Towards a juridical archaeology of primitive accumulation

A reading of Foucault's *Penal Theories and Institutions*

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The virtual dimensions of a project

The implicit diptych formed by the two successive courses delivered by Michel Foucault at the Collège de France between 1971 and 1973 – *Penal Theories and Institutions* and *The Punitive Society* – has already been the object of substantial commentary. The principal gains arising from philological or speculative soundings of these courses can be easily placed under two very general rubrics: first, the relation – never so explicit nor seemingly so benevolent – that Foucault entertained with categories drawn from the Marxian workshop; second, the function – never as central but no less ambiguous for that – that he assigns to law. Two rubrics that seem to flaunt a decisively anti-Foucauldian character, if the run-of-the-mill and vague understanding of his genealogical project generally connects a description of power relations irreducible to relations of production, on the one hand, with a visceral and obsessive critique of the 'juridical' form of power itself, on the other.

The following brief remarks have as their sole aim to highlight the friction between an enduring and resistant kernel of Foucault's work – the explicit and dual repudiation of economism and juridism – and this *Urtext* of his research. Yet it is these two seemingly spurious and apocryphal dossiers – the Marxian connection and the focus on the juridical – that make the conjoined and convergent reading of the two courses a reasonable proposition. These courses are not drafts or precursors of *Discipline and Punish* (published just two years after the last lecture in *The Punitive Society*), but veritable fossil remains that indicate a possible and different 'solution' to Foucauldian archaeology as such (which at this juncture Foucault chooses to call 'dynastics'). It is therefore misleading to speak of *two* dossiers. The extremely thorny question of the standing of the 'juridical' in Foucault's theoretical undertaking and the similarly slippery one of his turbulent relations with Marx's work ultimately designate a single problem: what an *archaeology of primitive accumulation* might have been and how it could have been carried out. This argument can only be formulated under a stringent condition of virtuality: while never explicitly or programmatically expressed in the pages of the two courses, it constitutes their most secret infrastructure, and Marxism and law could not but be its indispensable ingredients.

We should straightaway discount the temptation, so ambitious as to seem grotesque, of trying to verify this hypothesis. Let us immediately limit the scope of our claims and circumscribe their domain. In the following pages we will put only one of the figures of the chiasmus formed by Marxism and law under the magnifying glass, and with reference to *Penal Theories and Institutions* alone. This is but a modest probe carried out on a very restricted textual corpus.

Scene, protagonists, plot

Simply to begin to frame our discussion, it is necessary to place *Penal Theories and Institutions* in the ambit of a historiographic debate in which it ended up tacitly partaking, albeit in a Foucauldian fashion (that is to say, not frontally). I am alluding to the discussion which,

between the mid-1960s and mid-1970s, interrogated the relation between the historiographic figure of the absolute state and the emergence of the bourgeoisie as a class, and which studied the effects of this relation – including popular revolts – as it prepared the take-off of modern capitalism. The elements invoked by the debate orbited around the prehistory of class struggle and its ideological authorisation, but also concerned the definition of unprecedented political objects – whether the 'economy' or even 'civil society'. Foucault's implicit contribution to the conversation addresses the various rubrics evoked by this debate from a perspective, and with a set of analytical instruments, that are capable of drastically reorganising it.

That said, Foucault shares some crucial elements with the overall framing of the debate, namely the setting in which the *pièce* unfolds – the France of the *Grand Siècle* – and the main protagonists of the plot: the absolute monarchy, the industrious bourgeoisie and a rebellious proto-proletariat. It is the linkage between setting and plot which is instead unique: it is law (penal, but not only, as we'll see). The penal question is tackled by Foucault, in keeping with one of his most characteristic theoretical moves, by avoiding the systematic scrutiny of theories and dismissing the sociology of institutions. The analysis focuses instead on the overall functioning, on the system – the host of operations, instruments and techniques that dictate the relation of forces between two poles. Popular revolts are the objects of this verification, namely as forms of deliberate refusal of that law whose political character the analysis is establishing. Foucault undertakes the meticulous reconstruction of a revolt, that of the *Nu-pieds* (1639) – a popular sedition that chooses as its polemical target the monarchical attempt to build a centralised fiscal apparatus. This motive for revolt seems capable of federating all the social classes in seventeenth-century France. The army – both agent and beneficiary of a centralised tax levy – will turn out to be the only permanent ally of the monarchy, thereby also becoming actor and object of a metamorphosis in the exercise of justice. The definition of this 'armed justice' effectively implies the establishment of a genuinely novel repressive system. The passage that Foucault tries to outline is none other than the one leading from a feudal justice to the repressive state system with the monarchy at its head. In the context of this passage the role of the bourgeoisie is crucial; it will operate on a double register, of use and abuse, masked contestation and forthright appropriation, vis-à-vis these repressive systems, finally wearing them out after having amply prejudiced them for the cause of accumulation, in the form of the Code and the protection of the capitalist freedom of exchange.

