1 ON POPULAR JUSTICE: A Discussion with Maoists

In the following discussion Michel Foucault and some Maoist militants attempt to identify the basic issues in a debate which had been initiated in response to the project of June 1971, to set up a people's court to judge the police.

FOUCAULT: In my view one shouldn't start with the court as a particular form, and then go on to ask how and on what conditions there could be a people's court; one should start with popular justice, with acts of justice by the people, and go on to ask what place a court could have within this. We must ask whether such acts of popular justice can or cannot be organised in the form of a court. Now my hypothesis is not so much that the court is the natural expression of popular justice, but rather that its historical function is to ensnare it, to control it and to strangle it, by re-inscribing it within institutions which are typical of a state apparatus. For example, in 1792, when war with neighbouring countries broke out and the Parisian workers were called on to go and get themselves killed, they replied: 'We're not going to go before we've brought our enemies within our own country to court. While we will be out there exposed to danger they'll be protected by the prisons they're locked up in. They're only waiting for us to leave in order to come out and set up the old order of things all over again. In any case, those who are in power today want us to use against us— in order to bring us back under control—the dual pressure of enemies invading from abroad and those who threaten us at home. We're not going to fight against the former without having first dealt with the latter.' The September executions were at one and the same time an act of war against internal enemies, a political act against the manipulations of those in power, and an act of vengeance against the oppressive classes. Was this not—during a period of violent revolutionary struggle—at least an approximation to an act of
popular justice; a response to oppression, strategically effective and politically necessary? Now, no sooner had the executions started in September, when men from the Paris Commune—or from that quarter—intervened and set about staging a court: judges behind a table, representing a third party standing between the people who were 'screaming for vengeance', and the accused who were either 'guilty' or 'innocent'; an investigation to establish the 'truth' or to obtain a 'confession'; deliberation in order to find out what was 'just'; this form was imposed in an authoritarian manner. Can we not see the embryonic, albeit fragile form of a state apparatus reappearing here? The possibility of class oppression? Is not the setting up of a neutral institution standing between the people and its enemies, capable of establishing the dividing line between the true and the false, the guilty and the innocent, the just and the unjust, is this not a way of resisting popular justice? A way of disarming it in the struggle it is conducting in reality in favour of an arbitration in the realm of the ideal? This is why I am wondering whether the court is not a form of popular justice but rather its first deformation.

Victor: Yes, but look at examples taken not from the bourgeois revolution but from a proletarian revolution. Take China: the first stage is the ideological revolutionisation of the masses, uprisings in the villages, acts of justice by the peasant masses against their enemies: executions of despots, all sorts of reprisals for all the extortions suffered over the centuries, etc. The executions of the enemies of the people spread, and we would all agree in saying that these were acts of popular justice. All this is fine: the peasant has a good eye for what needs to be done and everything goes just fine in the countryside. But a new stage in the process develops, with the formation of a Red Army, and then it is no longer simply a matter of the masses in revolt against their enemies, for now we have the masses, their enemies, plus an instrument for the unification of the masses, namely the Red Army. At this point all of the acts of popular justice are supported and disciplined. And it is necessary that there be some legal authority so that the diverse acts of vengeance should be in conformity with law, with a people's law which is now something entirely different from the old system of feudal law. It has to be decided that this particular execution or that particular act of vengeance is not simply a matter of an individual settling of accounts, that is, purely and simply an egotistical revenge against all the oppressive institutions which had themselves equally been based on egoism. In this case it is true that there is what you call a neutral institution which stands between the masses and their immediate oppressors. Would you argue that at this point in the process a people's court is not only not a form of popular justice but is a deformation of people's justice?

Foucault: Are you certain that in this example a 'neutral institution' came to intervene between the masses and their oppressors? I do not think so: I would say that, on the contrary, it was the masses themselves which came to act as intermediary between any individual who might become separated from the masses, from the aims of the masses, in order to satisfy an individual desire for vengeance, and some other individual who might well, in fact, be an enemy of the people but whom the former individual might be aiming to get at simply as a personal enemy ....

