Chapter Title: Mainly on The First Volume of Foucault's History of sexuality; Le volonté de savoir (The will to knowledge)

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LECTURE FOURTEEN

Mainly on The First Volume of Foucault's History of sexuality; *Le volonté de savoir* (The will to knowledge)

Unlike those who saw social democracy as a compromise between capitalism and communism, and who then saw its decline as a consequence of the fall of communism, because once the threat of communism ended, capitalism no longer needed to compromise, I hold that social democracy declined because it was incompatible with the basic rules of the game of capitalism. In other words it is the basic cultural structures of the modern world (Richards and Swanger, 2006). Unlike those who believe that history has demonstrated the superiority of capitalist democracy (for example, Fukuyama, 1992), I hold that history has demonstrated the desirability of social democracy (see, for example, Wilkinson, 2005), although not – at least not yet – its feasibility.

Unlike those who see the task of increasing labour's share of the social product as primarily one of forging a powerful alliance of the majorities against the privileged minorities (for example, Laclau and Mouffe, 2001), I see the task as primarily one of transforming the basic structures of the modern world, and, therefore, the rules that govern capital accumulation (for example, Richards, 1995; 2007). I do not see the interests of the privileged minorities as opposed to eliminating poverty or to achieving ecological sustainability, nor do I see their interests as incompatible with strengthening ethical norms in a world-system now driven not so much by the egoism of a privileged few, as by the implacable logic of accumulation.

To some degree, unlike those who take a pessimistic view of the economic future of the majority of humanity, as labour inevitably loses what little bargaining power it still retains, while capital roams the globe in search of jurisdictions that offer lower costs and higher profits (for example, Winters, 1996), I am moderately optimistic about the prospects for local development and a pluralistic economics of solidarity (Coraggio, 2004; 2004a). But we will not get far in constructing an economy that includes the excluded without understanding the rules that award Ricardian rents, far in excess of the opportunity cost of capital to a privileged few, while excluding those who find no buyers for what they have to sell, from the economy. Here it is to be noted that the basic constitutive rules of the system make inevitable a chronic weakness of effective demand at the same time that they make inevitable Ricardian windfalls (Keynes, 1936, updated in Krugman, 2008, interpreted in Hoppers and Richards 2012 and in Richards and Swanger, 2006). They also make it inevitable that

the only alternative to a regime of accumulation (say the Fordist/Keynesian regime right after World War II; see Harvey, 1989) is some other regime of accumulation (such as a neoliberal one, perhaps now to be supereded by that of a developmental state). To break free of the systemic imperatives that run our lives, to end what Marx called the pre-history of humanity and begin history properly so called, when the open society that Karl Popper, advocated and the experimental society John Dewey advocated, will be possible because it will be possible to make rational decisions and carry them out, we must study constitutive rules. We must change them.

To transform the basic cultural structures of the modern world, to escape from the systemic imperatives of capitalism that have now assumed the form of globalisation, I recommend less power-talk, more rule-talk, more caring human relationships (which, I believe, we can systematically nurture today better than in former times because of advances in psychology and applied ethics).

At first glance, it might appear that Michel Foucault lived on some other planet where people worried about different issues, asked different questions, and therefore necessarily got different answers. At second glance, it appears that if we are speaking of the classic Foucault, if we are speaking of the best-known Foucault, if we are speaking of the author of *Surveiller et Punir* (Foucault, 1975) (*Discipline and Punish*), of the author of the first volume of a never-completed six volumes on the history of sexuality, *La Volonté du Savoir* (Foucault, 1976) (*The Will to Knowledge*), of Foucault's lectures at the Collège de France, in the academic year 1975–1976, that were transcribed and later published as *Il Faut Défendre la Socié*té (Foucault,1997) (*Society Must be Defended*), of the Foucault who wrote a history of the birth of the prison, who saw the society we live in as a carceral society, as one large jail penetrated everywhere by disciplinary power and by its corollary normalisation; then, in at least in one respect, we are not talking about a Foucault who lived on some other planet, but rather of one who lived on the same planet at the same time, but chose to talk about it differently. In the later of the two books published in Foucault's lifetime, *La Volonté du Savoir* (1976), Foucault writes the word "power" (*pouvoir*) 359 times in 211 pages, not even counting numerous sentences, in which *dispositif du pouvoir*, or *mécanisme du pouvoir*, or *technique du pouvoir, appareil du pouvoir*, or *strategie du pouvoir*, is expressed in shorthand as *dispositif, mécanisme, technique, appareil*, or *strategie* – invoking *pouvoir* as a shadow word that the reader reads even though the writer has not written it. Each of Foucault's three 1975–1976 books systematically attacks juridical thinking that associates power with law and with rules. On second glance, it would seem likely that, if Foucault were alive today, he would regard my recommendation to do less power-talk and more rule-talk not as an irrelevant answer to questions that do not interest him, but rather as relevant but wrong.

