THE CAMBRIDGE FOUCAULT LEXICON

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II. PROPER NAMES

List of Abbreviations for Foucault's Texts

TEXTS BY MICHEL FOUCAULT IN ENGLISH TRANSLATION

EAIF	*Michel Foucault: Beyond Structuralism and Hermeneutics*, ed. Paul Rabinow and Hubert Dreyfus. Chicago: University of Chicago Press, 1983.
EAK	*The Archaeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith. New York: Pantheon Books, 1971.
EAW	"Madness, the Absence of an Œuvre," in *The History of Madness*, trans. Jonathan Murphy and Jean Khalfa. London: Routledge, 2006, pp. 541–549.
EBC	*The Birth of the Clinic: An Archaeology of Medical Perception*, trans. A. M. Sheridan Smith. New York: Vintage Books, 1994.
EBHS	"About the Beginnings of the Hermeneutics of the Self: Two Lectures at Dartmouth," *Political Theory* 21, no. 2 (May 1993): 198–227.
ECF-AB	*Abnormal: Lectures at the Collège de France 1974–1975*, trans. Graham Burchell. New York: Picador, 2003.
ECF-BBIO	*The Birth of Biopolitics: Lectures at the Collège de France 1978–1979*, trans. Graham Burchell. New York: Palgrave Macmillan, 2010.
ECF-COT	*The Courage of Truth. The Government of Self and Others II: Lectures at the Collège de France 1983–1984*, trans. Graham Burchell. New York: Palgrave Macmillan, 2011.

the text is saying. However, "Ceci n'est pas une pipe" can now legitimately mean that even the model pipe in the picture is also not a pipe. Indeed, we cannot even say that any one of the pipes through which we blow smoke is the model for any of the drawn pipes. How would we justify choosing one of the "real" pipes over the others to have this privileged status? Moreover, the drawn ones do not present themselves in the artworks as mere imitations: we say spontaneously that they *are* pipes even though we know we can't use them like the "real" pipes (ENP, 20). Foucault concludes from this that we must replace the idea of instances "resembling" a real model with the idea of "simulacra" or "a network of similitudes," of elements in a series that repeat each other without the guidance of a Platonic form or other type of model (ENP, 47, 49, 52). Magritte's unraveled calligram therefore illustrates that there is an unstable dependency among words and things in all their possible venues. For Foucault, this fecund instability implies the murmur of many anonymous voices, each articulating a different version of what the relation between the sayable and the perceivable means in the Magritte painting or in any other setting, each voice contesting with the others for greater audibility (ENP, 37, 48–49; cf. Deleuze 1988, 7, 50, 55). Thus the anonymous voices or murmurings to which Foucault continually refers are the basis of language but also the visible, moving "to infinity" in innumerable new beginnings that are also rebeginnings.

Fred Evans

SEE ALSO

Contestation
Discourse
Knowledge
Literature
Structuralism
Georges Bataille
Maurice Blanchot
Raymond Roussel

SUGGESTED READING

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LAW

"LAW" (*loi*), AND its related concept of "right" (*droit*), occupies an ambivalent location within Foucault's thought. On the one hand, Foucault never self-consciously prioritized law as an object of analysis in and of itself or offered an account of the law on the same level he approached other concepts. Moreover, throughout the mid- to late 1970s, in his published books, seminar courses, public lectures, and interviews, Foucault offered a concept of power explicitly distinguished from the law. Linked with sovereign and juridical power, the law would have to be displaced as the dominant framework for understanding modern force relations. On the other hand, Foucault's oeuvre is replete with references and engagements with the law (*loi*),and with various laws and rights (*droits*). Law is always in the foreground of his historical accounts of madness, punishment, and sexuality. In interviews, he spoke at length on the legal reforms of prisons and sexual practices (EPPC, 178–210, 271–285; EFL, 279–292). His interest in Kant, especially in his attention to the concepts of critique and enlightenment, gravitated around notions of autonomy and the possibility of self-legislation within the context of obedience (EPT, 41–82, 97–120). His early literary dialogue with Maurice Blanchot playfully depicts the law as inescapably mutable, elusive, and as "the shadow toward which every gesture necessarily advances" (EFB, 35).