The stakes

Let us line up two substantial samples from *Penal Theories and Institutions* and listen to Foucault:

> The danger to feudalism represented by plebeian town-country contacts and an urban (people-bourgeois) coalition made a certain system of repression necessary (in the seventeenth–eighteenth century). It was only lifted during the short moment when the bourgeoisie needed this contact and political coalition to liquidate the remains of the feudal regime and its forms of tax levy. But it had to re-establish it immediately (in new, much more coherent and much more manageable forms) for it was under the shelter of this double political separation (town/country, people/bourgeoisie) that capitalism developed in the interstices of feudalism; and it still needed this double separation.[1]

And:

> The bourgeoisie under the Revolution, but especially in the Napoleonic period, carried out a separation:
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> – it truly got rid of feudal (seigneurial or parliamentary) justice, which, due to its form and purpose it could not use;
>
> – it rejected the purpose of the new repressive system which was established in the seventeenth century (imposition of feudal rent) but not the form (or certain formal elements at least: the police element).
>
> It uses these elements for its own ends. And these ends are no longer the imposition of feudal rent, but the maintenance of capitalist profit.
>
> But whereas the monarchical regime had juxtaposed two heterogeneous repressive systems, even though both were intended to preserve feudal taxation, the bourgeoisie will give itself a unitary repressive system: State-controlled, juridical and police. A unitary system which the bourgeoisie will seek to hide beneath the assertion that justice is independent
>
> – of political control by the State
>
> – as well as the armed police force.
>
> And this is in order to get it to function as if it were an arbitral and neutral power between the social classes.[2]

This minimal sequence sampled from Foucault's lectures condenses, in a kind of shorthand, the entire stakes of his research: to establish the role and function of (penal) law in the bourgeois organisation of a society of exchanges. But what is particularly important is that as soon as an investigation of this kind is put into motion it cannot avoid revoking the very centrality of penal law which appears to govern it. In other words, to write the history of how the bourgeoisie sabotaged absolutist penality is already to begin to narrate the vicissitudes of modern private law. What unfolds before Foucault is thus a scene that is far more crowded than he might have anticipated, and which forces him, albeit in a cursory manner, to return to the all-too-slight explanation he had initially adduced for the place that law occupies in the framework of 'dynastics'. This perpetual oscillation that traverses the groundwork of *Penal Theories and Institutions* with abiding intensity, and which finds its epicentre in law and its seeming intractability, is also the most powerful warrant for the text's posterity.

But let's not get ahead of ourselves. The semiotic square that Foucault outlines – with monarch, army, bourgeois and rebels at its apexes, and penal law and fiscal policy at its core – occludes a more viscous density. On closer inspection, it is the battlefield for a far more radical conflict between juridical regimes: the one which, by opposing them, also begins to render more solid and distinguishable the respective districts of public, criminal and private law. It is around the question of the link between patrimonial and political power – irredeemably intermingled as they are in a feudal regime – that a drastic bourgeois repair of penal law will come to operate. Stated with extreme concision, the reading hypothesis is as follows: *Penal Theories and Institutions* details the dynamic that separates two different political uses of penal law. We will call the first *tragic* or splendid, and the one that succeeds it *novelistic* or parsimonious. If 'dynastics' are, in keeping with its Foucauldian definition, a stylistics of power regimes, it is preoccupied here with the description of a crucial passage in the history of normativity, namely the use that an aggressively ambitious bourgeoisie – an economic class that is not yet a political subject – made of the penality typical of the absolutist state, in the end radically transforming its kernel after having long exploited its husk.