I will now consider more passages where Foucault goes into greater depth on the meaning of the power perspective he used to construct his concept of normalisation in *Discipline and Punish.* Foucault provides, in a section of *La Volonté du Savoir,* a detailed explanation of exactly what he does and does not mean when he writes the word "power" (Foucault, 1976: 121–135). I will soon quote from it a passage that can be called a "definition" of "power". But before examining Foucault's formal definition of the word I will first look at how he uses it in the first half of *La Volonté de Savoir.* "Power" occurs 188 times in the 120 pages that precede its definition.

Power makes its first appearance on page 12. It surely would have appeared earlier, if so many of the initial pages of the book had not been left blank. On page 12, the reader is told that, since the classical age (the 17th and 18th centuries), power in the form of repression has been thought to be the fundamental link connecting power with pleasure and with knowledge (Foucault, 1976: 11–12).

This word "power", which will prove to be so key, is not introduced at first with any particular fanfare, and legitimately so. It is not surprising to find the word "power" in any text, whether woven by Foucault or woven by someone else. "Power" like any other word carries conventional baggage presumed to be familiar to writer and reader. I would nevertheless add that, in this particular case, that of "power", quite apart from the creative use Foucault will make of this particular well-known noun, the conventional baggage it carries is itself unusual.

"Power", along with its near-synonym "force" (and its mathematisation as *impact* of a functionally dependent variable), is a word among words. It is modernity's characteristic root metaphor (Richards, 1995; Husserl, 1937). It was the pivot of the paradigm shift from medieval scholasticism to early modern European philosophy. It was (I claim) the pivot of what Richard Rorty describes as the project of the early modern thinkers to create a secular public discourse, independent of theology (see Rorty, 1980). What will be surprising is Foucault's hyper-modernity; the sheer magnitude of the cargo of coal he brings to Newcastle; his proposed philosophical super-saturation of a culture that was already saturated with power-talk even before Michel Foucault put pen to paper (see, for example, Heidegger, 1938).

In attributing to "power" a central meaning in modern worldviews, I mean to *include* (that is, to count as more modern and less traditional) along with "power" terms with similar meanings, notably "force" and the Latin *"vis"* (*vis* being the protagonist of the tale told by Isaac Newton in his *Principia Mathematica*); and I mean to *exclude* cases where a word like "power" is employed but its meaning is more mythical, magical, or personal (for example, St. Paul's allusions to "the powers", see Freudenthal, 1982).

On page 12, the reader sort of learns, but does not really learn, that repression is what connects power with pleasure and knowledge. Foucault is writing in *oratio obliqua*. He is outlining not his own views, but the Marxist repressive hypothesis of Herbert Marcuse and Wilhelm Reich, which makes the Victorian repression of natural sexuality the companion and the consequence of the repression of the proletariat by the bourgeoisie. Although he refers to their ideas here, he does not mention Marcuse or Reich by name, but he does name them in the contemporaneous, but posthumously published *Collège de France* lectures (Foucault, 1997). One can describe the general aim of *La Volonté du Savoir* by saying that it is to refute the repressive hypothesis, not in the sense of proving it to be false, but in the sense of showing it to be part and parcel of a defective worldview ("worldview" is a term I chose, not one Foucault would have chosen). The defective worldview, to be *aufgehoben,* is, as Dreyfus and Rabinow put it, one that simply takes it for granted that there are subjects, desires, and interdictions, and that these explain history and society (Dreyfus and Rabinow, 1986: 114). I think the Hegelian term *aufgehoben* is appropriate here, since rather than denying that there are subjects, desires, and interdictions, Foucault is proposing, what I am calling an allegedly better and more comprehensive worldview, in which subjects, desires, and interdictions are talked about and seen in the light of stories-about-power, "genealogies", tracing their origins.

