority and morale in the ranks.

Foucault’s next example more clearly demonstrates a ritualized form of counter-conduct. He cites the proliferation of secret societies during the eighteenth century, the most famous of which were the Freemasons. Such secret societies developed elaborate rituals that closely followed established religious forms.

⁵⁵ *Ibid.*, 123.

⁵⁶ *Ibid.*, 196.

⁵⁷ *Ibid.*, 197.

⁵⁸ *Ibid.*, 198-199.

⁵⁹ *Ibid.*, 198

As you know, they have their dogmas, rituals, hierarchy, postures, ceremonies, and forms of community. Freemasonry is, of course, a privileged example of this. Then, in the nineteenth century, they become increasingly composed of political elements and take on clearer political objectives—plots, political, or social revolutions—but always with an aspect of the pursuit of a different form of conduct: to be led differently, by other men, and towards other objectives than those proposed by the apparent and visible official governmentality of society.⁶⁰

Foucault's third example is that of medical institutions, which Foucault claims more closely maintain the form of the pastorate than other arts of government. One can see this most clearly in Foucault's analysis of psychiatric power and the role of the therapist there, but the authority manifested in other medical professionals' conduct can take similar form. Given the contemporary controversies around vaccinations, it is noteworthy that Foucault mentions here those who refuse vaccination as examples of individuals engaged in revolts of conduct, as well as those who engage in holistic medicine and members of certain religious groups who reject medicine altogether.⁶¹ In addition to being examples of counter-conduct, what these three examples have in common is their ritual component rooted in pastoral power as well as the threat of judicial reprisals that face these dissident individuals if they are apprehended for their counter-conduct.

From the early 1970s through *Discipline and Punish* and *Security, Territory, Population*, we can discern a clear thread connecting exercises of power that are consistently ritualized. The final text I examine, the 1981 series of lectures at the Catholic University of Louvain recently translated as *Wrong-Doing, Truth-Telling*, will show how this thread of the ritualized exercise of justice concerns Foucault well into the 1980s.

Wrong-Doing, Truth-Telling is the transcript of six lectures that Foucault gave in April-May 1981. The volume's editors note that Foucault was invited in the spring of 1981 by the Center for Criminological Research to give a series of lectures, and the lectures reflect this context, but they also relate to the work that Foucault was doing in his courses and writings in interesting ways.⁶² Avowal and disavowal would seem to be closely related to conduct and to *parresia*, the speech acts of the speaker who seeks to critique current institutional norms. Provisionally, we might say that avowal (and its counterpart disavowal) link critical practices and acts (counter-conduct) with critical speech (*parresia*).

⁶⁰ Ibid., 199. Reinhart Koselleck provides an excellent and concise analysis of the role that secret societies played in Enlightenment political history in *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge: MIT Press, 1988 [1959]). His book traces the rise of the Absolutist State as theorized by the work of Hobbes through the Illuminati and other secret societies that developed to critique this state form. See in particular Chapter Seven "The Political Function of the Loges and the Plans of the Illuminati," 86-98.

⁶¹ *Security, Territory, Population*, 199-200.

⁶² Michel Foucault, *Wrong-Doing, Truth-Telling: The Function of Avowal in Justice*, edited by Fabienne Brion and Bernard E. Harcourt, translated by Stephen W. Sawyer (Chicago: University of Chicago Press, 2014), 3.