The story that Foucault reconstructs is therefore that of the use (or abuse) of penal law undertaken by the bourgeoisie in the fundamental shift from its marriage of convenience with absolutism to its definitive access to political protagonism and its sole management of the dialectic between public and private – the most indispensable warrant for its political existence. The penal machine devised by absolutism will thus come to be employed by the bourgeoisie in ways that transform that

machine from top to bottom, along with the political and juridical conditions that had allowed it to function. This transformation completely reconfigures the standing and function of penal law. If absolutism embodies the indiscernibility of penal and public law – which finds in the crime of *lèse majesté* its most exemplary and clearest exhibition – the bourgeoisie subordinates penal to a private law which, as the veritable infrastructure of the political existence of that class, ends up turning penal law into a mere expression of its private counterpart.

In the *Grand Siècle*, two phenomena converge which, having developed in a more or less parallel manner until then, only attain their complete form in the nineteenth century. On the one hand, we find a vast process that concerns the relations between public and private, sovereignty and property, state and civil society, and which coincides with the gradual separation of property and public power; that is to say, to sum it up in a formula, with the gradual privatisation and individualisation of property. Absolutism is therefore still an episode in the history of normativity in which it is legitimate to speak of a *private property of public power*.[3] Accordingly, feudal constitutional form wholly absorbs penality as a function of political command. On the other side, there is an emergent bourgeoisie which contracts with absolutist power to be delegated the administration of public order. The monarch and the army are tasked with the sumptuous and gory repression of everything that may trouble that accumulation process which occupies a bourgeoisie that is literally 'dissociated' in its political existence as a social class demanding from an 'obsolete' political-repressive system the guarantee of its own future existence as a political class.[4] Therefore, if absolutist penality is ideologically secure it is already working towards its own abrogation: the means may well still be those of sumptuous torture but the ends are already the prosaic ones of a guarantee of social peace as the only possible background for the industrious laboriousness of the civil society of exchanges. To borrow a lapidary formula from Althusser: 'In the labour of centuries that was required to constitute and, consequently, unify the dominant bourgeois ideology, *legal ideology* [*l'idéologie juridique*] *was determinant and philosophy was dominant*.'[5] The phenomenon is therefore the same in the two cases: a public law that seems to find in penality its seal and its banner, to the point of becoming almost indistinguishable from it, begins to be shadowed by a general process of privatisation and individualisation of rights and law.

Adopting a pattern that the history of literature has established with considerable precision,[6] we can conclude that the most typical political performance of the bourgeoisie coincides with the capacity to subject an anterior juridical form to uses so unprecedented as to render it obsolete, setting up its replacement with a new form, one more suited to the task at hand. If the 'splendour of torments' is the morphological equivalent of baroque tragedy (with which it shares a space: the Court; a hero and his character: the violent prince; style: the sublimity of its verse) then discipline – in which penal law is entirely subordinated to the command of private law – is destined to play the part of the novel: the eminent bourgeois narrative form to the extent that it is the miniaturised encyclopaedia of its political style.[7]

To these two economies of power there correspond two political economies. If absolutist penality – both celebrated and consumed, exalted and sanctioned by the staging of torture – is intrinsically anti-economic, this is true not just in the more obvious sense of the wastage of energies and resources it implies, but in its logical opposition to the government of a civil society that must coincide with market exchange: a government whose juridical tools are no longer derived from penal law – which could remain the hegemonic normative register only until patrimonialism and *puissance publique* merged to the point of indiscernibility – but from private law, which will also end up governing all the residual, albeit not inessential, performances of the former. We could even affirm that the penality which is discussed especially in *Discipline and Punish* is actually only the *peripheral form* employed in the management of all those relations, or better yet all those subjects, who are incapable of adapting to the capital-relation that private law – driven by the brand-new infrastructure of subjective law – has begun to institute and with which it is delineating the institutional as well as anthropological profile of a market society. What we witness here is not a (capitalist) mode of production emancipated from a (feudal) constitutional form demanding through the dogmatics of contract a new formal government. Instead, the latter which, by instituting the social in the guise of the exchange relation also fatally undermines the confusion between patrimonialism and public power and, along

with it, the hegemony and ideological intrusiveness of penal law and repression. In other words, penal law stops being the juridical appearance of political majesty and becomes the *extrema ratio* overseeing the administration of the inevitable remainder of the private law-driven production of the bourgeois order of manufacture and exchange.

If, as Étienne Balibar has written, modernity harbours 'multiple ways of positing relation',[8] the *Grand Siècle* is the site of a fundamental epochal passage in which the relation of feudal subjection and the confusion between patrimony and the public authority that guarantees its reproduction begins – albeit in a masked and negotiated form – to be supplanted by the social relation of capital. That social relation is instead defined by a sharp separation between private property and public sovereignty, between two regimes of obligation – general law and the private contract – which are made possible and nourished by the machine of subjective right, the indispensable logical and metaphysical structure to initiate the dismantling of absolutism and manufacture a society of (waged) individuals.