The saturation of his text with power-talk makes it evident from the get-go that power-talk will be Foucault's proposed better worldview's constituting discourse. It is sometimes difficult to tell whether a given instance of power-talk in the book is Foucault speaking in his own voice, or whether the speaker is the seductive voice of the misleading and inadequate repressive hypothesis, or whether – a third possibility that Foucault discusses at length – the speaker expresses a juridical rules-talk representation of power.

Power appears a second time on the same page in the course of describing what the advocates of the repressive hypothesis want. They want transgression of the laws, the lifting of prohibitions, the restoration of pleasure in reality. In sum, they want "a whole new economy in the mechanisms of power" (Foucault, 1976: 12). Power, therefore, has mechanisms. Or mechanisms have power. There are some mechanisms that are "of power". Since we know from the *Collège* lectures that Foucault construes power as a relation and not as a substance, we must be careful, while noting that power and mechanism are somehow connected and associated, not to interpret power as a substance, one of whose qualities or accidents is mechanism.

On the next page, it appears that one thing the repressive hypothesis does is to formulate, in terms of repression, the relationships of sex and power (Foucault, 1976: 13). Therefore, whatever else power may be, it is something that has relationships

with sex. More remarkably (Foucault is still speaking in *oratio obliqua*), the speakers who dare to talk about repression, who dare to talk about the forbidden subject, by the very fact of violating prohibitions (prohibitions about what it is allowed to talk about) as well as by the fact of advocating violating prohibitions, enjoy the pleasure of placing themselves to a certain extent "outside power" (Foucault, 1976: 13). They are speaking "against the powers" (Foucault, 1976: 14). The charms of the repressive hypothesis are such that anybody who denies it – anybody who says the relationship of power to sex is not repression – has to compete on unfavourable terms with the discursive interest of its proponents in enjoying the pleasures of transgression (Foucault, 1976: 15–16).

Foucault's question, then, is not why people are repressed, but rather why they so passionately say they are repressed. Why do they speak of abuse of power as a sort of sin against sex (Foucault, 1976: 17)? Why do they identify power with repression, and especially with the repression of useless energies, intense pleasures, and irregular behaviours? On the next page Foucault introduces the phrase, "the intrinsic mechanisms of power" (Foucault, 1976: 18). I am unable to discern whether this phrase here is in *oratio obliqua* or in his own voice. In any case, he soon ratifies "mechanics of power", as spoken in his own voice, in the course of doubting whether power's "mechanics" are really repression. Is prohibition and repression really the form in which power is generally exercised? Foucault's answer to his own question will be negative. In the course of asking it, he alludes to his view that "power" is something that is "exercised". Power is exercised rather than possessed (Foucault, 1975: 35). It is not the privilege of a dominant class, but rather the effect of a "set of strategic positions". He will continue to speak of power as exercised (for example, Foucault, 1976: 21, 45, 57) without specifying any person, any institution, any social class, or any group that is doing the exercising. The "intrinsic mechanisms of power" exercise themselves. Foucault frequently uses the French reflexive form of the verb: power "*s'exerce*" (for example, Foucault, 1976: 18, 21, 45, 57).

Above, I described Foucault's general aim in the book as showing that the repressive hypothesis was part of a defective worldview and proposing a better worldview. Now I can rephrase my interpretation of Foucault's general aim in Foucault's own words: the general aim is "to determine, in its functioning and in its rationale, the regime of power-knowledge-pleasure that sustains discourse about human sexuality in our culture" (Foucault, 1976: 19). Foucault will not talk about a social class or any group of people wielding power, but rather about power itself, "penetrating and controlling daily pleasure" (Foucault, 1976: 20). The polymorphous techniques of power determine the production of discourse and its (power's) effects of power lead to formulating what is taken to be the truth about sex. He will defend his way of talking as superior to the Freudo-Marxism of the repressive hypothesis and also, as

superior to a related way of talking about power and law that he will call juridical-discursive. This is what I had in mind in the last lecture when I said, that in 1976, Foucault withdrew the "maybe" of 1975 that conceded that perhaps something, indeed a lot, could be said in favour of making the abstract juridical forms of exchange a main model for understanding modern society (see Foucault, 1976: 109). Foucault says later, in a section called "*Enjeu*" ("what is at stake"), that the mistakes he is correcting are not just about sex; they are also about political analyses of power, and are, in general, deeply rooted in the history of the West.

