

## ARTICLE

### **Disciplining Europe – The Production of Economic Delinquency**

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**ABSTRACT:** The main goal of the following article is to offer a Foucauldian reading of the economic governance structure of the European Union after the reforms passed and implemented over the last six years. The starting point is a reconstruction of Foucault's analytical framework to scrutinize disciplinary power as well as the respective apparatuses and how this framework has been integrated into the more encompassing governmentality perspective. In the second section I provide a brief survey of the strategic terrain of the European Union as a site of multi-level governance that poses unique challenges from a governing perspective. The following sections are structured according to some key characteristics of disciplinary/governmental power arrangements (visibilization, norm(aliz)ation, prevention, normalizing judgement) which I try to identify in the context of the European Semester, the Six-Pack and the Macroeconomic Imbalance Procedure as elements of a broader disciplinary framework. The final section draws on Foucault's famous point about the 'productive failure' of the prison as a disciplinary apparatus that ends up serving ends and purposes quite distinct from the ones officially declared and suggests that we should also consider the European regime of economic discipline and surveillance as one, which is 'failing forward', creating opportunity structures to pursue political projects that may differ markedly from those officially stated.

**Keywords:** Discipline, Governmentality, European Union, Sovereign Debt Crisis

#### **Introduction<sup>1</sup>**

Forty years ago, Michel Foucault's *Discipline and Punish* was published, and although it was attacked in some quarters as being alarmist and overly dystopian at the time, from a contemporary vantage point it seems as if Foucault had almost underrated the possibilities of all-encompassing

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surveillance and (self-)monitoring. *Discipline and Punish* was and remains noteworthy for a number of reasons. Arguably, the most important contribution of the book is the first elaborate formulation of an innovative and somewhat heterodox understanding of power that does not manifest itself primarily in repression, but rather in the constitution of various phenomena from discourses to subjects; it is a productive power that Foucault calls discipline.

The aim of this paper is to make use of Foucault's insights regarding disciplinary power and to take seriously his emphasis on illuminating the micro-level workings of power, which was always an integral part of the genealogical endeavor, and which contains a transformative potential: It is only once we have a clear understanding of how disciplinary practices and the institutions built around them operate that oppositional efforts may stand a chance of establishing different power relations and not just the same patterns in new disguises.<sup>2</sup> Foucault's toolkit to detect and analyze disciplinary power has been put to productive use in any number of different contexts from the contemporary regime of punishment and incarceration<sup>3</sup> to the micro-practices that subject the (female) body to disciplinary regimes.<sup>4</sup> In this paper I will apply the toolkit of Foucault's analytics of power to a realm in which it has rarely ever been used before, namely the European Union (EU) and the national economies of its member states. More specifically, I will investigate what significance disciplinary techniques and practices have had in the government(-ality) of the European Union after and in response to the Sovereign Debt Crisis.

Before I can turn to this main part of the paper, a number of preliminary remarks are needed to address three points. First, as will have been noticed, my approach here is not strictly genealogical along the lines of *Discipline and Punishment*; rather, I am interested in the role that disciplinary techniques and practices play in a more encompassing project of 'governing Europe', which means I will have to provide at least a very brief sketch of the governmentality perspective as it was developed in Foucault's lectures at the *Collège de France* 1977-79 and how disciplinary elements fit into it. As I will try to show, the governing of Europe (of course, only in the limited sense of trying to set up a regime of public finance discipline) relies on what almost amounts to a hybrid of disciplinary and governmental power, of which, in some instances the former and in others the latter is more pronounced.

Secondly, I am interested in the way national economies in the EU are subjected to disciplinary/governmental techniques and practices by supranational institutions, which prompts the question as to how unique this constellation is and to what extent we may extrapolate from similar relations in the setting of more or less federalist states. This will also give me an opportunity to

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<sup>2</sup> "... and that since these things have been made, they can be unmade, as long as we know how it was that they were made." Michel Foucault (1983) 'Critical Theory / Intellectual History,' in Michel Foucault *Politics, Philosophy, Culture: Interviews and other Writings 1977-1984*, pp. 17-46, 37.

<sup>3</sup> See, for example, Garland (2014) 'What is a 'history of the present'? On Foucault's genealogies and their critical preconditions,' *Punishment & Society* 16: 365-384. <https://doi.org/10.1177/1462474514541711>.

<sup>4</sup> See, for example, Susan Bordo (1993) *Unbearable Weight: Feminism, Western Culture, and the Body*. Berkeley: Berkeley University Press.

introduce readers unfamiliar with the barrage of reforms in economic governance structures in Europe since 2011 to some of their key elements. Finally, I will briefly review the scarce literature on the subject – approached from this particular angle – to highlight the existing findings as well as the questions that remain open. Based on this clearing of theoretical and empirical ground, the paper will proceed to illustrate the workings of a disciplinary/governmental regime in the reformed governance structures of the Eurozone and EU with reference to five broad themes: Visibilization/constitution, normation/normalization, prevention, normalizing judgment and, finally, productive failure.

### Discipline and Governmentality

For those interested in Foucault's work, it has always been a challenge to take proper account of the various shifts, e.g. from archeology to genealogy and from there to governmentality and the techniques of the self that preoccupied the late Foucault of the 1980s. He himself retrospectively suggested that his work had unfolded rather stringently along the three axes of truth, power and the subject that he had pursued in various combinations at different times.<sup>5</sup> This seems a little too conciliatory in the light of the well-documented phases of frustration with his own work, explicit self-criticisms and the abandonment or at least thorough revision of large parts of entire research agendas. Still, the point of bringing up such shifts is not to portray Foucault's oeuvre as a loosely connected set of disparate agendas, but rather to remind us of the dynamics in his thought and the concepts and analyses engendered by it.

In the present context, there is no need to delve too deeply into the various reasons behind those dynamics. What is of interest to the project pursued here is solely the relation between Foucault's notion of discipline and the consecutive project of writing a "'history' of governmentality."<sup>6</sup>

To be sure, the history of governmentality is not a genealogy like *Discipline and Punish*.<sup>7</sup> More importantly, though, the self-criticism of the genealogical project in its various aspects, including the notion of discipline, does not lead Foucault to abandon it altogether. His work, thus, should not be understood as a sequence of replacements, but rather a process of "intensification"<sup>8</sup> or, as I would suggest, a process of enrichment. Earlier perspectives and concepts may recede into the relative background at times, but many of them continue to inform the reformulated or newly taken up agendas even if they are not mentioned explicitly. And at the very moment when he introduces the novel vocabulary of power in the first lecture of 1978, Foucault is eager to point out

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<sup>5</sup> Michel Foucault (1984) 'The Ethics of the Concern of the Self as a Practice of Freedom,' in Michel Foucault (1997) *Ethics*, pp. 281-301, 281. New York: The New Press.

<sup>6</sup> Michel Foucault (2007) *Security, Territory, Population*. Lectures at the Collège de France 1977-78, p. 108. New York: Palgrave.

<sup>7</sup> See Thomas Biebricher (2008) 'Genealogy and Governmentality', *Journal of the Philosophy of History* 2: 363-396.

