



## CONTENTS

|  |       |
|--|-------|
| Foreword—François Ewald and Alessandro Fontana   | xiii  |
| Translator's Note  | xix   |
| Rules for Editing the Text   | xxi   |
| Introduction: Read Everything—Arnold I. Davidson   | xxiii |
| one 24 NOVEMBER 1971   | 1     |
| <i>Methodological principle: analysis of the penal system (penal theory, institutions and practice) to be set in the context of systems of repression in order to throw light on the historical development of moral, sociological, and psychological notions; political crime and common law crime. ~ Historical object: to study the repression of popular riots at the beginning of the seventeenth century in order to trace the birth of the State; the penal ritual deployed by the Chancellor Séguier against the uprising of the Nu-pieds (Barefeet) in Normandy (1639). ~ The Nu-pieds uprising: an anti-tax riot against a system of power (against the tax collector, against the homes of the wealthy); the attitude of the privileged classes, of members of the Parlement: neutrality, refusal to intervene.</i> |       |

two

1 DECEMBER 1971

17

*Summary of stages: (1) a popular revolt aimed at the State tax system; (2) evasion of nobility, bourgeoisie, and members of the Parlement; (3) the army as sole guarantor: towards the century of "armed justice"; (4) royal power introduces the new repressive system. - How to do the history of this new repressive system? Objection: earlier existence of the State apparatus of repression. Answer: continuous development of legislative institutions, but break within those concerning justice; on the one hand, attachment to the old system; on the other, production of a new system. In contrast with the post-revolutionary bourgeoisie which, behind the mask of the independence of justice, establishes a unitary repressive system of State, justice, and police at the same time. - Return to the Nu-pieds of Normandy. They take on the signs of power and assume its prerogatives. Rejection of the law by the imposition of a law. Rejection of justice as exercise of a justice. - The signs of this exercise of power: their name with reference to their "beggary"; their symbolic leader, chimerical personage; their orders "in the name of the King". - The acts committed in this exercise of power (military, administrative, financial, of justice). - Repression is really carried out against a different power.*

three

15 DECEMBER 1971

37

*An "armed justice": the repressive tactic as series of circumstantial operations; deferred doubling of the military by the civil: chronological gap between slow intervention by the army and the entry on the scene of the civil power. - Analysis in terms of relations of force: formation of an armed repressive apparatus, distinct from the body of the army, controlled by the civil State and not by the privileged - Analysis in terms of politico-military strategy: separation of town and country, of the people and bourgeoisie enabling the violent repression of popular strata, then a punitive treatment of the privileged and members of the Parlement. - Analysis in terms of manifestation of power: dramatization of power hiding the strategy pursued, designating the rebels as enemies of the king, therefore subject to the custom of war, and not as civil*

*delinquents. Each performs his role, and the Chancellor the role not of victor, but as dispenser of justice who discriminates and differentiates between the good and wicked.*

four

22 DECEMBER 1971

57

*Reminder: Analysis at three levels of the first episode of repression by armed justice (relations of force, strategic calculations, manifestations of power). ~ Development on the basis of the third level: a dramatization in four acts. (1) Royal power designates the population as "social enemy". (2) The local powers bring their submission but try to limit and moderate royal power: an application of the theory of the three checks. (3) The Chancellor's refusal and his invocation of the Final Judgment in his support: "the good will be rewarded, the wicked will be punished". (4) The privileged protect themselves by accusing "the low populace" and dividing it into good and wicked. ~ Dramatization which produces a redistribution of the repressive instruments and powers.*

five

12 JANUARY 1972

67

*I. Entry of the civil power into Rouen and formation of the visible body of the State. ~ The Chancellor goes beyond the traditional judicial rules and unites the orders of justice and military force: the State takes on a repressive power. ~ Appearance of that third purely repressive function of the State assured, independently of the King, by the Chancellor (member of the King's Council). Replacement of royal power and the absent king by a visible body of the State. The fiscal apparatus is doubled by a repressive apparatus. II. New forms of control without new institutions. ~ Questioning of local authorities: provisional suspensions. Provisional replacement of local institutions by commissioners. ~ Military measures and system of tax penalties in order to bind the privileged to their engagement. All in all, an unstable system of control which still depends upon feudal structures, anticipating the creation of a specialized repressive State apparatus.*