Most importantly, the law is integral for understanding the various modalities of the operation of power, the fabrication (and self-fabrication) of subjects, and the terrain of ethical comportment in ancient, modern, and contemporary society. Foucault's own methodological claims notwithstanding, the law can be said to occupy a central place in his thought in both explicit and implicit ways. Readers of Foucault must always approach the concepts of law and right (as with nearly any other important concept in Foucault's lexicon) as always related to and possibly constitutive with other techniques of power/knowledge. In a 1981 interview, Foucault put his relationship with the question of law and rights this way:

> I have always been interested in the law, as a "layman"; I am not a specialist in rights, I am not a lawyer or jurist. But just as with madness, crime and prisons, I encountered the problem of rights, the law, and the question that I always asked was how the technology or technologies of government, how these relations of power understood in the sense we discussed before, how all this could take shape within a society that pretends to function according to law and which, partly at least, functions by the law. (EPT, 142)

Foucault's most direct and explicit engagement with the concept of law itself can be found in the first volume of *The History of Sexuality*, where he takes up the question of power directly (EHS1, 81–102; FHS1, 107–135). Through the classical age and into the modern period, the law came to represent sovereign power in a primarily juridical and monarchical form. Insofar as a juridical notion of power was figured primarily as repression and prohibition, all deployments of power have been "reduced simply to the procedure of the law of interdiction" (EHS1, 86; FHS1, 113). Historically, this association of the law with sovereignty emerged during the Middle Ages, leaving the law overly determined by monarchical or sovereign power. Such an account of law, however, fails to adequately "describe the manner in which power was and is exercised" during even that period. Yet it nevertheless "is the code according to which power presents itself and prescribes that we conceive of it" (EHS1, 87–88; FHS1, 116).

We remain too focused, Foucault argues, on this representation of power, its mode of legalistic analysis, and its narrow objects and instruments:

> One remains attached to a certain image of power-law, of power-sovereignty, which was traced out by the theoreticians of right and the monarchic institution. It is this image that we must break free of, that is, of the theoretical privilege of law and sovereignty, if we wish to analyze power within the concrete and historical framework of its operation. We must construct an analytics of power that no longer takes law as a model and a code. (EHS1, 90; FHS1, 118–119)

Such an "analytics of power" (rather than a "theory" of power) therefore requires that "it free itself completely" from the "juridico-discursive" representation of power that looks to the law as an expression of power's prohibitive, repressive, or negative force (EHS1, 82; FHS1, 109). To give a proper history of sexuality (in particular) and an account of the analytics of power (more generally), it is therefore necessary to "rid ourselves of a juridical and negative representation of power, and cease to conceive of it in terms of law, prohibition, liberty, and sovereignty" (EHS1, 90; FHS1, 119).

To "escape from the system of Law-and-Sovereign" (EHS1, 97; FHS1, 128) and in turn to "replace" the privilege of the law with a "strategical model" focused on "a multiple and mobile field of force relations" (EHS1, 102; FHS1, 135) is necessary because this displacement is "in fact … one of the essential traits of Western societies that the force relationships which for a long time had found expression in war … gradually became invested in the order of political power" (EHS1, 102; FHS1, 135). This, most famously, is why we may finally "cut off the head of the king" in our political thought and analysis (EHS1, 88–89; FHS1, 117). Although a monarchical/juridical/sovereign theory of power has been "characteristic of our societies … it has gradually been penetrated by quite new mechanisms of power that are probably irreducible to the representation of law" (EHS1, 89; FHS1, 117). Foucault insists there has been an important shift in how power operates such that the law, as an account of power itself, stands in the way of our analysis, masks our understanding, and ultimately blocks potential paths of resistance when power appears in seemingly nonlegal, nonjuridical, or nonprohibitive forms such as discipline and normalization.

Objects of analysis should therefore be taken up from the point of view of power, which requires that one "must not assume that the sovereignty of the state, the form of the law, or the over-all unity of a domination are given at the outset; rather, these are only the terminal forms power takes" (EHS1, 92; FHS1, 121). The law itself (if such a thing can be said to exist) is therefore an instance of power/knowledge, and specific codified laws can be read as a "crystalized form" of power (EHS1, 92–93; FHS1, 122). In this sense, the law and right are to be studied as important "mechanisms" in the "grid of intelligibility of the social order" but never as some "primary," "central," or "unique source" from which power "emanates" (EHS1, 93; FHS1, 122).