In the example which I was discussing, the people's court, as it functioned during the Revolution, did tend to act as a 'neutral institution' and, moreover, it had a very precise social basis: it represented a social group which stood between the bourgeoisie in power and the common people of Paris (la plèbe); this was a petty bourgeoisie composed of small property owners, tradesmen, artisans. This group took up a position as intermediary, and organised a court which functioned as a mediator; in doing this it drew on an ideology which was up to a certain point the ideology of the dominant class, which determined what it was 'right' or 'not right' to do or to be. This is why, in this court, they convicted not only refractory priests or people involved in the events of 10 August—quite a small number of people—but they also executed convicts, that is, people who had been convicted by the courts of the Ancien Régime. They executed prostitutes, and so on .... So it is clear that it had reoccupied the 'median' position of the judicial institution just as it had functioned under the Ancien Régime. Where there had originally been the masses exacting retribution against those who were their enemies, there was now
substituted the operation of a court and of a great deal of its ideology.

VICTOR: This is why it is interesting to compare cases of courts during the bourgeois revolution with cases of courts during the proletarian revolution. What you have described comes down to this: between the masses at the base — what then constituted ‘the people’ on the one hand, and their enemies on the other — there was a class, the petty bourgeoisie (a ‘third party’) which was an intermediary, which took something from the common people and something else from the class which was becoming dominant: it thereby played the role of a median class, it coalesced these two elements, and this gave to the people’s court what was, from the point of view of the development of popular justice which was being conducted by the common people, an element of internal repression, thus a deformation of popular justice. So if there is a ‘third party’, this does not arise from the court itself, it comes from the class which took over the courts, that is, from the petty bourgeoisie.

FOUCAULT: I would like to take a brief look backwards, at the history of the state judicial apparatus. In the Middle Ages there was a change from the court of arbitration (to which cases of dispute were taken by mutual consent, to conclude some dispute or some private battle, and which was in no way a permanent repository of power) to a set of stable, well defined institutions, which had the authority to intervene and which were based on political power (or at any rate were under its control). This change was accomplished in conjunction with two underlying processes. The first was the fiscalisation of the judicial system: by means of fines, confiscations, distrains, by granting expenses and all sorts of allowances, operating the judicial system became profitable; after the breakdown of the Carolingian state the judicial system became, in the hands of the nobles, not only an instrument of appropriation — a means of coercion — but a direct source of revenue; it produced an income over and above feudal rent, or rather it became an aspect of feudal rent. To be a judge was to have a source of income, it was property. Judgeships became a form of wealth which could be exchanged, circulated, which were sold or inherited as part of, or sometimes separately from, fiefs. They became an integral part of the circulation of wealth and of the feudal levy. For those who owned them they constituted rights (in addition to those of quit-rent, mortmain, tithe, tonnage, banalités, etc.); and for those who came under their jurisdiction they amounted to a kind of taxation which was not systematised but to which it was nevertheless in certain cases certainly necessary to submit. The archaic operation of the judicial system had become inverted: one could say that in earlier times justice was a right for those to whom it was applied (the right to demand justice when the disputants agreed to do so) and a duty for those who made the judgments (the obligation to exercise their prestige, their authority, their wisdom, their politico-religious power). It was to become from this point on a (lucrative) right for those in power, and a (costly) obligation for those who had to submit to it. At this point we can see the convergence with the second of the processes which I mentioned earlier: the increasing link between the judicial system and armed force. To replace private wars by a compulsory and lucrative judicial system, to impose a judicial system where one is — at one and the same time — judge, party to the dispute and tax collector, instead of a system of deals and settlements, to impose a judicial system which secures, guarantees and increases by significant amounts the levy on the product of labour, all this implies the availability of the power of constraint. It could not be imposed without armed force: wherever a feudal lord disposed of sufficient military power to enforce his ‘peace’ it was possible for him to impose juridical and fiscal levies. Having become a source of income, judgeships developed in the direction of the division of private property. But supported by the force of arms they developed in the direction of its ever increasing concentration. This dual development led to the ‘classical’ result: when, during the fourteenth century the feudal lords were faced with the great peasant and urban revolts, they sought the support of a centralised power, army and taxation system: and in this emergency there arose, together with the provincial High Courts, the King’s Procurators, official prosecutions, legislation against beggars, vagabonds, idlers, and before long the early rudimentary forms of police and a centralised judicial system. This was an embryonic state
judicial apparatus which was superimposed upon, duplicat-
ed and controlled the feudal judges and their fiscal rights,
but which allowed them to continue to function. There thus
sprang up a ‘judicial’ order which had the appearance of
the expression of public power: an arbitrator both neutral and
with authority, of whom the task was both to ‘justly’ resolve
disputes and to exercise ‘authority’ in the maintenance of
public order. It was on these foundations, of social struggles,
the levying of taxes and the concentration of armed force,
that the judicial apparatus was erected.