<sup>8</sup> Jeffrey Nealon (2008) *Foucault beyond Foucault: Power and its Intensifications since 1984*, p. 5. Stanford: Stanford University Press.

that this also goes for the relation between discipline and government(ality). Just as disciplinary power has not ‘replaced’ sovereign or juridical power, it is, in turn, not eliminated by the rise of government or the concomitant apparatuses of security:

So, disciplinary mechanisms do not appear just from the eighteenth century; they are already present within the juridico-legal code. [...] Conversely, I could say that if we take the mechanisms of security [...] it is quite clear that this does not constitute any bracketing off or cancellation of juridico-legal structures or disciplinary mechanisms. [...] So, there is not a series of successive elements, the appearance of the new causing the earlier ones to disappear. There is not the legal age, the disciplinary age, and then the age of security. [...] In reality, you have a series of complex edifices...<sup>9</sup>

These passages come from the very first of the governmentality lectures, in which Foucault still refers to “security” as the new form of power, but already two weeks later it becomes clear that the mechanisms and apparatuses of security that operate in a different manner from their disciplinary counterparts are better understood as technologies that are employed in what Foucault considers a specific form of power, which he now calls government and which is directed primarily at the population: “I think that the series, mechanisms of security – population – government and the opening of the field that we call politics, should be analyzed.”<sup>10</sup> Accordingly, as Foucault shifts his attention more and more to the problem of government and governmentalities, i.e. the “reflected practices of government”<sup>11</sup>, he once more adamantly dismisses a view that would interpret the conceptual dynamics in his work as consecutive replacements:

So we should not see things as the replacement of a society of sovereignty by a society of discipline, and then of a society of discipline by a society, say, of government. In fact we have a triangle: sovereignty, discipline, and governmental management.<sup>12</sup>

How exactly the three constitutive elements of this ‘governmental triangle’ are connected, is something to be investigated in any given concrete case, but the point worth emphasizing here is that an encompassing analysis based on the governmentality perspective would have to contain an inquiry into the disciplinary element of what I have called the ‘governmental triangle’. This is important because while most scholars working in what has come to be called *Governmentality Studies* are probably familiar with this passage, in the fervor of what William Walters has called “applicationism”<sup>13</sup> in some quarters of it, attention to the ‘non-governmental’ sides of the triangle,

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<sup>9</sup> Foucault, *Security, Territory, Population*, p. 7.

<sup>10</sup> *Ibid.*, p. 76.

<sup>11</sup> Michel Foucault (2008) *The Birth of Biopolitics. Lectures at the Collège de France 1978-79*, p. 75. New York: Palgrave.

<sup>12</sup> Foucault, *Security, Territory, Population*, p. 107. See also: “As for discipline, this is not eliminated either.” *Ibid.*

<sup>13</sup> William Walters (2012) *Governmentality: Critical Encounters*, p. 143. New York: Routledge.

namely discipline, let alone sovereignty, often falls to the wayside.<sup>14</sup> So in the following analysis, my aim is to highlight specifically the disciplinary aspects in their intertwinement with the governmental dimension of this triangle in the context of the restructured governance of the European Union. Put in a slightly more ambitious way, I attempt to make a contribution to an analytics of what might be called the governmentality of the European Union with regard to some of its economic and financial governance structures.<sup>15</sup>

A final clarification with regard to the usage of these concepts is required here before we can move on. First, as will become clear, (national) sovereignty in the sense of a claim to non-intervention into internal affairs by other nations or supranational entities is at the heart of the mechanisms and regimes I will analyze in the following. However, since Foucault's specific understanding of sovereignty is centered on the "right to decide life and death"<sup>16</sup> on behalf of the sovereign, which is not immediately at stake in the matters to be discussed, I will not draw on this element of the 'governmental triangle' in my analysis, not least because this would also exceed the spatial boundaries of an article. Secondly, Foucault introduced the categories of disciplinary power employed below as techniques applied to the individual body, so it may seem a stretch to introduce national economies as objects of discipline. Still, Foucault himself encouraged unorthodox uses of his 'toolbox' when he referred to his writings as "'game openings'"<sup>17</sup> introduced to elicit creative responses, rather than emulation. Thus, just as it may be useful and instructive to consider forms of government(-ality) that are not confined exclusively to a population as their object, as research on "the government of things"<sup>18</sup> illustrates, I hope to show that it may be equally instructive to analyze disciplinary techniques applied to national economies instead of individual bodies: Discipline in intertwinement with more governmental techniques can be brought to bear on this level as well to the effect of more or less effectively influencing behavior and pursue even more encompassing strategic aims. Do the disciplines produce the 'collective soul' of those economies analogously to what they supposedly affect in the individual according to Foucault? This may seem far-fetched, but at the same time, and although I will not systematically follow up on this claim here, we cannot dismiss this constitutive dimension of power in this context: Who would deny that the various collective actors, the *dramatis personae*, have been constituted

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<sup>14</sup> There are, however, notable exceptions; see for example Mitchell Dean (2007) *Governing Societies: Political Perspectives on international and domestic Rule*. New York: Open University Press.

<sup>15</sup> Restrictions of space do not permit me to discuss the rich literature on governmentality here, which, nevertheless, has hardly ever been used for an analysis of the European Union. For an overview, see Walters, *Governmentality*, and Thomas Biebricher (2015) 'Governmentality', in Mark Bevir / Rod Rhodes eds., *The Routledge Handbook of Interpretive Political Science* (New York: Routledge), pp. 141-154.

<sup>16</sup> Michel Foucault (1990) *The History of Sexuality. Volume I: An Introduction*, p. 135. New York: Vintage Books.

<sup>17</sup> Michel Foucault (1980) 'Questions of Method,' in Michel Foucault (1994) *Power*, pp. 223-238, 224. New York: New Press.

<sup>18</sup> Thomas Lemke (2015) 'New Materialisms: Foucault and the 'Government of Things'' *Theory, Culture, Society* 32: 3-25. <https://doi.org/10.1177/0263276413519340>.

as cliché characters (the profligate and cunning Greeks; the authoritarian and rule-fixated Germans etc.) in what Mark Blyth has called a “morality play” over debt unfolding in Europe and elsewhere.<sup>19</sup>

### **The European Union – An unidentified political object in times of crises**

With the theoretical grounds cleared to some extent, let us take at least a cursory look at the empirical setting in question and in what ways it may be considered somewhat unique. The European Union is a phenomenon *sui generis* in many respects, or at least this is the default answer to the perennial questions related to its basic political form: Is it a federation of sovereign nation states, a supranational, albeit federalist state in the making, or even something altogether different, possibly a postmodern empire?<sup>20</sup> It is impossible to discuss these intriguing questions here in a more detailed manner, but the first thing to note is that it seems, for the time being, questionable to analyze the matters at hand, i.e. issues of economic policy and fiscal discipline, in analogy to what we are accustomed to at the nation state level, and simply assume that European states are the equivalent of subnational entities (provinces, municipalities) that are integrated into a hierarchical state structure as if they were the constitutive elements of the ‘United States of Europe’. On the other hand, it is far from convincing either to claim that European nation states are sovereign in the full sense of the term, to the effect that, strictly speaking, they cannot be forced to do anything, especially when it comes to such core competences as the treasured ‘power of the purse’ of national parliaments.