The repressive hypothesis will not be refuted in the sense of being shown to be false. It will be shown to be a limited description of certain local tactics of power. Foucault will place it in a larger context, in which power and discourse are produced (Foucault, 1976: 21).

On the same page, page 21, Foucault introduces the key idea we have seen already in *Discipline and Punish* of *mise en discours*, putting in discourse, and then in apposition to *mise en discours*, he writes *technique du pouvoir*, technique of power. Putting in discourse is a technique of power. "Technique of power" is virtually interchangeable with mechanism of power, *dispositif* of power, strategies of power, tactics of power, apparatus of power. When he needs to choose a general term to cover all these ways of saying more or less the same thing, Foucault tends to choose "mechanisms of power" (for example, Foucault, 1976: 45). The most notable "mechanism" is *mise en discours*. In the last lecture we had a foretaste of *mise en discours* in the examinations that created files where individuals were documented.

These rather abstract appearances of power, in the first pages of *La Volonté de Savoir,* become concrete when Foucault discusses, once again, the practice of confession in the Middle Ages and later (Foucault, 1976: 26–30, 78–94). Everything about sex had to be *mise en discours*. The father confessor had to know about the positions of the partners, their attitudes, who touched whom and how, the exact moment of pleasure, thoughts, desires, imaginary pleasures; all the movements of the soul, of the will, of the understanding; all the words, all the actions, all the dreams. Traditional penitence imposed the infinite task of saying over and over again, as often as possible, both to oneself and to another, everything about pleasure. Desire had to become discourse (Foucault, 1976: 30).

The Marquis de Sade, and the anonymous 19th century English libertine who devoted eleven volumes titled *My Secret Life* to describing his sexual pleasures, were "governed by the same prescription" (Foucault, 1976: 31). Tell all. Scandalous writings, too, were part of the "grand process of *mise en discours* of sex" (Foucault, 1976: 32).

But the techniques of power that penetrated and, at the same time, incited pleasure by verbalising it, might have remained matters of Christian spirituality and private sexual practice if the extension of mechanisms of power had not become a matter of public interest (Foucault, 1976: 33). Here, Foucault names a specific "mechanism of power". It is "population" (Foucault, 1976: 35).

It is the word "population"; the very idea of population; it is population-talk that is a mechanism of power. "Population" constitutes an economic and political problem. It is manpower. It is a matter of attaining equilibrium between population's growth and the available resources. It is *population-richesse* (Foucault, 1976: 35–36). It is not society; it is not a set of individual bodies. "It is the notion of 'population'", a notion that provides a rationale for an extension of power that Foucault calls "bio-power" (Foucault, 1997: 218). Talking about population is a strategy of power that leads to making the sexual conduct of the population both an object of analysis and a target of intervention (Foucault, 1976: 37). That sexual conduct should be controlled is independent of whether the policy is pro-natalist or anti-natalist. In either case there are numbers to be calculated and optimised. There is an intensification of *pouvoirs* and a multiplication of discourses in which the population becomes more known, and at the same time, more disciplined.

From the 18th century onward, even the sex life of children and adolescents becomes an *enjeu,* penetrated by innumerable institutional *dispositifs* and discursive strategies (Foucault, 1976: 42). Although they are diverse, the *dispositifs* and strategies have in common that they are constraining, *contraignants* (Foucault, 1976: 45). They are coercive, *coercitives* (*ibid.*: 47). They are not outside power or against power; they are, themselves, exercises of power and means of its exercise. From the single imperative that commands everybody to make of her or his sexuality a permanent object of discourse, amplified to the level of the population, there grow multiple mechanisms of power in the fields of pedagogy, of medicine, and of justice (*ibid.*: 45). But, contrary to the repressive hypothesis, power did not annul pleasure, nor did pleasure annul power. From the 18th century forward, the mechanisms of power produced a certain amount of prohibition, but they also incited and excited. By producing a whole science of sex in which perversions were classified as botanists classify plants (Foucault, 1976: 71–98), they gave each a name and a social status. They produced profitable specialties in such fields as medicine, psychiatry, pornography, and prostitution. On page 66, the word "power" appears as the name of something that extends itself, and which, by extending itself, proliferates sexualities (Foucault, 1976: 66).