This astonishing reset of juridical regimes establishes a new chapter in the history of normative rationalities. It is constituted by the shift from a primacy of the public or its fundamental merging with the penal – attested by the radical confusion between patrimonialism and public power – to an unequivocal primacy of private law, which turns penal law into a modest region which is then articulated with private law in an auxiliary and dependent manner. The dialectic between economy, politics and society is thoroughly reconfigured. A new way of formalising and disciplining the production and circulation of wealth requires a new role for penal law, which is now entirely governed by the categories of private law. This is what, commenting on the effective realisation of this process, is affirmed by way of shorthand in a phrase from *The Punitive Society*: 'The wage contract must be accompanied by a coercion that is like its validity clause.'[9]

An unintentional discovery

Not only is the story of accumulation revealed to be a juridical one through and through, but in it the starring role is not played by that penal law with which Foucault all too often identified law *tout court*, stressing the homology between penal law and the distinctive economy of sovereign power. Paradoxes of Foucault: while this insight is at the centre of *The Punitive Society*, where it attains an astonishing degree of completeness, it will be almost entirely dropped in *Discipline and Punish*, based on a framework in obvious if tacit (as the courses were intended to remain unpublished) discontinuity with the path explored up to that point.

But we need to introduce a further complication into this seemingly legible palimpsest, which also explains the break between the 1971–73 courses and the 1975 book. To put it as synthetically as possible: Foucault ends up considering the absolutist configuration of law – the one that unites and confuses the penal and the public – not as a moment in the history of normativity but as nothing less than the most proper character of law as such. It is not possible here to track the effects of this *quid pro quo* but this is certainly what prepares the ground for that image of (sovereign) power indissolubly tied to its 'juridical' character (the very ambiguity of the expression, midway between tautology and allusion, would deserve not just further investigation, but a symptomal reading). Since the adjective 'juridical' coincides for Foucault with the capacity to emit sanctions (and even with the expenditure, pomp and pleasure of doing so) then law as a whole ends up being drawn into the orbit of penality, punishment, command and repression. By deciding to treat this configuration of the relations between the political and the juridical as though it were an invariant and not a historically situated modality, Foucault blinded himself to another history of law: the history of that private law which, when all is said and done, will be the operator of the emergence of a bourgeois form of politics and a stringently capitalist organisation of the market economy.[10]

But there's more. This same blindness condemns Foucault to depicting the history of penal law in far too monolithic and inflexible a manner. Once his angle of vision has made penal law indiscernible from law *tout court*, it is much the same whether the punishment comes from an absolute monarch or a revolutionary parliament. This risks losing sight of the fact that the modes and styles of punishment, the relevance of the specificity of the offence, or the intrusions of penality into the general government of society crucially depend on the political use of penal law. If the latter does not coincide with the totality of law, then it can drastically change in standing and function in a framework in which private law (which, in an anti-absolutist guise, presents itself as neither public nor penal) is the *dispositif* capable of totalising the political field, articulating it with new and autonomous spheres (the social, the economic, or better the social understood as market). In sum, in *Penal Theories and Institutions* and *The Punitive Society*, Foucault described nothing other than the intimate connection between the emergence of the bourgeois political form (in Marxian terms, the process of primitive accumulation not so much as the historical but the *logical* premise for the institution of the modern capital-relation) and the delineation of a new dialectic between public, private and penal law (which shifts from precondition for the exercise of sovereign power to an almost peripherical articulation of the system of private autonomies). To repeat a slogan we already rehearsed above: a juridical archaeology of primitive accumulation. However, because of that very anti-juridism and anti-economism that he seemed to be dismantling in those courses, Foucault ended up blocking the way to a further development of this path whose blatant originality lies entirely in what separates it from *Discipline and Punish*. With the added paradox that in so doing he seems to retain the most vulgar part of Marxism (the reduction of law to superstructure) and to drop the most promising one (the possibility of undertaking a critique of law that would employ the same instruments that had made possible a critique of political economy).[11] It seems legitimate at this point to cease considering *Penal Theories and Institutions* as a mere sketch or draft of *Discipline and Punish* and to see it instead as the outline for an investigation that is still waiting to be undertaken.