To be sure, we are well advised not to overstate the singularity of the European arrangements. After all, only the most unitary and centralist states leave no degree of fiscal autonomy at all to sub-state units such as provinces and municipalities, and more federalist states actually make it a point to grant such autonomy to a considerable degree, at least formally. So it may seem as if sub-state units would not differ too much from European nation states in terms of economic sovereignty. However, *de facto*, fiscal autonomy of sub-state jurisdictions is restrained significantly even where it is granted formally by the fact that most of the tax revenue flow is channeled through the nation state and then redistributed to the sub-state units. In other words, because for many if not most sub-state jurisdictions it is difficult to survive on the basis of the revenue they generate themselves (state taxes; community fees etc.), states have some leverage over sub-state jurisdictions to ‘push’ their politics in a certain direction, which may amount to being effectively forced to adopt certain economic policies.<sup>21</sup> There is no real equivalent of this kind of leverage at

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<sup>19</sup> Mark Blyth (2013) *Austerity: The History of a Dangerous Idea*. New York: Oxford University Press.

<sup>20</sup> See Jan Zielonka (2006) *Europe as Empire: The Nature of the Enlarged European Union*. Oxford: Oxford University Press. <https://doi.org/10.1093/0199292213.001.0001>.

<sup>21</sup> Jamie Peck has shown how, in contrast, in the United States as a federal state, austerity politics are effectively ‘pushed’ down from the federal to the state and municipal level. Jamie Peck (2014) ‘Pushing Austerity: state failure, municipal bankruptcy and the crises of fiscal federalism in the USA,’ *Cambridge Journal of Regions, Economy and Society* 7: 17-44. <https://doi.org/10.1093/cjres/rst018>.

the supranational level of the EU. On the contrary, it is the EU that could not survive on its own since its budget is mostly financed by member states' dues.

Let me sum up this somewhat unique situation: The reforms of economic governance structures of the EU that I will sketch out momentarily are measures aimed to constrain actors in a particularly challenging strategic setting. The actors in question are formally sovereign states, politically speaking, i.e. as a last resort they could always leave the European Union if they chose to, so they cannot be forced to comply with certain political decisions<sup>22</sup> in the same way sub-state jurisdictions might be, especially in highly centralist settings. Nevertheless, economically speaking, the members of the Eurozone sharing a common currency, but also, to a lesser degree, members of the common market, have long lost their full sovereignty.<sup>23</sup> They find themselves in a deeply interdependent setting, in which coordination in matters of economic policy broadly understood is of preeminent importance. This setting of urgently needed coordination (to put it somewhat euphemistically) with somewhat restricted enforceability is the terrain upon which the disciplinary techniques and apparatuses in question will have to operate on.

What are these apparatuses and techniques and how have they been reformed and refined over the last five years in response to the string of crises? I will not spend too much time talking about apparatuses because this is not primarily an institutionalist analysis and the focus is on grasping and making intelligible disciplinary techniques, or what Foucault once referred to as "the panoptic modality of power".<sup>24</sup> However, the main institutional sites of disciplinary activity are easily identifiable: They are the European Commission, which we will come across repeatedly in the more detailed discussion of the disciplinary workings in economic governance, and, more recently, the European Central Bank (ECB), which has acquired considerable leverage over ailing national economies in the Eurozone because it can simply threaten to cut off the money supply or, what amounts to almost the same, stop buying government bonds off secondary markets. Despite all the talk about 'renationalization' in the EU, at least with regard to economic matters, both institutions have experienced a remarkable increase in importance due to the crisis, which has also prompted critical debates over these transformations.<sup>25</sup>

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<sup>22</sup> Unless they are enshrined in the European Treaties or European Law, but even then it is not a foregone conclusion, as we will see below.

<sup>23</sup> See on these matters of financial autonomy and sovereignty also William Davies (2014) *The Limits of Neoliberalism: Authority, Sovereignty and the Logic of Competition*. London: Sage. <https://doi.org/10.4135/9781473906075>, and Joseph Vogl (2014) 'The Sovereignty Effect: Markets and Power in the Economic Regime,' *Qui Parle?* 23 (1), 125-155. <https://doi.org/10.5250/quiparle.23.1.0125>. In this context it is also important to note that the introduction of the Euro itself could be seen as having disciplinary effects because it makes a certain form of interjurisdictional competition, namely currency devaluation, impossible among the members of the European Monetary Union. As important and interesting this issue is, the discussion of the effects – and defects – of the Euro from a governmentality perspective lie beyond the scope of this essay.

<sup>24</sup> Michel Foucault (1991) *Discipline and Punish: The Birth of the Prison*, p. 221. London: Penguin.

<sup>25</sup> See Michael Bauer and Stefan Becker (2014) 'Debate: From the front line to the back stage – how the financial crisis has quietly strengthened the European Commission,' *Public Money & Management* 43: 161-163.

Let us now take a look at the major reforms that have been passed over the last six years, i.e. in response to the Sovereign Debt Crisis in Europe. There is not enough space to discuss all of them, so I will focus only on those that are of particular importance for the structural transformation of the EU in its economic governance dimension. Reforms began in 2010 when Greece was essentially cut off from the money supply of financial markets and thus left unable to refinance itself. The immediate response was the creation of an emergency fund, the so-called *European Financial Stability Facility* (EFSF), which was transformed into the permanent *European Stability Mechanism* (ESM) in 2012. The funds from EFSF and ESM come with some serious strings attached as it is only made available under strict conditionality. Typically, what is required of countries requesting the money is an agenda of ‘structural reforms’ aimed at reducing deficits and increasing competitiveness and which, inevitably, involves austerity measures. It is incumbent upon the ‘Troika’, consisting of the ECB, International Monetary Fund and European Commission, to monitor and assess the progress with regard to this reform agenda. The decision to release the next tranche of money is based on this assessment and it can be withheld if the reform process stalls.

In 2010 two more reform packages were initiated, which were both passed or ratified within the following two years. First, there was the *Treaty on Stability, Coordination and Governance*, often dubbed ‘Fiscal Compact’. This international treaty (not signed by the Czech Republic and the United Kingdom) contains several measures, but its most important element is the stipulation that signees introduce a national balanced budget rule, preferably on the constitutional level, that would effectively limit deficits and debt to a certain percentage of the GDP.

The other major reform proposed by the Commission in 2010 and passed by the council in 2011 is the so-called *Six Pack*, containing five regulations and one directive, and introducing among other things a new instrument, the so-called (*Excessive*) *Macroeconomic Imbalance Procedure* (MIP), which is similar in design to the already existing *Excessive Deficit Procedure*. We will return to this instrument to prevent and correct major economic imbalances between the national economies of EU member states that translate into imbalances of relative competitiveness in the next section for a more extensive discussion.