This language of displacement has led some readers of Foucault with interests in jurisprudence and the sociology of law to insist that Foucault "expelled law" from both his own analysis of power and ultimately from modernity itself: "It is apparent that the most distinctive features of Foucault's account of the historical emergence of modernity led him to present a view which can be aptly summarized as the expulsion of law from modernity" (Hunt and Wickham 1994, 56). In the place of law, we find discipline, the concept of the norm, and the emergence of biopower: "Foucault identifies law and sovereignty with a pre-modern form of negative, repressive power which is progressively overtaken by a new mode of operation, or technology, of power, namely disciplinary power.... Enter power (in various guises); exit law" (Golder and Fitzpatrick 2009, 13). In this reading, the law is said to be fundamentally incompatible with the modern disciplinary power.

This view appears to be supported in particular by the first two lectures of *Society Must be Defended* (ECF-SMD, 1–41; FCF-FDS, 3–36), published separately

as "Two Lectures" in *Power/Knowledge* (EPK, 78–108). Proponents of the "expulsion thesis" routinely point to these lectures, and to Foucault's claims that sovereignty and discipline are "so heterogeneous that they cannot possibly be reduced to each other" (EPK, 106) and that "[t]he discourse of discipline is alien to that of the law," replacing a "code of law" with "a code of normalization" (ECF-SMD, 38; FCF-FDS, 34). Although the "expulsion thesis" has become a dominant interpretation of Foucault's account of law, it has been challenged substantially in recent years on multiple fronts. These critiques have noted that Foucault's account of law is always offered in conjunction with other concepts, most importantly discipline and governmentality. Moreover, other readers have rightly noted that Foucault maintained an important distinction between the "juridical" and the "legal" that the expulsion thesis fails to account for.

Moreover, there are also moments within both *The History of Sexuality* and the 1976 lectures that push directly against the expulsion thesis. Although Foucault expresses the need to "escape" from the law, he argues for the "replacement" of the privilege of power-law with an analytics of power in hopes of "ridding" ourselves of that privilege. Foucault never claims that law disappears. He writes, "I do not mean to say that the law fades into the background or that the institutions of justice tend to disappear, but rather that the law operates more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses … whose functions are for the most part regulatory" (EHS1, 144; FHS1, 190). In this sense, the methodological "displacement" of law is necessary in order to understand how law is a part of the "relations of subjugation" and how those relations "manufacture subjects" (ECF-SMD, 265; FCF-FDS, 239). Modern disciplinary power, in particular, is exercised at the point of contact between discipline and sovereignty (ECF-SMD, 37–38; FCF-FDS, 33–34). If modalities of power are "invading" and "increasingly colonizing the procedures of law," they are also "increasingly in conflict with the juridical system of sovereignty" (ECF-SMD, 38–39; FCF-FDS, 34–35). It is through conflict and colonization, at the limits of two heterogeneous systems that cannot be reduced to each other, that we find a "perpetual exchange or confrontation" between discipline and the law as a principle of right. Taken together, "[s]overeign and discipline, legislation, the right of sovereignty and disciplinary mechanisms are in fact the two things that constitute … the general mechanisms of power in our society" (ECF-SMD, 39; FCF-FDS, 35). In general, the role of law in Foucault's thought is subordinated to the task of constructing an analytics of power, in no small part as a corrective to an impoverished yet persistent conception of power that is identified with the law at the expense of other modalities or emerging forms of power in a given time and place.

This is not to say that the law is not vitally important to Foucault's study of "the how of power" (ECF-SMD, 24; EPK, 92; FCF-FDS, 21). Rather, Foucault was not primarily interested in the law for its own sake and was deeply

suspicious of the effects of taking the law or theories of right for granted. According to Foucault:

> So, these are connections, relationships of cause and effect, conflicts, too, and oppositions, irreductibilities between this functioning of the law and this technology of power, that is what I would like to study. It seems to me that it can be of interest to investigate juridical institutions, the discourse and practice of law from these technologies of power – not at all in the sense that this would totally shake up history and the theory of law, but rather that this could illuminate some rather important aspects of judicial practices and theories. (EPT, 142)

In particular, Foucault's interest in juridical institutions, legal discourse, and the practice of law was vitally important in illuminating the fabrication of subjects. Three select moments in Foucault's work are illustrative of both the law's productive tension with other discourses and the law's fundamental mutability in relation to the emergence or redeployment of political subjectivities.