Foucault begins *Wrong-Doing, Truth-Telling* with a scene of madness. He presents the summary of a case from 1840, in which a psychiatrist named Leuret is treating a patient who suffers from hallucinations and “delirium of persecution.” In order to cure Mr. A., it suffices that he simply avow his madness and thereby confess and identify himself as one who is mad. After a regime of cold showers, he in fact admits that he is mad and thereby confesses to Dr. Leuret.⁶³ Conscious awareness of madness, Foucault concludes, is inconsistent with madness—once one avows one’s madness, one can no longer be mad. Confessing the truth of one’s madness drives it away. “Avowal was the decisive element in this therapeutic operation.”⁶⁴ Foucault notes the strangeness of this ritual of avowal: after all, it’s not as if the medical authorities were proving the madness had been cured; it was sufficient for the patient to merely admit his madness for Leuret’s therapeutic interventions (therapeutic interventions, we might add, that can bear more than a passing resemblance to older techniques of physical torture) to cease.⁶⁵ Foucault summarizes the mechanics of avowal thusly: “avowal is a verbal act through which the subject affirms who he is, binds himself to this truth, places himself in a relationship of dependence with regard to another, and modifies at the same time his relationship to himself.”⁶⁶ Foucault refers back to his analyses of pastoral power that he had undertaken in *Security, Territory, Population* and the concern with the institutionalization of confession in the early Church that he had just examined in *The Government of the Living*.⁶⁷ Though he is clearly extending his previous work in these lectures, he is also re-casting his work in terms of veridiction, and in terms of the relationship between veridiction (truth-speech) and jurisdiction (justice-speech) in particular. He concludes his inaugural lecture with an overview of the various ways that avowal has been a feature of Western societies since antiquity. Like techniques of governmentality and inquiry, the modern period witnesses the extension of techniques of avowal into various institutions such as the medicine, justice, and psychiatry as well as an intensification within Christian contexts as well, with self-surveillance through confession and penance becoming much more frequent.⁶⁸ Religious, medical, and judicial institutions manifest this need for avowal, this need for confession, which had been a concern of Foucault’s since at least the mid-70s.⁶⁹

⁶³ Ibid., 11-12.

⁶⁴ Ibid., 12.

⁶⁵ Ibid., 13. Foucault is returning to a concern found in both *Psychiatric Power* and *Abnormal*, i.e. the medicalization of psychology. But this need for avowal seems contrary to this motivation, for it would be absurd for the medical doctor to claim that it were sufficient for the patient to avow the truth of her disease in order to be cured.

⁶⁶ Ibid., 17.

⁶⁷ Michel Foucault, *The Government of the Living: Lectures at the Collège de France 1979-1980*, translated by Graham Burchell (NY: Palgrave-Macmillan, 2014).

⁶⁸ Ibid., 18.

⁶⁹ The initial volume of *The History of Sexuality* and *Abnormal* both evince this growing concern with confession in his work. See in particular *The History of Sexuality, Volume 1: An Introduction*, translated by Robert Hurley (NY: Vintage, 1978 [1976]), Chapter One, “The Incitement to Discourse,” 17-35 as well as *Abnormal: Lectures at the Collège de France 1974-1975*, translated by Graham Burchell (NY: Picador, 2004), esp. Lecture Eight, in which

Foucault wishes to investigate the various ways that individuals are obliged to tell the truth of themselves and the effects of these truth-telling procedures throughout history, but we can only understand the specific institutional judicial context of avowal if we recall the broader context of governmentality, “government understood in the larger sense as a means of forming, transforming, and directing the conduct of individuals.”⁷⁰ Governmental technologies produce particular kinds of subjects, but these productive technologies overlap with two other kinds of technology, those for producing objects as well as various techniques of communication.⁷¹ The relationship between veridiction and jurisdiction is historically interpreted through three representative moments, that of archaic Greece, medieval Christianity, and the early modern period.⁷² Furthermore, each of these representative moments of avowal have their own ritual context. The final part of this section will examine these three moments and their ritual context as a way of showing that ritual remains an important aspect of Foucault’s analyses of the various historical connections between jurisdiction and veridiction via avowal, and, by extension, the abiding importance of ritual within Foucault’s *oeuvre*. I will conclude with a consideration of the relationship between avowal, justice, ritual, and conduct, the four terms that have structured my reading of these texts.

Foucault often begins with madness as a discourse of unreason and with the Greeks as a counterpoint to the Christian practices of the self. The first and second Louvain lectures focus on this Greek moment, with the first focused on archaic Greek texts (Homer, Hesiod) and the second focused once more on *Oedipus Rex*. The third lecture marks the transition from the ancient to the early Christian worlds. The fourth and fifth analyze veridiction in the practices of confession and penance in the Middle Ages, leaving the sixth lecture for a brief analysis of modern techniques and rituals of juridical avowal. The inaugural lecture in which he provides an overview of the project of tracing moments of avowal through Western juridical technologies of the self begins with a scene of madness, while the lectures proper begin with the Greeks—*The Iliad* in particular.