The last reform I will consider is the so-called *Two Pack* initiated in 2011 and passed in 2013, which introduced the European Semester. The European Semester is designed to structure the budget cycle of a fiscal year and increase the supranational monitoring of national budgeting processes. Among other things, this complements the Six-Pack in various aspects, especially with regard to the matter of excessive deficits, as it specifies the obligations of member states in providing information on their public finances to the European Union and details which Europe-

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<https://doi.org/10.1080/09540962.2014.908003>, for the European Commission and Wolfgang Streeck (2015) ‘Heller, Schmitt and the Euro,’ *European Law Journal* 21: 361-370. <https://doi.org/10.1111/eulj.12134> for the ECB.



an institutions are involved in what way at a particular point in the process. We will return to the details of this provision in the next section as well.<sup>26</sup>

Finally, let us take a look at the existing literature, which, literally, amounts to one single but very important text. It is stunning to read Stephen Gill's article "European Governance and New Constitutionalism" today, because when he writes about measures that "mandate strict fiscal discipline as part of new practices of economic governance that will give credibility to governments and confidence of investors"<sup>27</sup>, it sounds as if he is describing the rationale of most of the reforms since 2010. However, Gill wrote this in 1998 and refers not to the Fiscal Compact or the Six Pack, but rather to the pact that the latter are all designed to tighten or otherwise amend, namely the *Stability and Growth Pact* (SGP) from 1996/97 that was to ensure that the future European currency would be a stable and strong one. The SGP introduced the deficit (3 per cent of GDP) and debt limits (60 per cent of GDP) that are now supposed to be more effectively enforceable through the reforms passed in recent years. To my knowledge, Gill's article is the only case in which a vaguely Foucauldian perspective is adopted to analyze the workings of disciplinary power in the realm of macroeconomics, so it is obviously an important reference point for my endeavors. At the same time, Gill's otherwise excellent article is disappointing if one expects a *Foucauldian* analysis – an expectation that is not a stretch, considering that the subtitle of the article reads "Economic and Monetary Union and Alternatives to *Disciplinary Neoliberalism* in Europe" (my emphasis). It turns out, though, that Gill subscribes to a more Gramscian approach, and while he invokes the Foucauldian connotations of the terms 'disciplinary' or 'normalization', his study focuses on rationale and effects of "disciplinary neoliberalism," but it offers no analysis that elucidates how exactly the respective disciplinary power operates in detail. When it comes to understanding the "modalities of panoptic power" in the EU, therefore, the article has far from exhausted the possibilities of Foucauldian scholarship.<sup>28</sup>

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<sup>26</sup> These are not the only reforms passed, but the so-called Euro Plus Pact from 2011 did not include any legal obligations. By all accounts it was not made use of in a significant manner and is now described as being in a state of dormancy. The other reform I leave unaddressed is the Banking Union, agreed on in 2014, because the monitoring and auditing to be done by the ECB now concerns banks, the large majority of which are private financial institutions, whereas I am interested in the disciplining of national economies. Furthermore, in the following I focus on the Six-Pack and Two-Pack because in my view the other reforms do not add anything to the logic of discipline and to some extent even overlap with the ones analyzed in their thrust (Six-Pack and Fiscal Compact), or they are mostly designed to respond to emergency situations (ESM). Six-Pack and Two-Pack are about the establishment and continuous operation of a disciplinary-governmental regime – even if there is no crisis.

<sup>27</sup> Stephen Gill (1998) 'European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe,' *New Political Economy* 3: 5-26, 8. <https://doi.org/10.1080/13563469808406330>.

<sup>28</sup> See also Stephen Gill (1995) '*The Global Panopticon: The neo-liberal state, economic life and democratic surveillance*,' Alternatives 20: 1-49. <https://doi.org/10.1177/030437549502000101>.

This also applies to the way in which the workings of power are analyzed. Gill is highly critical of the ‘new constitutionalism’ and its logic of “subordinating democracy to the dictates of a neoliberal restructuring of state finances,” and calls for a “coalition of counter-hegemonic forces” to challenge the hegemonic notions on central bank independence, fiscal discipline and market efficiency that sustain this new institutionalism discursively.<sup>29</sup> This is obviously an analysis with strong normative overtones. There is no doubt that in the context of contemporary Europe strong normative opinions seem warranted. Warnings of an impending authoritarian turn in European governance are no longer just heard from marginal voices within political discourse, but have come to resonate with and are echoed by more mainstream political economists and scholars from other disciplines as well.<sup>30</sup> Still, the reformed economic governance of the EU may very well be authoritarian, undemocratic, technocratic and inhumane in cases like Greece, but in this article I will follow the lead of Foucault’s non-normative framework of analysis and focus exclusively on the modalities of power at the heart of this new governance structure.

### Visibilization / Constitution

Famously, Foucault characterized disciplinary power as a productive or constitutive power that was capable of bringing phenomena into existence on the basis of a certain knowledge and inscribe them into a regime of truth, i.e. enable the formulation of true and false statements about them: “In fact, power produces; it produces reality; it produces domains of objects and rituals of truth.”<sup>31</sup> Crucial ingredients to this productive power are techniques of visibilization: “The exercise of discipline presupposes a mechanism that coerces by means of observation; an apparatus in which the techniques that make it possible to see induce effects of power, and in which, conversely, the means of coercion make those on whom they are applied clearly visible”; discipline “imposes on those whom it subjects a principle of compulsory visibility.”<sup>32</sup> But what does this mean when the object of discipline is not a person but a national economy? Foucault’s governmentality lectures provide some clues how to answer this question. After all, here the object of government was the population; a phenomenon similarly abstract as a national economy. According to Foucault, the key to the ‘invention’ of the population is a certain (scientific) knowledge about birth rates, death rates, etc. and based on this knowledge a conglomerate of living beings is transformed into a ‘population’ with specific characteristics. Something similar takes place in the case of a national economy. This entity could only be invented on the basis of a certain economic, econometric and statistical knowledge that served to build the respective models. Thus, the notion of a national economy is invented as something ‘in the true’, i.e. a phenomenon about which

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<sup>29</sup> Gill, ‘European Governance’, p. 17; 22.

<sup>30</sup> See for example the contributions to the special issue of the *European Law Journal* on ‘authoritarian liberalism’. *European Law Journal* 21 (3), 2015.

<sup>31</sup> Foucault, *Discipline and Punish*, p. 194.

<sup>32</sup> *Ibid.*, pp. 170/71; 187.

true and false statements are possible and which is now ‘visible’ even though it lacks an empirical referent, strictly speaking.

Still, for governing purposes an additional ingredient also emphasized by Foucault is needed, namely the average birth, death or disease rates, and how they are distributed across the population etc. Discipline requires not only the visibilization of its object, whether it is population or an economy, but also a measure to express what is normal; in other words, what is required is a norm. The ‘Economic Scoreboard’ of the MIP is exactly such a measure that makes visible certain aspects of an economy as well as its potential ‘anomalies’, and thus enables a surveillance mechanism to be established.