We can understand, then, why it is that in France and, I
believe, in Western Europe, the act of popular justice is
profoundly anti-judicial, and is contrary to the very form of
the court. In all the great uprisings since the fourteenth
century the judicial officials have regularly been attacked,
on the same grounds as have tax officials, and more
generally those who exercise power; the prisons have been
opened, the judges thrown out and the courts closed down.
Popular justice recognises in the judicial system a state
apparatus, representative of public authority, and instru-
ment of class power. I would like to put forward a hypo-
thesis, though I’m not certain about it: it seems to me that a
certain number of habits which derive from the private war,
a certain number of ancient rites which were features of
‘pre-judicial’ justice, have been preserved in the practises of
popular justice: for example, it was an old Germanic custom
to put the head of an enemy on a stake, for public viewing,
when he had been killed ‘according to the rules’, or ‘juridi-
cally’, in the course of a private war; the destruction of
the house, or at least the burning of the timber-work, and the
ransacking of the contents of the house, is an ancient rite
which went together with being outlawed: now, these are
acts which predate the setting up of a judicial system and
which are regularly revived in popular uprisings. The head
of Delaunay was paraded around the captured Bastille;
around the symbol of the repressive apparatus revolves,
with its ancient ancestral rites, a popular practice which
does not identify itself in any way with judicial institutions.
In my view the history of the judicial system as state
apparatus enables us to understand why, in France at least,
acts of justice which really are popular tend to flee from the
court, and why, on the other hand, each time that the
bourgeoisie has wished to subject a popular uprising to the
constraint of a state apparatus a court has been set up: a
table, a chairman, magistrates, confronting the two op-
oponents. Thereby the judicial system is reborn. That is my
view of things.

Victor: Yes. You see things up to 1789, but what I’m
interested in is what happens later. You have described the
birth of a class idea and how this class idea was materialised
in practices and apparatuses. I perfectly well understand
how it was possible, in the French Revolution, for courts to
become instruments of indirect deformation and repression
of the acts of popular justice of the common people. If I’ve
understood, this was because there were several social
classes involved, on the one hand the common people, on
the other hand the traitors to the nation and to the
revolution, and between them a class which attempted to
play out to the full the historical role which was open to it.
Therefore I cannot draw any definitive conclusions about
the form of the people’s court from this example—in any
case, for us there are no forms which are incapable of
historical development—but merely see how the petty
bourgeoisie as a class picked up from the common people
some scrap of an idea and then, being dominated as it was,
especially in this period, by the ideas of the bourgeoisie,
crushed the ideas drawn from the common people under the
form taken by courts at that time. I cannot draw from this
any conclusions about the practical problem we are faced
with today, concerning people’s courts in the present-day
ideological revolution, nor, a fortiori, in the future people’s
armed revolution. This is why I would like us to compare
this example from the French Revolution with the example
which I mentioned just now, that of the people’s armed
revolution in China.

Now you would say ‘In this example there are only two
elements—the masses and their enemies’. But the masses in
a way delegate some part of their power to an element
which, while being deeply attached to them, is nevertheless
distinct, the People’s Red Army. Now this figure, military
power/judicial power, which you pointed out, can be seen
again here with the People’s Army helping the masses to
organise regulations covering the trial of class enemies. I myself do not find anything surprising about this, given that the People’s Army is a state apparatus. So I would put the following question to you: are you not dreaming up the possibility of going straight from present-day oppression to communism without any transition period—that which is traditionally called the dictatorship of the proletariat—during which there is a need for a new type of state apparatus, of which we must define the content? Is it not this which lies behind your systematic refusal of the people’s court as a form?