On page 108 Foucault considers a possible objection. He accuses himself, or imagines a reader accusing him, of having confused repression and law, as if they were equivalent ideas. This is a far-fetched objection, since Foucault has neither stated nor implied

any such equivalence. Far-fetched or not, it gives Foucault an opportunity to make a gracious transition to a critique of what he calls a juridical-discursive representation of power, that is to say: to a critique of errors concerning the relationship of power to law that he has accused himself of falling into or seeming to fall into.

Foucault outlines what he takes to be some of the principal features of a juridical-discursive view of power (Foucault, 1976: 110–112). Like the repressive hypothesis it is negative. Power can only say no (*ibid.*: 110). On this view that Foucault articulates but does not agree with there is a general form of power: it is the law. The law is the voice of power. "*Il parle, et c'est la règle*" (*ibid.*: 110) ("Power speaks, and it is the rule"). It is the same in the state and in the family; the same for a prince, a father, or a judge. According to this mistaken view, power mainly punishes transgressions. On one side, there is the power that legislates; on the other side, obedience: the subject obeys the monarch, the child obeys the parent, the citizen obeys the state, and the disciple obeys the master (*ibid.*: 112).

Foucault next asks why people so easily accept a juridical-discursive conception of power (Foucault, 1976: 113). His first answer to his question is a move that, in Charles Taylor's view, is an admission revealing a weakness in Foucault's case. The answer is: the juridical-discursive view, which views power as, at once, law and repression, which overlooks the fact that desires are themselves products of power, allows people to think they are free. Their desires are their own before the law, to some extent, represses them. The law performs the legitimate function of placing some limits on everybody's freedom. In this way, power becomes acceptable. If power were completely cynical, if it did not take the general form of tracing limits to liberty, then, in our modern western societies, power would not be acceptable (Foucault, 1976: 113–114). Taylor takes the view that Foucault's account of the power of humanitarian ideals cannot be true, because he underestimates the historical influence of humanitarian ideals. Power is not power, that is, it does not succeed in imposing itself, unless it compromises with humanitarian ideals in order to be accepted. I think the difference between Foucault and Taylor, here, is that for Foucault, the humanitarian ideals are themselves *dispositifs* of power, while for Taylor, they are gatekeepers without whose blessing power is not legitimate, and therefore, to a considerable extent not viable (see Taylor, 1985: 163–166).

Foucault then provides an historical explanation of why a juridical-discursive power seems natural to us. Our modern societies (of course he thinks of France first), are the successors of the monarchies of the classical age. *Pace* theories of law, which would assert that the law is and always has been whatever the sovereign says it is, the so-called absolute monarchies of the West, were, in fact, legal monarchies. Law constituted them. Their power was built on top of a series of forms of power

that already existed before them, such as the possession of arms. Arms-related power extracted the agricultural surplus as rent from those who cultivated the land. Monarchy gradually dominated aristocracy as it established order and hierarchy among pre-existing powers. The law (we learn from the *Collège* lectures that Foucault has in mind Roman law) was not just an ideological weapon, skilfully wielded by the monarchs. Law was the mode of their appearance on the stage of history and the form of their acceptability (Foucault, 1976: 115). Since the Middle Ages, in western societies, the exercise of power has always been formulated in law. So far, I almost agree with Foucault and Foucault almost agrees with Taylor. We see the same facts and, to some extent, we interpret them the same way.

Foucault then goes on to say that it is an error to take, at face value, the republican propaganda of the 17th to 19th centuries, that associates royalty always with non-law, with caprice, with abuse, with exceptions, with government that is *de facto* and not *de jure*. It is an error that forgets the fundamental historical fact that the western monarchies were constructed as legal systems. The royal mechanisms of power functioned as forms of law. The republican critique demanded the rule of law without the rule of the monarch. It did not question the underlying principles that law ought to be the form of power, and that power should always be exercised in the form of law (Foucault, 1976: 116).