Parallelisms

To (almost) conclude, I offer two suggestions to carry on the inquiry. First, let's change the scene and cross the Channel. The period is the same, the mid-1970s. E.P.

Thompson is working at the University of Warwick and, along with a collective formed by young colleagues and students, he organises a seminar devoted precisely to the relation between penal law and the 'prehistory' of capitalism. *Albion's Fatal Tree* constitutes the formidable proceedings of this seminar.[12] Once again, it's a question of explaining what the relation is, if there is indeed one, between (capitalist) economy and law. But, once again, and just as happened to Foucault, the path into verifying the nature of this nexus is penal law. Especially in the extraordinary opening essay by Douglas Hay – which is a kind of summation of the collection's political spirit and methodological approach – the impasse is blatant: repression and punishment seem to be the only service that law brought to bear in the aim of imposing unto a riotous and rebellious society the anthropology and politics of private property.

This argument comes with a paradoxical corollary: if, on the hand, Hay insists on the resort to penality as the royal road to the protection of an exclusive and individual right of property, one that was still exposed by dint of the legacy of feudalism to a multiplicity of regimes of appropriation, on the other, he relentlessly insists on an ideology of law that would have constituted the shared vocabulary of the bloody standard-bearers of the new property and the daring defenders of the old regime. This ubiquity of law is ultimately the fundamental discovery of Thompson and his co-authors; but if in *Albion's Fatal Tree* it struggles to emancipate itself from its standing as ideology, it is only in the sole-authored book that Thompson publishes that same year – *Whigs and Hunters* – that law crosses the threshold of autonomy and thus ceases to be solely the ideological and superstructural justification of this radical transformation in the modes of living and producing, becoming instead the most robust of infrastructures.[13] What separates two books written over the same months by the same person? The insight that penal law undergoes a radical dislocation in the period spanning the seventeenth and eighteenth centuries. If it is the ideology of property (as Hay himself demonstrates, the number of penalties carried out by comparison with the offences calling for them is singularly modest), it is only because private law is its matter.

The relationship of *Albion* to *Whigs* seems to be – albeit in inverted order – the same as the one between Foucault's two courses and *Discipline and Punish*. Thompson and his colleagues begin by overestimating the role of penal law and end up reassessing the instituent role of private law in the process of primitive accumulation. This brings with it a more general revision of the standing of law in a materialist research programme whose aim is to explain how, when and why something like the modern capital-relation could come to be instituted. Foucault seems to proceed in the diametrically opposed direction: if in the courses he appears to grasp the complex and historically sophisticated dialectic that changes the place of penal law within the process of the construction of the bourgeois form of politics, in the 1975 book that insight is submerged and discipline – whose juridical consistency is, in its status as a supplement to the contractual relationship, strictly dependent on private law – becomes the name of another (and equally formidable) project.

A different ending

A second (and final) suggestion. Allowing ourselves some license, we could propose by way of deliberate paradox and provocation that if Foucault had followed through the insights elaborated in *Penal Theories and Institutions* and *The Punitive Society* he wouldn't have written *Discipline and Punish* but rather *The Prison and the Factory*.[14] The research programme behind this work, undertaken in the same years, could be more or less superimposed onto Foucault's. It seems that here the hypotheses at the basis of Foucault's courses were coherently developed. We could therefore try to read *The Prison and the Factory* as a possible outcome of that mission statement that Foucault had left in draft form. Melossi and Pavarini's historical demonstration of the origin of the prison as 'disciplinary' before it was 'penal' illuminates an even more binding nexus between the process of accumulation and private law: the prison is not in the first instance a place of punishment and repression but a *workplace*, a space of apprenticeship into the capital-relation. The terroristic and deterrent function of the prison is thus also logically subsequent to its disciplinary one. To put it in a juridical register: there exists a contractual (private) matrix for (penal) incarceration. Penalty and obligation thus share the same logical form at their origin. This and none other would be the great bourgeois (and liberal) insight:[15] to have done with the dissipation of punish-

ment in order to reorganise, through space, the time of life.[16] The Foucauldian formula that we presented as capable of offering a shorthand version of the speculative effort undertaken in the two courses – the one that indicates in the coupling of contract and disciplinary supplement the juridical recipe for the institution of the modern capital-relation – finds here its most lucid and exacting interpretation: in sharing their form, discipline and contract are substantially the same thing. The equation between 'contractual reason' and 'disciplinary necessity' is the formalisation of the equivalence that binds penalty and wage, discipline and contract. It is only in this way that a juridical archaeology of primitive accumulation could turn into a political genealogy of labour-power. But we must stop here, where some might argue the story should begin.