**Foucault:** Are you certain that it is merely the form of the court that is involved here? I do not know how these things are done in China, but look a bit more closely at the meaning of the spatial arrangement of the court, the arrangement of the people who are part of or before a court. The very least that can be said is that this implies an ideology.

What is this arrangement? A table, and behind this table, which distances them from the two litigants, the ‘third party’, that is, the judges. Their position indicates firstly that they are neutral with respect to each litigant, and secondly this implies that their decision is not already arrived at in advance, that it will be made after an aural investigation of the two parties, on the basis of a certain conception of truth and a certain number of ideas concerning what is just and unjust, and thirdly that they have the authority to enforce their decision. This is ultimately the meaning of this simple arrangement. Now this idea that there can be people who are neutral in relation to the two parties, that they can make judgments about them on the basis of ideas of justice which have absolute validity, and that their decisions must be acted upon, I believe that all this is far removed from and quite foreign to the very idea of popular justice. In the case of popular justice you do not have three elements, you have the masses and their enemies. Furthermore, the masses, when they perceive somebody to be an enemy, when they decide to punish this enemy—or to re-educate him—do not rely on an abstract universal idea of justice, they rely only on their own experience, that of the injuries they have suffered, that of the way in which they have been wronged, in which they have been oppressed; and finally, their decision is not an authoritative one, that is, they are not backed up by a state apparatus which has the power to enforce their decisions, they purely and simply carry them out. Therefore I hold firmly to the view that the organisation of courts, at least in the West, is necessarily alien to the practice of popular justice.

**Victor:** I do not agree. Whereas you discuss concretely all revolutions up to the proletarian revolution, you become completely abstract when talking about modern revolutions, including those that have occurred in the West. That’s why I’ll now take a new case, coming back to France. During the Liberation there were a variety of acts of popular justice. I will deliberately take an ambiguous example of popular justice, an act of popular justice which was both real yet ambiguous, that is, an act which was in effect manipulated by the class enemy; we can draw a general conclusion from this so as to locate more exactly the theoretical criticism which I am making.

I want to discuss those young women whose heads were shaved because they had slept with the Germans. In one way this was an act of popular justice: for intercourse (in the most physical sense of the term) with Germans was something which was offensive to the deepest, bodily, sense of patriotic feeling: this really was an emotional and physical injury to the people. However, it was an ambiguous act of popular justice. Why? Quite simply because while the people were being entertained by shaving the heads of these women, the real collaborators—the real traitors—remained untouched. So the enemy was allowed to exploit these acts of popular justice; not the old enemy—the Nazi occupation forces, now disintegrating militarily—but the new enemy, the French bourgeoisie, with the exception of a small minority who were too compromised by the occupation and who could not come out into the open too much. What can we learn from this ambiguous act of popular justice? Not at all the conclusion that this mass movement was unreasonable, because there was in fact a reason for this act of retaliation against young women who had slept with the German officers, but that if the mass movement is not given
proletarian unity and direction it can disintegrate from within and be exploited by the class enemy. In short, the mass movement on its own is not enough. This is because there are contradictions among the masses. These contradictions within a popular movement can easily cause its development to take a wrong course, to the extent that the enemy takes advantage of them. So it is necessary for there to be an organisation to regulate the course of popular justice, to give it direction. And this cannot be done directly by the masses themselves, precisely because what is needed is an organisation which is able to resolve the masses' internal contradictions. In the case of the Chinese revolution the organisation which enabled these contradictions to be resolved (and which played the same role once again after state power had been seized, at the time of the Cultural Revolution) was the Red Army. Now the Red Army is different from the people even though it is linked to them, even though the people love the army and the army loves the people. Not all the Chinese were in the Red Army, and they are still not today. The Red Army represents a delegation of the power of the people, it is not the people themselves. This is also why there is always the possibility of a contradiction between the army and the people, and there will always be the possibility that this state apparatus will repress the popular masses, and this opens up the possibility and the necessity for a whole series of cultural revolutions, precisely in order to abolish contradictions which have become antagonistic between the state apparatuses such as the army, the Party or the administrative apparatus, and the popular masses.