It was not until the 19th century (Marx, of course, being the most famous example) that a more radical critique appeared: real power was something above and beyond the rules of law; and indeed, the rules of law themselves were a form of violence exercised for the profit of some at the expense of others. But even this more radical critique at bottom conceived of power as in essence something that ought to be exercised (even when in the societies criticised it was not exercised) according to fundamental principles of right (*droit*) (Foucault, 1976: 117). Here Foucault implies that his own Nietzschean critique is more radical than the radical humanist critiques of the 19th and 20th centuries. It turns out, that although for a moment it seemed that I would agree with Foucault because he had changed his mind, in the end he continues to see rules and laws as techniques of power, not as something other than power.

Foucault goes on to say that the West is still haunted by the ghost of the juridical monarchy. Its collective mind is still inhabited by power in the form of law. But today law represents power's practice less and less. Today it becomes more and more evident that law is what it always was. In practice it is every day clearer that power functions today not as law (*droit*) but as technique (Foucault, 1976: 118). Instead of law (*loi*), power relies on normalisation (*ibid.*). Instead of relying on punishment mainly administered by the state, power proliferates in networks of control penetrating all institutions.

The task that Foucault then assigns himself is to build an analytic of power in its concrete procedures – one that no longer represents power as law (Foucault, 1976: 119). It is to think "sex without law and power without king" (Foucault, 1976: 120).

It is, at this juncture in *La Volonté du Savoir*, with these cards on the table, or to vary the metaphor with these balls in the air, that Foucault decides to devote ten pages to explaining what he, Foucault, does and does not mean by "power". He does not mean by the term a set of institutions that guarantees the subjection of the citisens to the state (Foucault, 1976: 121). He does not mean that form of subjection that, unlike violence, takes the form of rules. In general he does not mean by "power" a system by which some group or entity dominates others. An analysis in terms of power should not postulate the sovereignty of the state. On the contrary, the sovereignty of the state should emerge, if at all, as a conclusion, as a terminal form, of the analysis (*ibid.*). Forms of law and domination should also be explained as conclusions of the analysis, not presupposed at its beginning (*ibid.*).

What Foucault does mean by "power" is quite a mouthful: It is "the multiplicity of relations of force (*rapports de force*) that are immanent to the domain where they exercise themselves or are exercised (*s'exercent*), and which are constitutive of their organization; the game (*jeu*) that by way of struggles and confrontations incessantly transforms them, reinforces them, reverses them; the supports that the relations of force have with each other, so that they form a chain or a system, or, on the contrary, the slippages, the contradictions, that separate some from others; the strategies by which they take effect, and of which the general design is the institutional crystallization which takes form as the state apparatus, as the formulation of the law, as social hegemonies" (Foucault, 1976: 121–122).

This is a long definition but it has a short kernel: relations of force. At this point, Foucault ought to confess something he never confesses, namely that the omnipresent generality of "power" naming relations of force in his discourse cannot be reconciled with his and Deleuze's nominalistic methodology of "dispersion" (Digeser, 1992: 986). The rest of the definition mainly talks about what the relations of force do. If we ask, "As opposed to what?", that is, "What other way of looking at power is *rapports de force* supposed to be an alternative to?" We will find an answer in Foucault's lecture at the *Collège de France* on 7 January 1976: power is not mainly about the maintenance of economic relationships (Foucault, 1997: 15). If we go on to ask what Foucault means by "force", we will find that he does not elaborate on it in any special or unusual way (Philp, 1983). We are left with the ordinary meanings of the term without any special senses peculiar to Foucault. What are, however, peculiar to Foucault, are his accounts of how strategic relationships of force are stabilised in institutions, reinforcing one another in ways that make institutions very difficult to change (for example, Foucault, 1982: 742).

Although we may feel that we learn more about what Foucault means by ¨power¨ studying his actual use of the word and its surrogates than by a definition that ends up calling power "force", it is in any event pretty clear that, for Foucault, power is not many things other scholars have deemed to be central to explanation in the social sciences. Foucault's "power" is not Margaret Mead's "customs" or "mores" (Mead, 1942). It is not Karl Marx's *Verhältnisse* (relations, as in "relations of production"). It is not Emile Durkheim or Adam Smith's "division of labour". It is not Max Weber's *Verstehen* (Weber, 1981). Foucault has made a reasonably intelligible proposal to study society differently from the ways that others have studied it. He recommends doing a lot more power-talk than most scholars do. In the next lecture, I will consider reasons one might adduce for and against following Foucault's lead. I will be evaluating his recommendation and, for the most part, declining to accept it.