**Fig. 1: Economic Scoreboard of the Macroeconomic Imbalance Procedure**

Indicator	Measurement	Accepted Range
Current Account Balance	3-year moving average, % of GDP	Between +6 % and -4%
Net international investment position	% of GDP	> -35%
World export share	In current value, 5-year percentage change	> -6%
Real effective exchange rate	Vis-à-vis 35 industrial countries, based on consumer-price indices, 3-year percentage change	-/+ 5% (euro-area) -/+ 11% (non euro-area)
Nominal unit labor cost	3-year percentage change	< 9% (euro area) < 12% (non euro-area)
Private Sector Debt	% of GDP	< 160%
Private Sector Credit Flow	% of GDP	< 15%
House prices relative to consumer prices	Year-on-year changes, in %	< 6%
General government debt	% of GDP	< 60%
Unemployment rate	3-year moving average, in %	< 10%

The scoreboard of the MIP is essentially a ‘table’, the use of which Foucault only considered in passing in *Discipline and Punish*: “In the economy, it makes possible the measurement of quantities and the analysis of movements.”<sup>33</sup> The significance of the scoreboard goes beyond this in two respects. First of all, the very existence of something like a macroeconomic imbalance is based on this compilation of ten indicators which, supposedly, enable us to make true/false statements about the condition called macroeconomic imbalance. To put it pointedly, the scoreboard and the techniques of knowledge generation that enable and sustain it are the basis of its very existence. Secondly, this table (and arguably any table) is a device to generate a norm.

**Normation / Normalization**

What is the norm in question and how does it operate? Since the MIP refers to ‘imbalances’ or, at times, ‘excessive imbalances’, it seems plausible to infer that ‘balance’ or ‘non-excessive imbalanc-

<sup>33</sup> Ibid., p. 149.

es' are the norm. Still, a closer look shows that things are not as straightforward as that. The first thing to notice is the heterogeneity of the indicators. They range from nominal unit labor cost to real estate prices, and from the current account balance to overall government debt. They obviously cut across the distinction between public and private sphere as well as state and economy, and one could also add that some of these indicators are well within the scope of governmental action, whereas others (e.g. house prices) seem a little out of range. With regard to what exactly is being taken into consideration in the diagnostic assessment, note the difference between the various measurements in the middle column. At times it is state variables that are mostly measured relative to GDP, but in other instances it is flow variables, and in still some other cases it is dynamic variables measuring (average) changes over a certain period of time. But the construction of a norm would be incomplete without the last column in which the 'accepted range' of deviance of all of these variables is defined. As can be seen, this range is at times as broad as 35 per cent and can be as narrow as 6 per cent depending on the indicator in question. The Scoreboard is part of a so-called *Early Alert Mechanism*, i.e. when one or more of the variables moves beyond the threshold specified, in-depth country reports must address the question as to how serious the 'excess' is; possibly leading to a preventive or, eventually, even a 'corrective' procedure. We will take a closer look at the details of these procedures below.

To the non-expert, this table conveys an air of arbitrariness. Why these indicators, why these different ways of measuring them and why the widely varying ranges of acceptable deviance, one may want to ask. However, while it would be worthwhile to take a closer look at the potential scientism inherent in the design of this scoreboard that assumes nothing less than its ability to identify an equilibrium with regard to relative competitiveness, which is no small feat, this would take us too far into economic and econometric territory.<sup>34</sup> Instead, I would first like to simply note what a complex operation this construction of a far from self-evident norm is. Still, what is even more interesting is to look at this norm using Foucault's reflections on different kinds of norms and how they operate. In *Discipline and Punish* Foucault had not yet systematically distinguished between different kinds of norms and their varying effects. Here he still refers to norms that could "function as a minimal threshold, as an average to be respected or as an optimum towards one must move"; the norm's overall effect being that "it *normalizes*".<sup>35</sup> The governmentality lectures, in contrast, begin with a detailed discussion of the differential functioning of norms. *Discipline and Punish* maintains that "the order that the disciplinary punishments must enforce is of a mixed nature: it is an 'artificial' order, explicitly laid down by a law... [...] But it is also an order defined by natural and observable processes [...]".<sup>36</sup> Now, Foucault deems it im-

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<sup>34</sup> There is a debate over the usefulness and potential defects of the scoreboard among economists and public policy analysts. See for example Daniel Mügge (2016) 'Studying Macroeconomic Indicators as Powerful Ideas,' *Journal of European Public Policy* 23: 410-427. <https://doi.org/10.1080/13501763.2015.1115537>.

<sup>35</sup> Foucault, *Discipline and Punish*, p. 183.

<sup>36</sup> *Ibid.*, p. 179.

portant to overcome this ambiguity and distinguish between two types of norms. In the realm of discipline “there is an originally prescriptive character to the norm and the determination and the identification of the normal and the abnormal becomes possible in relation to this posited norm.”<sup>37</sup> Due to the primacy of the norm in this constellation, Foucault now wants to refer to such disciplinary techniques as “normation (*normation*) rather than normalization.”<sup>38</sup> In contrast to this there is a different way of generating a norm, which is based on the normal, i.e. empirical averages. Foucault identifies this with the workings of ‘security’ and what “is involved here is no longer normation, but rather normalization in the strict sense.”<sup>39</sup> Discipline identifies a desired state of affairs or condition and its mechanisms work tirelessly to get its object closer to whatever that norm was. Security (and in the lectures this often blends into governmental management) instead investigates what is normal, i.e. birth and death rates of a population, lays down what is essentially an empirical norm and only intervenes in case the ‘actual’ deviates too far from the ‘natural’. Security is more about “the delimitation of phenomena within acceptable limits, rather than the imposition of a law that says no to them.”<sup>40</sup>

Adopting this distinction, is the MIP a disciplinary or a security mechanism? Does it aim at normation or normalization in the Foucauldian sense? The answer is that both logics are at work in the case of the economic scoreboard, so here we have a case in which the logics of discipline and government are almost amalgamated. First of all, it is hardly possible to characterize the various indicators and the values that are considered to be desirable as natural in the sense of simple empirical averages. Just consider the most obvious case in point: the general government debt should be below 60 per cent of GDP. However, in 2014 the average debt in the EU was 87 per cent of GDP and in the Eurozone it was even higher. However, one could argue that the prescriptive values of the scoreboard are not chosen arbitrarily but on the basis of long-term assessments of sustainable and competitive national economies. They are, so to speak, the key parameters of a ‘normal’ competitive national economy – although significant doubts remain as to whether such knowledge is reliable or even attainable.

The mechanisms of the MIP are also ambiguous when it comes to the timing and rationale of intervention. Given that a range of acceptable variance is explicitly part of the mechanism, and the MIP in its *corrective* arm is only initiated when one or more variables move beyond the tolerated range and a consecutive in-depth report confirms the problem, we can discern the logic of security. Still, as we shall see below, the MIP (in its corrective dimension) is already the last resort in a highly gradualized system of surveillance and, if needed, sanctions. After all, even in the case of a state remaining just under 60 per cent of government debt, the European Commission will still use all available tools of the *preventive* arm to ‘encourage’ the country in question to become

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<sup>37</sup> Foucault, *Security, Territory, Population*, p. 57.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, p. 63.