Therefore, I would be against people's courts, I would find them completely unnecessary or detrimental if the masses—once set in movement—were a homogeneous whole—that is, in short, if there were no need, in order to keep the revolution moving ahead, for institutions which could discipline, centralise and unify the masses. In other words I would be against people's courts if I did not think that to make the revolution it is necessary to have a Party, and, for the revolution to keep going, a revolutionary state apparatus.

As for the objection which you put forward on the basis of the analysis of the spatial arrangement of courts, my reply is as follows: on the one hand we are not forced to adopt any particular form—in the formal sense of spatial arrangement—for any particular court. One of the best of the Liberation courts was that at Béthune. Hundreds of miners had decided to execute a 'boche'—that is, a collaborator—and they left him in the central square for seven days; each day they turned up, and they said: 'We'll execute him', and then went away again. The lad was still there, and they still didn't execute him. At that point somebody marginal, I'm not sure who exactly, with some vestige of authority left, said, 'Let's get it over with, lads. Either kill him or let him go, we can't go on like this', and they said 'OK. Come on comrades, we'll execute him', and they took aim and fired, and before dying the collaborator cried out 'Heil Hitler!', which allowed everyone to say that the decision had been a just one . . . In this example there was not the spatial arrangement that you describe.

What forms should the judicial system take under the dictatorship of the proletariat? This is an unanswered question, even in China. Things are still at an experimental stage on this question, and there is a class struggle around the question of the judiciary. You can see from this that it is not a matter of once again adopting the table, the magistrates, etc. But here I'm only touching on the superficial aspect of the problem. Your example went much further. It pointed to the problem of 'neutrality'; as far as popular justice goes what happens to this necessarily neutral 'third element' which is purportedly in possession of a truth different from that of the popular masses, and by virtue of this acting as a shield?

FOUCAULT: I identified three elements: (i) a 'third element'; (ii) reference to an idea, a form, a universal rule of justice; (iii) decisions with power of enforcement. It is these three characteristics of the courts which are represented in anecdotal fashion by the table, in our society.

VICTOR: The 'third element' in the case of popular justice is a revolutionary state apparatus—for example, the Red Army in the early stages of the Chinese Revolution. In what sense is it a 'third element', a repository of a law and of a truth? This is what needs to be explained.
There are the masses, there is this revolutionary state apparatus, and there is the enemy. The masses express their grievances and compile an inventory of all the extortions, of all the suffering caused by the enemy; the revolutionary state apparatus takes note of this inventory, and the enemy interjects, ‘I don’t agree about such-and-such a point’. Now, the truth as far as the facts are concerned can be established. If the enemy has betrayed three patriots, and if the whole population of the commune is present and are agreed on a verdict, then it must be possible to establish the facts of the matter. If it is not then there must be some problem: if there is no agreement that he is guilty of such-and-such an extortion then the least that can be said is that the desire to execute him is not an act of popular justice but a settling of accounts between some minority fraction of the masses with egotistical ideas and this enemy, or this alleged enemy.

The facts of the matter have been established, the role of the revolutionary state apparatus is not yet over. Already, during the investigation of the facts, it has played a role, since it has allowed the whole of the actively participating population to list the charges against the enemy, but its role does not stop here; it still has a contribution to make when it comes to deciding on the sentence. Say the enemy is the owner of some moderately large factory; the fact can be established that he really did exploit the workers abominably, that he was responsible for quite a few accidents at work; is he to be executed? Let us suppose that it is desirable that the middle bourgeoisie be rallied to the cause of the revolution, that it is said that only the very small handful of archcriminals should be executed, and that these can be identified by objective criteria; then this enemy would not be executed even though the factory workers whose friends had been killed have a violent hatred of their boss and would perhaps like to execute him. This could constitute a perfectly correct policy, as was, for example, during the Chinese revolution, the deliberate minimising of the contradictions between the workers and the national bourgeoisie. I don’t know if it would happen like that here, but I will give you a hypothetical example. It is probable that not all the bosses would be liquidated, particularly in a country like France where there is a large number of small- and medium-sized firms so that this would amount to too many people . . . . All this comes down to saying that the revolutionary state apparatus, representing the general interests which have priority over those of any particular factory or any particular village, applies objective criteria in sentencing. I’ll go back again to the example of the early stages of the Chinese revolution. At a certain point in time it was correct to attack all landowners, while at other points there were some landowners who were patriots and who had to be spared; it was necessary to educate the peasants, and so to go against their natural inclinations with regard to these landowners.