First scene of ritual conduct—the archaic ordeal

As if to signal the importance of ritual in techniques of avowal, the first lecture presents a ritual of commemoration as a means of understanding juridical avowal in archaic Greece. The ritual of commemoration arises as the result of the chariot race in Book 23 of the *Iliad*, a scene that apparently depicts a competition between Achilles and three other competitors. Foucault argues that, although this scene appears to be simply an athletic contest to commemorate the death of Patroclus, it is in fact a judicial scene. He provides three reasons for this claim, the most important of which is the scene’s ritual character:

Foucault links early modern techniques of confession and controlling witchcraft with the later nineteenth century injunctions against masturbation.

⁷⁰ *Ibid.*, 23.

⁷¹ *Ibid.*

⁷² *Ibid.*, 30-31.

Above all, the proof that this is not merely an athletic competition but is indeed a judicial scene can be seen in the pledge proposed by Menelaus, which takes on a ritual form, a very precise juridical-religious form. Antilochus must stand up, whip in hand, and the whip must touch the horses. Moreover, when he explains to Antilochus the oath's formula and tells him that he must 'do this and that,' at that moment, Menelaus is very clear that he is giving his *dikē*—that is, the form he has chosen for a judicial settlement—and, as well, that all of these forms, all of these rituals, are, as he says, in conformity with *themis*—in other words, with the rules that allow for the settlement of a dispute. We are in the world of *dike* and *themis*, the world of rules, the world of liquidating a conflict.⁷³

Recalling his earlier analyses of Greek justice in *Lectures on the Will to Know* and "Truth and Juridical Forms," Foucault adds that this scene is both an athletic contest and a judicial ritual. Similar to these previous analyses, the *agon* shows that this judicial scene is pre-legal; that is, it lacks the typical institutional structures that we have come to associate with legal procedure, such as a prosecutor who represents the state. Yet, this scene has sufficient characteristics to identify it as juridical in character, key among them the ritual and veridical dimensions.

The race reveals the truth that was already implicitly present, though not explicitly manifest. Like the much later psychiatric scene that opens *Wrong-Doing, Truth-Telling*, the point of the race is to show a truth that has yet to be acknowledged.

The race should have, as its function, to manifest a truth that is already recognized. The race has, as its function, to solemnly reveal, in a combat that is at the same time a ceremony, the heroes' different strengths. The race's real function is to put them in the order of their truth value. Consequently, far from being a test in which the equal individuals can distinguish themselves so that an unpredictable winner emerges, the race is nothing more than a liturgy of truth.⁷⁴

Avowal makes manifest a latent truth, and it is this structure that remains the same throughout these historical permutations of veridiction and jurisdiction.

Second scene of ritual conduct: penance as expressive act and as veridiction

Foucault focuses on the term *exomologēsis*, which "means to recognize something."⁷⁵ The *Oxford English Dictionary* simply renders it as "a public confession," a definition Foucault will eventually adopt as well.⁷⁶ Foucault begins by noting three distinctive features of penance as it developed in the Latin West. First, penance begins as an annual obligation in which a believer must publicly

⁷³ Ibid., 36.

⁷⁴ Ibid., 39.

⁷⁵ Ibid., 105.

⁷⁶ "Exomologesis," *Oxford English Dictionary*.

<http://www.oed.com/view/Entry/66322?redirectedFrom=exomologesis#eid>. Accessed April 3, 2015.

announce and renounce her sins. But there was a contradiction facing the early Church: baptism was supposed to render the initiate free from sin and backsliders would be permanently exiled from the religious community. There should thus be no need for penance because the Church, understood as a community of baptized souls, should in fact be free from sin.⁷⁷ Second, the early Church had yet to prescribe a procedure governing when one ought to engage in penance. Third, and most significantly for Foucault's purposes here, penance was not primarily a practice or procedure. Rather, it was a status that one adopted. One was a penitent, but this status entailed certain rites and practices, even in the context of the early Church. The third lecture details the various ritual practices associated with the expiation of sin in the early Church. First is the juridical *expositio causae*, the exposition of the cause. Foucault characterizes this as a judicial precondition that the would-be penitent had to present to the priest or bishop in order to be considered for penitential status. Foucault emphasizes that this judicial precondition of penitence was a private affair between the individual and the Church authority.⁷⁸

Exomolegēsis did not refer to this private judicial procedure. Rather, one engages in penance (the ritual acts that render one a penitent) until reconciliation occurs in a public ceremony of the laying of the hands, which occurred annually on Good Friday.⁷⁹ Tertullian criticized these rites of penance, but Foucault argues that in the "theatricality of Tertullian's text" we glean insight into the actual rites associated with penance in the early Church:

[...] we can hear a note of indignation against such practices, it seems that we have here a certain number of precise gestures that characterize the *exomolegēsis* of the one who is to be reconciled—a hair shirt, taking him by the hand, being covered in ashes, prostration, kissing the steps of one's brethren, and rolling humbly at their feet.⁸⁰

⁷⁷ Foucault analyzes this contradiction more fully in *The Government of the Living*. Here, the problem is parsed in terms of the question of whether the saving act can be repeated as well as in terms of the problem of sin among the baptized. Foucault argues in the 27 February 1980 lecture that the even within the institutional context of the early Church, members were not seen as purified elect. The first *metanoia* is baptism, and the ritualized forms of penance operate within the context of this conversion. One ritual form that Foucault highlights is that of the collective public confession of sins that occurs along with private repentance understood as "a constant detestation of sin" (174-175). Finally, Foucault points out a third ritual form, that of repenting, which typically meant temporary exclusion from the community of the faithful. Foucault summarizes this: "All this shows therefore that the Christian communities did not consider themselves to be a society of the perfect, of the pure, of people who having once gained access to the light and to eternal life could never be dispossessed of this and could never fail again. We see that sin and weakness, may be, are in actual fact present in the Christian communities and that awareness of these sins and weaknesses, and repenting [*repentir*] them, are characteristic of the Christian life, of the life of individuals, and of communities" (176).

⁷⁸ *Wrong-Doing, Truth-Telling*, 106-107.

⁷⁹ *Ibid.*, 107.

⁸⁰ *Ibid.*, 108.

Foucault proceeds to examine other texts by early Church Fathers, including Saint Jerome. In particular, he cites the *exomolegēsis* of Fabiola, who had divorced her first husband and remarried before the death of her first husband, an act that was considered sinful. Foucault cites Saint Jerome's description of her *exomolegēsis*: she proceeds "before the eyes of all Rome, during the days preceding Easter" among a group of penitents, "hair disheveled, deathly pale, her head sullied with ashes" in order to "[lay] bare to all her wound."⁸¹ Foucault's gloss on Saint Jerome's letter emphasizes the ritual theatricality of this event of penance as well as its continuity with earlier Greek rites of supplication:

We have here a ritual, a great ritual of supplication that, it must not be forgotten, was similar in many respects to the rituals of supplication found in Greek tragedy and which were effectively enacted in Greek society—the Roman version was no doubt slightly different. In short, one has here a ritual that has a deep tradition; it is a ritual of supplication, but one that had a well-defined place in penitential procedure. And this ritual [...] did not include an avowal of sins, but a spectacular manifestation of the fact that one had sinned, of one's awareness of being a sinner, of remorse for being so, and of the will to be a sinner no longer and be reintegrated.⁸²

Tertullian emphasizes that penance is not a dialogue that the individual carries out privately, either with a priest or bishop or one's own conscience. Rather, it is a theatrical public act in which one shows how sin is inscribed on one's very body. In other words, it is conduct that the penitent must perform in order to be welcomed back to the fold. Such theatrical acts of penance were simultaneously acts in which one expressed nonverbally who one was (with the judicial speech act of avowal as a condition for this expression) as well as acts of ritual recognition. These were expressive acts before a community of believers by which individuals expressed who they were and what they had done in the hopes that they might return to the community. The private judicial act of *expositio causa* serves as prelude to the ritual act of *exomolegēsis*. This ritual *exomolegēsis* followed the model of martyrdom rather than medicine or law.⁸³ In the following lecture, Foucault concisely states that Christianity's innovation "was this principle of a veridiction of the self through a hermeneutics of thought."⁸⁴ This veridiction through a hermeneutics of the self would prove highly influential, as it poses the problem concerning the link between the spiritual subject of veridiction with the legal subject.

It is only later in the Middle Ages that we see the development of a form of penance as avowal; this development provides the basis for Foucault's fifth lecture. The verbal penance of *exagoreusis* was developed by the ancient Greeks as a form of permanent self-avowal.⁸⁵ While

⁸¹ Ibid., 108-109. Foucault cites this passage from Saint Jérôme, *Lettres*, translated by Jérôme Labourt (Paris: Les Belles Lettres, 1954), vol. 4, letter 77, sections 4 and 5, 43-45.

⁸² Ibid., 109.

⁸³ Ibid., 111.