<sup>40</sup> *Ibid.*, p. 66.

even more fiscally disciplined, as the following section will show. Hence, a genuinely disciplinary element is detectable as well. In sum, let us firstly keep in mind the considerable complexity involved in the construction of a norm in the case of the MIP and, secondly, the ambiguity of this norm that is in part prescriptive, but could also be said to capture some aspect of the normal as it exhibits traits of both normation and normalization.

### Prevention

Disciplinary power in the context of punishment is at least as concerned with some kind of retribution for a past crime as it is concerned with the prevention of potential crimes in the future. Arguably, this is one of the most powerful lines of argumentation in *Discipline and Punishment*, showing that the assessment of prospective risks (calculable) and dangers (incalculable) becomes an integral part of a form of punishment that is drawn out into a process of continual assessments and re-assessments of the danger/risks particular individuals or groups pose. In Foucault's words, the shadowy figure of the delinquent appears behind the criminal, and the former's drives, motives, genetic heritage and somatic dispositions are the field upon which the new 'sciences' of man from psychology to criminology will try to present themselves as reliable diagnostics of these traits of individuals, entering into a controversial but mutually beneficial cooperation with the penal institutions from judges to probation boards. Risk and prevention, however, are also of central concerns for governmental forms of power working through apparatuses of security; so once again we must note the intertwinement of discipline and 'governing'.<sup>41</sup>

The new economic governance structures of the EU subscribe wholeheartedly to the preventive paradigm, as can be shown with reference to two particular reforms. The first is the European Semester briefly introduced above. Fig. 2 (see pp. 77–78) is a visualization of the process in its current form after some additional streamlining that was decided on in October 2015.

Before we consider the preventive aspects on display, let us note how this process makes use of yet another tool from the disciplinary toolbox that Foucault mentions as well, namely "the control of activity", not least through the "time-table" – and what else is the European Semester but a very elaborate and detailed time-table?<sup>42</sup> Of course, Foucault is more interested in practices that would later be perfected in the form of Taylorism, but the principles and rationale are virtually the same. First, a complex process is broken down into its constitutive elements, and then the sequencing and timing of these elements is laid out in a most detailed manner. This technique may be used on the shop floor as well as in the European budgetary process. In the latter case, the

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<sup>41</sup> On the 'governing' of risk, see particularly the work of Pat O'Malley, e.g. (2004) *Risk, Uncertainty and Government*. New York: Routledge.

<sup>42</sup> Foucault, *Discipline and Punish*, 149.

**Figure 2: The European Semester<sup>43</sup>**

	European Commission	European Council/Council	Member States	European Parliament
November  <i>Autumn Economic Forecast</i>	Commission publishes Annual Growth Survey (AGS) and Alert Mechanism Report (AMR)  Commission recommendations for the euro area  Commission opinion on draft budgetary plans			
December/ January	Bilateral meeting with Member States  Fact-finding missions to Member States	Council discusses Commission opinions on draft budgetary plans  Council adopts euro area recommendations and conclusions on AGS + AMR	Member States adopt budgets	Dialogue on the Annual Growth Survey
February  <i>Winter Economic Forecast</i>	Country Report per Member State (reform agenda and imbalances)			
March		European Council adopts economic priorities based on		

<sup>43</sup> According to the European Commission, the *Annual Growth Survey* sets out proposals for EU priorities in the coming year, including the economic and fiscal policies and reforms needed to ensure stability and growth. The *Alert Mechanism Report* identifies the member states for which further analysis is necessary in order to decide whether an imbalance in need of policy action exists. *Country reports* analyse the economic situation and policies of each EU Member State and assess whether imbalances and excessive imbalances exist in those Member States where an in-depth review was carried out. *National Reform Programmes* are reforms and measures to make progress towards growth. *Stability/Convergence Programmes* entail plans for sound public finances. *Country-Specific Recommendations* are economic and budgetary policy recommendations tailored to each country.

		AGS		
April	Bilateral meeting with Member States		Member States present National Reform Programmes (on economic policies) and Stability or Convergence Programmes (on budgetary policies)	
May <i>Spring Economic Forecast</i>	Commission proposes country-specific recommendations (CSRs)			
June/July		Council discusses the CSRs  European Council endorses final CSRs		Dialogue on the proposal for CSRs
September			Member States present draft budgetary plans	Debate/resolution on the European Semester and the CSRs
October				Dialogue on the Annual Growth

sequencing of four timelines for four actors has to be coordinated throughout the entire fiscal year. What is being minimized with this tight schedule is uncertainty, undefined time, potential for deliberate delays and idle months in which national governments may consider strategies of shielding themselves against the influence of the supranational institutions. We may also note in this process what Foucault called “the swarming of disciplinary mechanisms.”<sup>44</sup> Here, it is not just the European Commission, which in many other cases inhabits the tower at the center of the supranational Panopticon, but many other actors who are involved in a constant back and forth of prospects, reports, recommendations, reactions and conciliations, in which all of these actors seemingly monitor each other to some extent.

However, the main point about the European Semester is its overall preventive thrust. Disciplinary power is about constantly assessing virtual dangers and risks in order to prevent them, ideally, from ever becoming reality in the first place. At least, this is the vanishing point of

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<sup>44</sup> Ibid., p. 211.



preventive logic. The European Semester is the orchestrated attempt to detect and assess potential risks looming in national budgetary plans and work towards respective revisions long before national parliaments get to vote on them – or even see them. The underlying rationale is easily understood: Not only is it much more difficult to demand changes on a *fait accompli*, i.e. a budget that has been passed by a national parliament in expression of its core power, it can also turn out to be more costly if risks of deficits, imbalances etc. are not addressed *before* they materialize. Needless to say, the preemption of excessive deficits etc. according to the European Semester could also spell the “preemption of democracy”<sup>45</sup> in important aspects, i.e. the control over national budgetary processes. But as mentioned above, the question I pursue here is not whether the new European governance structures are (il-)legitimate, but how the disciplining/governing of national economies through these structures works.

The preventive dimension that seems crucial to the workings of disciplinary power is also an important part of the two main *Procedures* that deal with excessive deficits and excessive macroeconomic imbalances respectively. Let me quote from the official description of the MIP:

The MIP has two arms, preventive and corrective [...] These two arms have different objectives: the preventive arm helps Member States to adopt good policies that will lead to balanced medium-term growth, jobs and financial stability. The corrective arm aims to identify and correct policy failures or address major macroeconomic risks [...].<sup>46</sup>

The preventive arm of the MIP sounds particularly benevolent, but it is also a quintessentially disciplinary element and possibly even more important in that respect than its corrective equivalent. After all, the latter is only to be activated once a country has overstepped the accepted range of variables discussed above, but the preventive arm is the one that also operates on those who are well within the accepted range yet are still considered to be more or less *at risk* to miss the target thresholds in the future – as we will see this is the large majority of countries. This brings us to a final and crucial ingredient to disciplinary techniques.