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Notes

1. Michel Foucault, *Penal Theories and Institutions: Lectures at the Collège de France 1971-1972*, ed. Bernard E. Harcourt, trans. Graham Burchell (London: Palgrave Macmillan, 2019), 44.
2. Foucault, *Penal Theories and Institutions*, 23–4.
3. See Rafe Blaufarb, *The Great Demarcation: The French Revolution and the Invention of Modern Property* (Oxford: Oxford University Press, 2019).
4. I am following here the interpretation of the *Grand Siècle* advanced by Antonio Negri for the first time in 'Problemi di storia dello Stato moderno. Francia: 1610–1650', *Rivista critica di storia della filosofia* 2 (1967), 182–220, and later perfected in his *The Political Descartes: Reason, Ideology and the Bourgeois Project*, trans. and ed. Matteo Mandarini and Alberto Toscano (London: Verso, 2006). On the same themes, see also Alessandro Pandolfi, 'Il discorso del filantropo. Genealogia dell'egemonia borghese', *Scienza e politica* 52 (2015), 85–103, and 'La dialettica della repressione. Michel Foucault e la nascita delle istituzioni penali', *Scienza e politica* 55 (2016), 131–149.
5. Louis Althusser, *How to Be a Marxist in Philosophy*, ed. and trans. G. M. Goshgarian (London: Bloomsbury, 2017), 133. For a commentary on this formula and important insights into the place of law in Althusser and Foucault's respective research programmes, see Alberto Toscano, 'A Just People, or Just the People? Althusser, Foucault and Juridical Ideology', *Consecutio temporum* 8 (2020), 163–183.
6. Franco Moretti, 'Modern European Literature: A Geographical Sketch', *New Left Review* 206 (1994), 86–109.
7. See Franco Moretti, *The Bourgeois: Between History and Literature* (London and New York: Verso, 2013).
8. Étienne Balibar, *Filosofie del transindividuale: Spinoza, Marx, Freud* (Milan and Udine: Mimesis, 2020), 23.
9. Michel Foucault, *The Punitive Society: Lecture at the Collège de France, 1972–1973*, ed. Bernard E. Harcourt, trans. Graham Burchell (Basingstoke: Palgrave Macmillan, 2015), 149. For a brilliant reading of this passage, see Mikhail Xifaras, 'Illégalismes et droit de la société marchande, de Foucault à Marx', *Multitudes* 59 (2015), 142–151.
10. See the still unsurpassed discussion in Mario Sbriccoli, 'La storia, il diritto, la prigione. Appunti per una discussione sull'opera di Michel Foucault', in *Storia del diritto penale e della giustizia: scritti editi e inediti, 1972–2007*, vol. 2 (Milan: Giuffrè, 2009), 1077–1094.
11. See Stéphane Legrand, 'Le Marxisme oublié de Foucault', *Actuel Marx* 36 (2004), 27–43, and Pierre Macherey, *Le Sujet des normes* (Paris: Amsterdam, 2014), 149–212.
12. Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, Cal Winslow, *Albion's Fatal Tree: Crime and Punishment in Eighteenth-Century England* (London: Verso, 2001 [1975]).
13. For a more sustained version of this argument, see my 'Au milieu du droit. Une glose à E. P. Thompson', in *Milieu, mi-lieu, mi-lieux*, eds. Emanuele Clarizio, Roberto Poma and Michele Spanò (Paris: Mimésis, 2020), 157–175.
14. Dario Melossi and Massimo Pavarini, *The Prison and the Factory (40th Anniversary Edition): Origins of the Penitentiary System* (Basingstoke: Palgrave Macmillan, 2017 [1977]). But see also Alessandro Baratta, *Criminologia critica e critica del diritto penale. Introduzione alla sociologia giuridico-penale* (Milan: Meltemi, 2019 [1982]), 217–284.
15. See Pietro Costa, *Il progetto giuridico. Ricerche sulla giurisprudenza del liberalismo classico*, vol. 1 (Milan: Giuffrè, 1974), 327–78.
16. This insight finds confirmation in E. P. Thompson, 'Time, Work-Discipline, and Industrial Capitalism', *Past & Present* 38 (1967), 56–97.