19 JANUARY 1972

*A remarkable system of repression for several reasons. I. Internal coherence: interplay of differentiated sanctions aiming to break the previous alliances of social groups; financial profit given to the privileged in return for maintenance of order; formation of a third (neither military nor juridical) instance as (juridico-military) administrative instrument of the State, but basic lack of a specific apparatus of repression. II. Visible precariousness: differentiated arming (problems of bourgeois militias and popular arming), ruinous intervention by the army; drop in income from property as from tax levies; rent/taxes antinomy; bringing two contradictions into play. III. Resolution of the rent/taxes antinomy and stabilization of the army. From 1640, setting up of a new institution and distinct repressive apparatus within the State apparatus (intendants of justice, police and finance), acting as administrative tribunal and exceptional jurisdiction; establishment of a centralized and local police; a levy on the "dangerous population", confinement and deportation. - Birth of the prison conjointly with birth of capitalism.*

26 JANUARY 1972

*The failure of the repression carried out by the Chancellor Séguier and then the Fronde gave rise to the setting up of three new institutions: a centralized justice (intendants of justice); the police; a punitive system by removal from the population, confinement, deportation. In response to popular struggles, the repressive penal system produces the notion of delinquency: the penal system-delinquency couple as effect of the repressive system-sedition couple. - The new institutions do not replace the feudal institutions, they are juxtaposed to them. - The exercise of political power is linked to nascent capitalism. The new repressive system, conceived of as an element of protection of the feudal economy, is linked functionally to the development of the capitalist economy. It takes shape in the penal code and will be ratified at the end of the eighteenth century: production of the penalty/delinquency coding.*

eight

2 FEBRUARY 1972

111

*Opposition of the new repressive system to the old one: antagonism between processes which gives rise to the birth of justice as both a specific and a state controlled apparatus.*

*I. History of the judicial apparatus in the eighteenth century: political struggles, operational conflicts, and determinant contradictions forged the different discourses of penalty, crime, and penal justice. ~ Need to return to feudal justice and Germanic law. II. History of Germanic penal law. The juridical order defined by the rules of the dispute; the act of justice is not organized by reference to the truth, nor by the judicial instance, but through a regulated struggle. ~ Closure of war by payment of an indemnity (rachat), and not sanction for the offense. ~ The activity of judging as risk-taking, the danger of private war producing a system of assurances (oaths, compensations, pledges (gages)).*

nine

9 FEBRUARY 1972

127

*I. History of Germanic penal law (continued): its residues in penal law of the Middle Ages. (A) The accusatory procedure, the diffamatio. (B) The system of proof: a test which determines the winner. The truth is not at stake in the oaths, ordeals, and judicial duel. (C) Private war as modality of law in the Middle Ages. The dispute outside the judicial. II. History of the transformation into judicial penal system with public action and establishment of a truth of the crime. (A) Not simply due to the influence of Roman law or Christianity, it is inscribed rather in the interplay of relations of appropriation and relations of force. (B) Criminal justice carries out a significant economic levy and contributes to the circulation of wealth. ~ Elements of this circulation: pledges (gages), dues, fines, confiscation, compensation. ~ Consequences: circulation of wealth and concentration of political power. ~ General remarks: The penal system of the Middle Ages produces its major effects at the level of the levy of goods; the contemporary penal system, at the level of the removal of individuals; comparison: fiscal/carceral, exchange/exclusion, compensation/prisons.*