### Normalizing Judgement

What exactly does the European Commission do throughout the European Semester and how does it attempt to install fiscal discipline and prudent economy policy in general at the level of national governments? Most importantly, it gathers information and generates knowledge about its flock of national economies to ‘know them all and each one individually’, to borrow a phrase

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<sup>45</sup> Fritz W. Scharpf (2011) ‘Monetary Union, Fiscal Crisis, and the Preemption of Democracy’, *MPIfG Discussion Paper* 11/11.

<sup>46</sup> European Commission. Available online at: [http://ec.europa.eu/economy\\_finance/economic\\_governance/macro-economic\\_imbalance\\_procedure/mip\\_framework/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/macro-economic_imbalance_procedure/mip_framework/index_en.htm)

from Foucault's *Omnes et Singulatim*.<sup>47</sup> As Foucault notes, disciplines can only work on the basis of proper bookkeeping and smart visualization, "these small techniques of notation, of registration, of constituting files, of arranging facts in columns and tables"<sup>48</sup>. The veritable fervor of knowledge generation exhibited by the Commission and other institutions can even be ascertained by the lay person by simply consulting the respective websites that offer access to an overabundance of documents. Among them are detailed individual recommendations as well as even more detailed country reports. Restrictions of space do not permit to quote extensively from these dossiers, which are as long as one hundred pages in the case of country reports. Suffice it to say that reports and recommendations pertain to practically everything from real estate markets in the Netherlands to pension systems in Austria, and from local government reform in Estonia to the sustainability of the health sector in Slovakia. They provide an in-depth assessment of the specifics of each national economy in combination with detailed strategies of improvement that ought to be pursued to close the gap between the current state of affairs and the norm. Foucault writes that:

the other innovations of disciplinary writing concerned the correlation of these elements, the accumulation of documents, their seriation, the organization of comparative fields making it possible to classify, to form categories, to determine averages, to fix norms.<sup>49</sup>

This is exactly what the European Commission does on the basis of the detailed individualized knowledge it has been generating continuously, as one example of the many tables and classificatory taxonomies used by the Commission shows. Keep in mind that discipline is highly nuanced and efficient, i.e. it intervenes, ideally, in just the right way to achieve its end, be it the production of 'docile bodies' or 'competitive national economies'. The prerequisite is a detailed knowledge of the object and fine-grained classificatory schemes that suggest the individualized corrective measures to be employed. The MIP has such a classificatory scheme that charts the space this side of the corrective arm on the basis of no less than six categories with the first category being that of 'no imbalance' (1). At the risk of tediousness, let me list all of the remaining five to illustrate how fine-grained and highly individualized this classification is: Countries may exhibit (2) imbalances which require policy action and monitoring, (3) imbalances which require *decisive* policy action and monitoring, (4) imbalances which require decisive policy action and *specific* monitoring, or (5) *excessive* imbalances which require decisive policy action and specific monitoring. Category (6) finally requires that the corrective arm be activated.

Over the course of the fiscal year, the Commission approaches the various member states and confronts them with their findings, categorizations and recommendations. In the next round

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<sup>47</sup> Michel Foucault (1979) "Omnes et Singulatim": Toward a Critique of Political Reason,' in Michel Foucault (1994) *Power*, pp. 298-325. New York: New Press.

<sup>48</sup> Foucault, *Discipline and Punish*, 190.

<sup>49</sup> *Ibid.* p. 190.

of consultations, progress is assessed, more recommendations are offered, country reports are put together and categorizations are upgraded and revised accordingly. The crucial leverage for the Commission in this process is their power to upgrade and downgrade national economies between the various categories according to their compliance with recommendations and general socio-economic developments. This exerts some pressure because with each downgrade a country gets closer to category (6), which means the corrective arm would be activated, and looming a little further down the road from there might be the dreaded Troika, whose involvement countries want to avoid at all costs because of the hardship and humiliation it usually brings. Countries under Troika administration are the equivalent of “the shameful class” Foucault discusses in *Discipline and Punish*, “for which special regulations were drawn up ‘so that those who belonged to it would always be separated from the others and would be dressed in sackcloth’”<sup>50</sup> to deter and keep the other classes in line. In all of this the Commission can work on countries bilaterally or it can try to pit one or a group of countries against another and thus make use of a quintessentially disciplinary technique that “individualizes by making it possible to measure gaps, to determine levels, to fix specialties,”<sup>51</sup> i.e. it exerts the power of “normalizing judgment”.<sup>52</sup>

### **Productive Failure**

So far the implicit assumption has been that the aim of the reformed governance structures is the production of competitive national economies without excessive deficits or imbalances. Furthermore, the assumption has been that the new surveillance and sanctioning scheme works. Let us now shift the perspective and question each assumption. We will begin with the latter – and a theoretical argument taken from neoliberal thought.

It is one of the curiosities of public choice theory that many of its proponents are among the most vocal supporters of some kind of balanced budget rule, although their theory is virtually incapable of consistently explaining how such a rule could ever be passed. After all, politicians are presumed to be utility maximizers and hence they will find it beneficial to engage in what public choice calls ‘rent-seeking’ transactions with parts of the electorate. Rents need to be financed, and given the unattractiveness of raising taxes for politicians, generalized rent-seeking will likely result in deficits and debt, hence the need for a balanced budget rule.<sup>53</sup> But if politicians benefit from the existence of rent-seeking, why would they ever make it prohibitively difficult by passing such a rule? The only answer available to public choice theory without violating its own core assumptions is that rules on deficits and fiscal prudence may be passed (and they really are,

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<sup>50</sup> Ibid., p. 182.

<sup>51</sup> Ibid., p. 194.

<sup>52</sup> Ibid., p. 177.

<sup>53</sup> See for example James Buchanan (1997) ‘The balanced budget amendment: Clarifying the arguments,’ *Public Choice* 90: 117-138. <https://doi.org/10.1023/A:1004969320944>.

as we know) but when push comes to shove they will be watered down and ultimately disregarded.

Whatever one thinks of public choice theory in general, in this case it may have a point. After all, the fate of the original SGP should serve as a cautionary tale regarding the limits of the kind of ‘rule-and-sanction’-regime the recent reforms have sought to tighten. Retrospectively, the original regime looks like a fair weather construction. That is to say, it worked well as long as there were no serious challenges, but as soon as they materialized it began to falter. The challenges in this case were the economic heavyweights of Europe, France and Germany, both violating the SGP rules in the early 2000s. When they got away with just a political slap on the wrist, the credibility of the regime was eroding rapidly as it became clear to everyone that the rules could be violated with impunity – at least by some. The question is why anyone would expect the reformed regime to perform better than the original SGP framework. Sure, the screws have been tightened on potential and actual offenders with the measures discussed in this paper and a number of others like the reverse majority rule, which makes Commission recommendations in the corrective arm of the Procedures binding on member states unless there is a majority in the Council *against* them. Still, the example of the current situation of France (and to some extent Italy) offers grounds for skepticism regarding the effectiveness of the new regime. After all, the country has been in violation of the deficit rules for years now and, for whatever reason, the Commission has been unwilling to enforce them rigorously so far. Other examples like Germany and its exorbitant trade surplus, which should be an obvious candidate for excessive imbalances, could be added. This is, of course, purely anecdotal but as empirical studies on the effectiveness of fiscal rules show, doubts about the success of the new regime are clearly warranted.<sup>54</sup>