A COMMENT ON LECTURE FOURTEEN

Evelin Lindner

Foucault's remarks on legitimate government, in *La Volonté de Savoir* bring home to me the deep meaning of what Catherine Odora Hoppers has been saying to us about second-level indigenisation.

Foucault makes the very important point that the so-called enlightened despots of what he calls the classical age in Europe were not really despots. They were legal monarchs. They were authorised by law to be sovereign rulers. They were obligated by law to respect and maintain a legal order. Their legitimacy and their power depended on a legal framework that existed before their birth and would continue after their death.

I know I am not doing justice to the subtlety of either Foucault's or Charles Taylor's or anyone else's analysis of the relationships between law and power, either in general or in the France of the 17th and 18th centuries that Foucault mainly discusses. But, unless I am missing something, whatever the subtleties may be, and even if, in some sense, in the last analysis law is nothing but a *dispositif* of power, the monarchs of early modern Europe had the right to sit on their thrones because they were the legal successors of the monarchs who preceded them. They were expected to respect the legal rights of their subjects and they mainly did. When they needed more money than they could rise by taxes, they had to borrow money from its owners like anyone else. As Foucault says, we should not believe the republican propaganda of the revolutionary period that depicted royal rule as a system where kings and queens did whatever they personally chose to do.

One of the main points you, dear Catherine, make in the book that you wrote with our esteemed Howard, is that the mostly Roman legal framework of modern European society is quite different from what law has been in most of the world's indigenous cultures (Hoppers and Richards, 2012). Roman legal principles fostered an individualism that can be traced back to the absolute power within his little realm of the *Pater familias.* The meaning of "emancipation" was in Rome, and down to our own times still continues to be, modelled on the notions of getting out from under the "hand" (*manus)* of the *Pater familias* and becoming, like him, autonomous and free. Property, *dominium,* was first identified with war winnings (Vogel, 1948). It was what was dominated by the *Pater familias,* and then by whomever stood in his shoes.

Rome stands out like a sore thumb in the array of the world's early legal traditions. In most of them, law is closer to folk customs, to religion, to the wisdom of elders, and to communal processes of reaching consensus.

Foucault underlines the point that the characteristically Western legal framework did not appear suddenly at the time of the French Revolution. It was not imposed on the rest of society by a triumphant bourgeoisie. Even though the leaders of the new order sometimes portrayed themselves as establishing the rule of law, where formerly, there had been only arbitrary rule by kings, in reality the roots of the western legal order were far older and deeper.

Foucault and other authors trace the Western tradition forward from its beginnings. Our contemporary democratic governments are no freer to change the basic structures of society than the French kings were in the 17th century (Renner, 1904; Richards and Swanger, 2006). In democratic constitutions, for example, in the Constitution of the European Union, it is usually made explicit that basic rights provide the framework for government. They are not created by government. In Sweden, there was the famous Saltsjöbaden Agreement of 1938, in which business and labour jointly agreed to work within the existing order.

Foucault's study of the deep roots of legitimacy in the West can help us to appreciate the deep significance of Catherine's call for second-level indigenisation. Wherever the West conquered, it did not just impose its science. It did not just demote the knowledge the Africans already had to the status of unreason. It did more than bring capitalism and Christianity to Africa. It also brought a concept of legitimate government. Like the kings of France in the 17th century, the Africans, too, were obliged to live within the confines of a legal framework inherited mostly from Rome.

The connection between Foucault´s remarks on the history of legality in France and Catherine's call for second-level indigenisation partly explains why we chose the title, *Following Foucault*, for our book. When we think in terms of second-level indigenisation, we are going back to the roots of the roots. We are remembering that, in many parts of Africa, and also on other continents there were, and in many cases still are, cultures where individualism is not built into society's basic constitutive rules.

In *Discipline and Punish* and in *La Volonté de Savoir* Foucault analysed power's recent metamorphoses in the Western tradition. Power is coming to rely less and less on society's basic legal framework and more and more on disciplinary normalisation in typical contemporary Western institutions such as schools, hospitals, businesses, prisons and barracks.

He does not go where you, dear Catherine, go, back to the early times when Roman and then European institutions differentiated themselves from the typical institutions of the rest of the world, only to return many centuries later as institutions imposed on the rest of the world, by conquest.