First, in *Abnormal*, Foucault focused his attention on the relationships between legal, medical, biological, and psychiatric discourses to show how there occurred in the nineteenth century "the insidious invasion within judicial and medical institutions, exactly at the frontier between them, of a mechanism that is precisely neither medical [n]or judicial" (ECF-AB, 41; FCF-ANO, 38). This "invasion" took the form of an increasing reliance on "expert knowledge" into judicial proceedings (ECF-AB, 18; FCF-ANO, 18). Although various sorts of "abnormal individuals" came into existence as legal categories, they did so only through the reconfiguration of legal knowledge with respect to other modes of knowing. Abnormality itself, Foucault explains, can be defined through the interplay between legal and medical knowledges, each themselves discourses of power/knowledge, in which a figure like the "human monster" is simultaneously a legalistic notion as well as a contradiction of the law. By sitting at the limit of possibility as a breach of the laws of society and nature, the monster in fact becomes the very "principle of intelligibility" through psychiatric and biological knowledge, speaking the "truth" of an anthropological subject that is categorically dangerous (ECF-AB, 56–57; FCF-ANO, 52). The introduction of Article 64 in the French penal code, establishing that no crime could be said to have occurred when the individual accused was in a state of dementia, opened the door to a juridicomedical basis for criminology, the transformation of penal law in the coming century, and the figuration of individuals accused of crimes as dangerous in their being (ECF-AB, 18; FCF-ANO, 18).

Second, the figure of the delinquent in *Discipline and Punish* illustrates the productive force of the law at its border with disciplinary power (EDP, 264–268; FSP, 269–274). Perhaps here more than anywhere else in Foucault's work we can see

how law and power (in this case disciplinary power) are always related in various (and possibly oppositional) manners. Disciplinary power, Foucault notes, contains within it punitive and prohibitive force, a "small penal mechanism" (EDP, 177; FSP, 180). Discipline, in fact, relies on the failure of some persons to be properly normalized, "recalcitrant" subjects, who necessarily fail to adhere to the norm (Golder and Fitzpatrick 2009, 69). Thus, discipline is not contrary to law but is deeply dependent on it, if not co-constitutive with it. Discipline, Foucault notes, constitutes an "infra-law," a "counter-law," and it operates "on the underside of law" to generate both obedient subjects and hopelessly delinquent ones (EDP, 222–223; FSP, 224–225). And it does so precisely through its tension and relation with discipline. Law does not simply recede in modernity, but rather it "is inverted and passes outside itself," allowing for a generalization of the power to punish not through "the universal consciousness of the law in each subject" but through the broad sweep of disciplinary surveillance (EDP, 224; FSP, 225). We are, as docile bodies, as citizens, and as delinquents, fabricated as subjects by virtue of the law's ability to mold and adapt itself to the emergence of disciplinary power.

Third, *The Birth of Biopolitics* describes the production and transformation of the liberal subject by the law in relation to the economic discourse of the past three centuries. Twentieth-century neoliberal economic theorists would call for a return of the law and a revaluation of the juridical under strictly economic terms. Central to this revaluation was the redeployment of the classical figure of *homo œconomicus*. At the heart of the nineteenth-century paradox of criminal subjectivity was an "ambiguity between the crime and the criminal" (ECF-BBIO, 250; FCF-NBIO, 255). Under a juridical system that was necessarily focused on responsibilities for *acts*, individuals themselves would have to be disciplined as dangerous and irrational failures of self-government. The "solution" was found in fabricating a distinct category of *homo criminalis*, the productive failure of the law's ability to contain a classical utilitarian and economic calculus (ECF-BBIO, 250–251; FCF-NBIO, 255–256). The neoliberal approach would be to reintroduce the law, not as a framework within which to pursue economistic outcomes but rather as the "rules of the game" according to which *homo œconomicus* must play; that is, it tends to subject the law to economic principles rather than incorporate economic principles into the law. Paradoxically, we should therefore expect the growth of judicial discourse under neoliberalism, "because in fact this idea of law in the form of a rule of the game imposed on players by the public authorities, but which is only imposed on players who remain free in the game, implies … a revaluation of the juridical" (ECF-BBIO, 174–175; FCF-NBIO, 180). Such a revaluation, Foucault notes, comes only through the critical redeployment of neoliberal subjectivity, of *homo œconomicus*, effectively rejecting the entire notion of delinquency, *homo criminalis*, and throwing out the bulk of criminological power/knowledge. The law is