But assessing the likelihood of success presupposes that we know what the regime is trying to succeed at, which brings us to the first assumption mentioned at the beginning of the section and the last clue I will take from Foucault’s investigation of disciplinary power and the prison. The latter, he points out, has a remarkably poor record at delivering on what it is supposed to achieve, namely individual and general prevention of crimes through the deterrent and rehabilitation of criminals. On both counts the prison is a blatant failure. Therefore, Foucault explores the possibility of the function of the prison being of a different nature:

But perhaps one should reverse the problem and ask oneself what is served by the failure of the prison [...] one would be forced to suppose that the prison, and no doubt punishment in general, is not intended to eliminate offences, but rather to distinguish them, to distribute them, to use them; [...] Penalty

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<sup>54</sup> For an overview, see Charlotte Rommerskirchen (2015) ‘Fiscal Rules, Fiscal Outcomes and Market Behavior,’ *European Journal of Political Research* 54: 836-847. <https://doi.org/10.1111/1475-6765.12112>, and Robert Alasdair (2015) ‘No Simple Fix: Fiscal Rules and the Politics of Austerity,’ *Indiana Journal of Global Legal Studies* 22: 401-431. <https://doi.org/10.2979/indjglolegstu.22.2.401>.

would then appear to be a way of handling illegalities [...] it 'differentiates' them, it provides them with a general economy.<sup>55</sup>

Analogously, if the production of fiscally prudent states with competitive national economies is the goal, the revised governance structures turn out to be as much of a failure as the prison is with regard to its proclaimed aims: As of early 2016, the number of countries that fall into category (1) of the MIP, meaning there is no imbalance, is *zero*. However, no less than *16 countries* find themselves in category (2) - (5) and face the consequences outlined above, i.e. monitoring, policy recommendations etc. The majority of EU countries are still burdened with public debt well beyond the mark of 60 per cent of GDP, and seven countries are even in the corrective arm of the Excessive Deficit Procedure – not counting Greece that is still under the special supervision of the Troika. Granted, success may take some time, but as of yet the system is not performing well.

So could it be that the new governance structures could serve another purpose? Foucault's answer to the 'puzzle' of the prison is that it is really good at the production of delinquency, i.e. a milieu of (petty) criminals that can be used for a number of purposes, be it the diversion from high crime in other milieus or as a reservoir of informers that can be pressured by the police as former inmates, at-risk youth or repeat offenders on probation etc. What if the unintended 'functionality' of the regime lay in the equivalent of this, namely the production of economic delinquency? The various *Procedures* may not be particularly effective in making the national economies comply with the rules they are supposed to enforce, but it is a system that lends itself well to 'managing' these economic 'illegalities' and making use of them. After all, the most minor infractions are recorded, as are stubborn resistance against certain supranational precepts or, positively, docility even in the face of inconvenient recommendations. All of these differentials are possibly exploitable to gain leverage – not just by the European Commission but, in principle, also by member states against the Commission or vis-à-vis other member states. This is presumably the unintended result of a situation in which almost all or at least the large majority of European states cannot conform to the set norms and are consequently all delinquent to some degree.<sup>56</sup> What we see here is possibly an economy of power quite different from the official claims about principles and rationale of the new regime, and it might be one worth exploring in greater detail. Just consider the connection between the economic issues discussed here and the European migration regime. As it happens, it is Spain, Italy and Greece, located on the southern border of the Schengen area and thus holding a key position in making the various Dublin Accords work, that are also among those countries at the center of the controversy over fiscal discipline. Moreover, it happens to be Germany, one of the hardliners with regard to Southern European austerity re-

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<sup>55</sup> Foucault, *Discipline and Punish*, p. 272.

<sup>56</sup> This situation of an almost generalized delinquency through indebtedness bears some resemblance to the mechanics of 'governing by debt', analyzed by Maurizio Lazzarato in (2015) *Governing by Debt*. Los Angeles: Semiotext(e)/MIT and (2007) *The Making of the Indebted Man: An Essay on the Neoliberal Condition*. Los Angeles: Semiotext(e)/MIT.

quirements, that has a particularly strong interest in the border countries fulfilling their Dublin obligations of registering and accommodating refugees and asylum seekers rather than waving them through – towards Germany, Austria etc. It is not far-fetched to assume that coalitions of fiscally hawkish lender countries headed by Germany will instrumentalize the possibility of upgrading and downgrading a country along the lines sketched out above as leverage in the conflicts over the European migration regime, while Italy or Greece may try the reverse strategy. This is just one example, but given that the large majority of EU countries are economically delinquent in one way or another, it is easy to imagine conflicts over other issues with other coalitions involved which also aim to instrumentalize those economic infractions for purposes completely unrelated to fiscal prudence and macroeconomic imbalances. In this sense the regime is a failure that still turns out to be eminently useful.<sup>57</sup>

### Conclusion

In this article I have tried to identify disciplinary/governmental mechanisms in the reformed economic governance structures of the EU as elements of a more encompassing project of ‘governing Europe’. In this endeavor I have relied strongly on Michel Foucault’s analysis of disciplinary power but also, to some extent, his concept of governmentality. My aim has been to not just posit that certain procedures, mechanisms etc. may have disciplinary effects, but to unveil the modalities of such disciplinary/governmental power in its very minutiae from the complex construction of a norm to elaborate timetables and fine-grained classificatory schemes that enable the categorization of each and every national economy in any number of aspects.

I have shown that the techniques of visibilization, normation/normalization, prevention and what Foucault calls ‘normalizing judgment’ all play a role in the new regime of surveillance and sanctions that has been established in response to the Sovereign Debt Crisis at the supranational level.

Foucault’s analyses are often criticized for their alleged portrayal of power regimes as all-encompassing, immune to resistance and becoming ever more efficient. But as his analysis of the prison in *Discipline and Punish* shows, Foucault was much more interested in what could be called the ‘productive failure’ of institutions and regimes that may not deliver on their proclaimed goals but, over time, are appropriated by other actors with different interests for other purposes. Along these lines I have argued that we should try to analyze the newly erected regime as a productive

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<sup>57</sup> It is important to add that I do not think of this as a functionalist explanation of anything (although Foucault’s way of putting it is somehow suggestive in this direction). It is simply a matter of making alternative uses of existing structures that are – for better or for worse – not particularly good at performing according to their stated purpose. The political world is populated by political ‘entrepreneurs’, bureaucrats and other actors that may have a sense of ‘opportunity structures’, or who simply do not know what they are doing when they put certain instruments to alternative uses and thus contribute to a dynamic that leads to a shift in the overall function of this instrument or to the purposes to which it is predominantly used. I think of these as completely contingent processes.

failure in this sense because its performance with regard to its stated goals is not exactly impressive and it might take a productive shift in perspective to inquire into the alternative uses of the regime. I have only been able to gesture towards what such alternative uses might be in this paper, but I hope that future research may make use of these preliminary remarks as a promising starting point.

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