⁸⁴ Ibid., 152.

⁸⁵ Ibid., 163.

exomologēsis was a public deed in which an individual shamed oneself in order to become reconciled with the community, *exagoreusis* is the spoken report of thoughts that one has. It becomes a form of self-censorship in which one seeks to determine if one's thoughts are illusory, based on the origin of the representatives. Put simply, did the thoughts derive from God or from Satan? Unlike ancient *exagoreusis* in which one sought self-mastery, Christian *exagoreusis* led to the complete self-renunciation and reliance upon another, who became one's spiritual guide. Foucault sees this as the beginning of the hermeneutics of the self. Both *exagoreusis* and *exomologēsis* are hermeneutic practices of the self. The former is a public expression of oneself as shameful penitent, while the latter consists in the individual's examination of her thoughts, either alone or in the presence of another.⁸⁶ The hermeneutics of the self, a self-discipline that seeks to discover the truth of oneself, works in tandem with the revealed truth of the biblical text.⁸⁷ As he did in "Truth and Juridical Forms," Foucault links the development of this hermeneutic self-examination with broader developments in science and philosophy. Modern philosophy develops out of rejection of the authority of the text toward "the truth of reason and the truth of oneself," which sets the stage for both Descartes and subsequently Freud, both of whom develop methods to determine when one is deluding oneself.⁸⁸

Later these two early forms of penance would be replaced by fixed forms of penance beginning in the seventh century as Irish monks begin evangelizing in Western Europe. Rather than a particular form of penance that would change one's status with regard to the Church, penance became an ongoing activity that one had to practice following the commission of each sin; it should therefore be repeated as often as necessary.⁸⁹ During this period, penance was in the process of becoming a verbal juridical form. This fixed, reiterative penance derived from two main sources. First was the monastic model, which imposed forms of discipline on individuals within a hierarchical and regulated community.⁹⁰ The second main source was that of Germanic law, for the idea that penance takes the form of reparation derives from the proportional reparation that was the sinner's responsibility. The debt that one must pay for each sin became codified. "For example, when a cleric stole a head of cattle, the penitentials of the seventh and eighth centuries provided for a penance of one year of bread and water; three years of bread and water plus three years without wine or meat if the cleric had killed without premeditation or hate."⁹¹ The two final juridical features of penance during the seventh and eighth centuries are the fact that the accused could negotiate with the accuser for a lighter sentence, and that one finds more frequent combination of penance with civil penalties.⁹² While these become juridical penitential forms during this period, they still retain elements of both *exomologēsis* and *exageurosis*,

⁸⁶ Ibid., 167.

⁸⁷ Ibid., 168.

⁸⁸ Ibid., 169.

⁸⁹ Ibid., 178.

⁹⁰ Ibid.

⁹¹ Ibid., 179.

⁹² Ibid., 180.

though the juridical dimension was novel. Foucault claims that the juridification of penance was complete when it became a sacrament during the 11-13th centuries, with avowal becoming an increasingly important element.⁹³ At the same time, one sees a broad juridification of medieval society: “the first form of the modern state was a state of justice.”⁹⁴ In Louvain, Foucault slightly modifies what he had called in “Truth and Juridical Forms” the institution of inquiry and subsequently examination. In 1981, Foucault emphasizes the role of avowal in the transformation of these juridical forms. Avowal becomes the technology for inquisition and thus closely linked with torture.⁹⁵

Final scene: the judicial ritual—veridiction and jurisdiction

Judicial avowal takes a different form during the modern period, however. Avowal remains a necessary feature of judicial proceedings—the guilty must admit their guilt, but Foucault claims that this is not a symbolic representation in which one is reporting on the state of her soul. Rather, the role is dramatic. “Neither performative nor symbolic, I would suggest that, in changing the usual meaning slightly, that avowal is of the order of drama or dramaturgy.”⁹⁶

Foucault reports early in the sixth lecture that his original plan had been to show how the introduction of avowing subject disrupted the judicial machinery—both a condition for its continued functioning and

in excess—a third party constantly solicited to say what was asked of him, yet always saying less than what was expected, always saying something other than what would allow the machine to function properly; such that this character of the one who tells the truth, who tells the truth of his crime [...] opened an irreparable breach in the penal system.”⁹⁷

Avowal is both necessary for the modern drama of justice and disruptive of it.