- ten 16 FEBRUARY 1972 149  
*Distinction between medieval pre-State structures and the State apparatuses which replace them. Penal practice in the Middle Ages, which is inserted between civil dispute and violent despoilment, consists in a political-economic correlation; it redistributes property, wealth, and goods: it is the "joust of fortunes". ~ Fiscalization of justice. Importance of peace institutions and peace pacts (suspension of acts of private war, pacts, contracts; ritualized development). Pax et justitia, principle of peace councils. Social war falls under penalty. ~ System of penalty linked to the problem of the possession, concentration, and distribution of arms. ~ Crisis of the thirteenth to fourteenth century: toppling of feudalism; call for foreign mercenaries; seigneurs rely on royal justice. Application of a system with an anti-seditious function to the parliamentary apparatus and fiscal apparatus. Development of royal justice, as first form of an institutionalized power, into judicial State apparatus.*
- eleven 23 FEBRUARY 1972 167  
*I. Endogenous process. The function of peace institutions in the Middle Ages: 1/ constitution of a space of justitia guaranteed by the judiciary as public authority; 2/ constitution of better assured zones of taxation which double the procedure; 3/ distribution of arms, intervention of force, and formation and development of the professional army. Concentration, centralization, and virtual State takeover of justice. II. Exogenous processes. The fourteenth and fifteenth century crises and major social struggles transform justice. Important phenomena: 1/ the functioning of Parlement as center of every practice of justice; 2/ the king is justiciar as sovereign; 3/ Parlement becomes a component of a State apparatus.*
- twelve 1 MARCH 1972 183  
*Summary: crises and social struggles of the thirteenth and fourteenth centuries lead to the centralization of royal power and the setting up of a royal justice which appears in the institution of a Parlement. Three characteristics of State*

*justice: universal, compulsory, delegated. ~ Two other measures: 1/ The development of cases coming under the king: extension of his jurisdiction with, as effects, a new definition of the kingdom-State and a new dimension of penalty for breaches of public order. New domain of penalty which sanctions breaking a rule stated by the public power. 2/ Establishment of royal procurators: extension of their role to indictment, with the consequences that every crime is an offense against the public power, and the king becomes both judge and interested party. ~ Double effect on the functioning of the penal system: (1) Separation of the penal and the civil; (2) replacement of war and redress by obedience and punishment. Penalty is organized by reference to a political structure. Crime becomes an attack on the public power. Opposition between political crime and common law crime as central component of the penalty of the nineteenth century, concealing the political function of the penal system.*

thirteen 8 MARCH 1972

197

*I. After analysis of the function and power relations of penal justice in the Middle Ages, studying its knowledge effects: not in the sense of ideological operations, but of production of truth. ~ In Germanic law, the test establishes the superiority of one over the other. ~ In the new penal regime with royal procurators, the inquiry establishes the truth that makes it possible to pass from accusation to sentence. The inquiry as restoration of order. ~ The test is replaced by the truth established by witnesses and writing which records.*

*II. Complementary comments. Inquiry and confession (aveu) as privileged sources of the discovery of truth in the new penal regime. ~ Torture's point of insertion. ~ The system of legal proofs. Contrast between inquiry and measure. Measure as the instrument and form of a power of distribution; inquiry as instrument and form of a power of information. Inquiry-bureaucratic system in the Middle Ages. ~ Analysis of the types of extraction of surplus-power. Relation to the 1970-1971 lectures on "the will to know". Final comment on the appearance of the examination form in the eighteenth-nineteenth century. The birth of the human sciences.*

|   |     |
|---|-----|
| <b>Course Summary</b>   | 229 |
| <b>Ceremony, Theater, and Politics in the Seventeenth Century</b>     | 235 |
| <b>Course Context</b>   | 241 |
| <b>Letter from Étienne Balibar to the Editor</b>                      | 279 |
| <b>Foucault and the Historians: The Debate on “Popular Uprisings”</b> | 285 |
| <b>Index of Concepts and Notions</b>                                  | 303 |
| <b>Index of Names</b>   | 319 |