FOUCAULT: The procedures you’ve described seem to me completely alien to the very form of the court. What role is played by this revolutionary state apparatus, in this case the Chinese army? Is its role to choose between two sides, for one rather than the other, between the masses who represent one particular will or one particular interest, and an individual representing a different interest or will? Obviously not, because it is a state apparatus which is engendered by the masses, which is under the control of the masses, and which will carry on being controlled by them, and which in fact has a positive role to play, not in making decisions as between the masses and their enemies, but in guaranteeing the education, the political training, the broadening of the political vision and experience of the masses. So is the job of this state apparatus here to determine sentences? Not at all, but to educate the masses and the will of the masses in such a way that it is the masses themselves who come to say, ‘In fact we cannot kill this man’ or ‘In fact we must kill him’.

You can see clearly that this is not at all the way that courts operate, as they exist at the present time in France—where they are of an entirely different order—in which it is not one of the parties which is in control of the judicial system and where the judicial system has no educative role to play. To go back to your earlier example, if people went rushing after women to shave their heads it was because the collaborators who should have been their natural targets and against whom they should have exercised popular justice, were presented to the masses as being too difficult to
deal with in that way: it was said, ‘Oh, those people’s crimes are too great, we’ll bring them before a court’. They were put in prison and were brought before the courts, and they, of course, acquitted them. In this case the courts were just used as an excuse for dealing with things other than by acts of popular justice.

Now I’ve arrived at the basic point of my thesis. You speak about contradictions among the masses and you say that there is a need for a revolutionary state apparatus to help the masses resolve these contradictions. Now, I don’t know what happened in China: perhaps the judicial apparatus was like those in feudal states, an extremely flexible apparatus, with little centralisation, etc. In societies such as our own, on the contrary, the judicial apparatus has been an extremely important state apparatus of which the history has always been obscured. People do the history of law, and the history of the economy, but the history of the judicial system, of judicial practices—of what has in fact been a penal system, of what have been systems of repression—this is rarely discussed. Now, I believe that the judicial system as a state apparatus has historically been of absolutely fundamental importance. The penal system has had the function of introducing a certain number of contradictions among the masses, and one major contradiction, namely the following: to create mutual antagonism between the proletarianised common people and the non-proletarianised common people. There was a particular period when the penal system, of which the function in the Middle Ages had been essentially a fiscal one, became organised around the struggle to stamp out rebellion. Up until this point the job of putting down popular uprisings had been primarily a military one. From now on it was to become taken on, or rendered unnecessary by a complex system of courts—police—prison. It is a system which has basically a triple role; and depending on the period, depending on the state of struggles and on the conjuncture, it was one or other of these roles which was dominant. On the one hand it is a factor in ‘proletarianisation’: its role is to force the people to accept their status as proletarians and the conditions for the exploitation of the proletariat. It is perfectly obvious that from the end of the Middle Ages up until the eighteenth century, all the laws against beggars, vagabonds and the idle, all the police organisations designed to catch them, forced them—and this was of course their role—to accept, at the particular place where they were, the conditions imposed on them, which were extremely bad. If they rejected these conditions, if they went away, if they took to begging or ‘to doing nothing’, then it was prison and often forced labour. On the other hand, this penal system was aimed, very specifically, against the most mobile, the most excitable, the ‘violent’ elements among the common people: those who were most prepared to turn to direct, armed action, including farmers who were forced by debts to leave their land, peasants on the run from tax authorities, workers banished for theft, vagabonds or beggars who refused to clear the ditches, those who lived by plundering the fields, the small-time thieves and the highwaymen, those who, in armed groups, attacked the tax authorities and, more generally, agents of the State, and finally those who—on days of rioting in the towns or in the villages—carried weapons. There was widespread plotting, a whole network of communications, within which individuals could adopt different roles. It was these ‘dangerous’ people who had to be isolated (in prison, in the Hôpital Général, in the galleys, in the colonies) so that they could not act as a spearhead for popular resistance. This fear was great in the eighteenth century, and it was greater still after the Revolution, and at all the times of commotion during the nineteenth century. The third role of the penal system: to make the proletariat see the non-proletarianised people as marginal, dangerous, immoral, a menace to society as a whole, the dregs of the population, trash, the ‘mob’. For the bourgeoisie it is a matter of imposing on the proletariat, by means of penal legislation, of prisons, but also of newspapers, of ‘literature’, certain allegedly universal moral categories which function as an ideological barrier between them and the non-proletarianised people. All the literary, journalistic, medical, sociological and anthropological rhetoric about criminals (and we are all familiar with examples of all these in the second half of the nineteenth century and the beginning of the twentieth century) play this role. Finally, the distance which the penal system creates and sustains
between the proletariat and the non-proletarianised people, all the pressures which are put upon the latter, enable the bourgeoisie to make use of certain of these plebeian elements against the proletariat; they mobilise them as soldiers, policemen, racketeers and thugs, and use them for the surveillance and repression of the proletariat (it is not only fascism which has provided examples of this).