In order to make sense of the contradictory nature of avowal in modern judicial proceedings, Foucault returns to a series of cases that had constituted a criminal category that he here terms “crimes without reason.” Such crimes had fascinated Foucault for quite some time, and these particular cases appear in his lecture courses throughout this period.⁹⁸ Foucault’s fascination derives from the way that this kind of crime (and this kind of criminal) was a juridical problem. These crimes present a juridical problem because they were crimes “without avowal.”⁹⁹

⁹³ *Ibid.*, 184-185.

⁹⁴ *Ibid.*, 202.

⁹⁵ *Ibid.*, 203-205.

⁹⁶ *Ibid.*, 210.

⁹⁷ *Ibid.*, 200.

⁹⁸ See, e.g. *Abnormal: Lectures at the Collège de France 1974-1975*, translated by Graham Burchell (NY: Picador, 2004), esp. Lectures Four and Five, in which Foucault analyzes the figure of the criminal monster, citing many of the same examples he cites in *Wrong-Doing, Truth-Telling*. See also “About the Concept of the Dangerous Individual in Nineteenth Century Legal Psychiatry,” *Power*, 176-200.

⁹⁹ *Wrong-Doing, Truth-Telling*, 215.

“The avowal does not function within the dramaturgy that is demanded,” for the unreasonable criminal refuses to play her prescribed role in the juridical ritual.¹⁰⁰ Judicial proceedings demanded from the criminal that she proclaim the truth of her conduct and thereby illuminate the truth of who she is as a criminal, and the ritualized drama of justice is designed to discover the truth of the crime and thus the truth of the criminal. The unreasonable criminal refuses to play this juridical game of avowal, so a host of disciplines are brought to bear on the nature of the criminal beginning in the nineteenth century, with psychiatry and criminology foremost among them. Beginning in the nineteenth century, the criminal begins to be conceived as an enemy of society whose nature can be discovered regardless of whether the criminal avows her nature.¹⁰¹ Police, the judiciary, and the sciences that justify them seek to keep society secure. “And gradually an image was constructed of an enemy of society: an enemy of society who could be the revolutionary just as he could be the assassin, since, after all, revolutionaries do sometimes kill.” During this period, discourses develop around problems of degeneracy, race, and social hygiene in order to keep the social body safe from harm.¹⁰²

At the end of this rich set of lectures, we return to the problems of conduct and security that are the basis for the account of modern political rationality in *Security, Territory, Population*. Criminology and psychiatry accept the biopolitical demand that they provide the state with the knowledge of the biological nature of criminal such that the population can be kept secure, an imperative that is unfortunately not simply of historical importance. One need only recall the apparently interminable war that the United States has waged on terrorism since 2001 or the Ferguson protests that erupted in Missouri after the shooting of Michael Brown, both of which have theatrical, ritualized elements that conduct the conduct of those involved as well as demand protest in the form of ritualized counter-conduct (consider the use of the phrase “hands up, don’t shoot” among the Ferguson protestors). My aim here was not to extend Foucault’s thought and apply it to current events. Rather, I hope to have established three things with this essay: First, that ritual plays an important role in Foucault’s thought; second, that ritual isn’t simply a function of sovereign power; and, third, that ritual is an important concept for understanding both Foucault’s conception of conduct as it develops out of pastoral power and juridical forms as they develop out of their medieval antecedents, both of which are constituents of political rationality. If we attend to the ritual character of conduct and counter-conduct in Foucault’s texts from the early nineteen-seventies to the early eighties, we get an even clearer picture of the relationship

¹⁰⁰ Ibid.

¹⁰¹ See *Abnormal*, where Foucault traces this enmity through various figures of monstrosity. See also Ladelle McWhorter, *Racism and Sexual Oppression in Anglo-America: A Genealogy* (Bloomington: Indiana University Press, 2009), which utilizes a Foucaultian genealogical method to better understand the history of racial and sexual oppression in the United States.

¹⁰² Ibid., 221-223.

between Foucault's work on the various strategies and tactics of power and the ethics of the subject that become the focus of his final writings.¹⁰³

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¹⁰³ Arnold Davidson argues that the concept of 'conduct' serves as the linchpin between the political analytics of power in published works such as *Discipline and Punish* and the first volume of *The History of Sexuality*. See "In Praise of Counter-Conduct," *History of the Human Sciences*, vol. 24, no. 4 (2011), 25-41.