revalued on economic terms, not as a sovereign source of authority or as the infra-law of discipline (with its pathological production of monsters and delinquents) but instead as the ground rules for "free" entrepreneurial subjects responding to penal practices as market prices. The law, in Foucault's careful account, always continues to adapt and shift in relation to new modalities of power, *dispositifs*, and subjectivities. It is far from a fixed or universal form in Foucault's thought but instead represents one aspect, technique, or manifestation of historically contingent modalities of power.

In the closing pages of *Discipline and Punish*, Foucault states that the carceral technique, now generalized throughout society, represents as a system a "new form of 'law': a mixture of legality and nature, prescription and constitution, the norm" (EDP, 304; FSP, 310). The resurgence of the juridical in the twentieth century, subordinated to economic rationality, likewise could be seen as a "new" form of law, one that Foucault seemed presciently aware of before many of his contemporaries. And in a telling line from *Society Must Be Defended*, Foucault claimed that, "If we are to struggle against disciplines, or rather against disciplinary power, in our search for a nondisciplinary power, we should not be turning to the old right of sovereignty; we should be looking for a new right that is both antidisciplinary and emancipated from the principle of sovereignty" (ECF-SMD, 39–40; FCF-FDS, 35). The ability of law to be new, and to call for a "new" law as well as a new "law," reflects its ability to change in relation to the contingencies of history. The discomfort that many legal theorists express about Foucault's thought reflects, perhaps above all, a discomfort with Foucault's refusal to attribute an ahistorical universality to law. It is a contingent – however particularly powerful – instance and practice of power/knowledge among many others. Foucault would never give a "theory" of law, nor would he elevate it to a point of priority in the study of power or the self, but it is consistently present throughout his work, and like so many of his most powerful insights, handled with flexibility and care.

Andrew Dilts

SEE ALSO

Freedom
Governmentality
Liberalism
Power
Subjectification
Maurice Blanchot

SUGGESTED READING

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LIBERALISM

LIBERALISM, IN FOUCAULT'S account, is best understood as a historically specific form of political reason that organizes, directs, and imposes limits on the apparatus of governmentality (ECF-BBIO, 20). As a rational discourse that developed internal to governmental practice itself, eighteenth-century liberalism tied together a new empirical knowledge of the dynamics of the economy and the population with the burgeoning policy apparatus of the administrative state, formulating a precise agenda for the most effective application of governmental power in support of the "natural" growth of the market and society. As a critical doctrine wielded by individuals and groups subject to governmental control, however, liberalism has also constantly confronted governments with the question of whether they have not crossed the line to govern too much, destroying the capacity for self-maintenance and self-transformation supposedly built into the very fabric of civil society and the economy (EEW1, 75).

Both the critical and the governmental deployments of liberalism are grounded on a fundamental principle of "*laisser faire, passer, et aller*," which, as Foucault interprets it, "means acting so that reality develops, goes its way, and follows its own course according to the laws, principles, and mechanisms of reality itself" (ECF-STP, 48). Because this central principle refers simultaneously to the preeminence of a "free" or "natural" path of development and the need for governmental action in support of such development, liberalism is perpetually plagued by the problem of determining whether socioeconomic development requires increased governmental intervention, perhaps to remove irrational or unnatural obstacles to growth, or whether it necessitates only greater governmental restraint. Liberal reason attempts to resolve this difficulty by deciphering the "true" needs of the population, the economy, and civil society in the very nature of the objects themselves. Through this scientific determination of the "truth" of society, liberal reason continues to shape, limit, and extend governmental practice