At first sight these are at least some of the ways in which the penal system operates as an anti-seditious system, as a variety of ways of creating antagonism between the proletarianised and the non-proletarianised people, and thereby introducing a contradiction which is now firmly rooted. This is why the revolution can only take place via the radical elimination of the judicial apparatus, and anything which could reintroduce the penal apparatus, anything which could reintroduce its ideology and enable this ideology to surreptitiously creep back into popular practices, must be banished. This is why the court, an exemplary form of this judicial system, seems to me to be a possible location for the reintroduction of the ideology of the penal system into popular practice. This is why I think that one should not make use of such a model.

**Victor:** You have surreptitiously forgotten one particular century, the twentieth. So I put to you the following question: is the principal contradiction among the masses that between prisoners and workers?

**Foucault:** Not between prisoners and workers; between the non-proletarianised people and the proletariat: this has been one of the contradictions, one of the important contradictions, which the bourgeoisie has for a long time, and especially since the French Revolution, seen as a means of self-defence. For the bourgeoisie the main danger against which it had to be protected, that which had to be avoided at all costs, was armed uprising, was the armed people, was the workers taking to the streets in an assault against the government. They thought they could identify, in the non-proletarianised people, in those common people who rejected the status of proletarians, or in those who were excluded from it, the spearhead of popular rebellion. They therefore provided themselves with a certain number of methods for distancing the proletarianised from the non-

proletarianised people. At the present time these methods are deficient; they have been or are being taken away from them.

These three methods are or were the army, colonisation and prisons. (Obviously the distancing between proletarianised and non-proletarianised people and the prevention of armed uprising were only one of their functions.) The army, with the 'proxy' (remplacants) call-up system, made it possible to drain off significant numbers, especially from the peasant population which was over-numerous in the countryside and could not find work in the towns. It was this army which was used against the workers when the need arose. The bourgeoisie tried to maintain an antagonism between the army and the proletariat, and this often worked, though sometimes it failed when the soldiers refused to move or to shoot. Colonisation constituted another way of draining off these elements; those who were sent to the colonies did not take on a proletarian status. They were used as cadres, administrative functionaries, as tools of surveillance and control over the colonised peoples. And it was certainly in order to avoid the forming of an alliance between these 'lesser whites' and the colonised peoples—an alliance which would have been just as dangerous out there as proletarian unity would have been in Europe—that a rigid racialist ideology was foisted on them: 'Watch out, you'll be living among cannibals'. As for the third method of separating off these elements, this was organised around the prison system, and the bourgeoisie erected an ideological barrier around those who went to prison or who had been in prison (an ideology about crime, criminals, theft, the mob, degenerates, 'animals') which was in part linked with racialism.

But look what's happened; no overt form of colonisation is possible any longer. The army can't play the same role as it used to. As a result we have a reinforcement of the police and an overloading of the penal system; these now have to take on by themselves the whole burden of performing all these functions. Systematic police control of every quarter, the police stations, the courts (especially those dealing out summary judgments to those 'caught in the act'), the prisons, the parole and probation systems, the whole system
of controls involved in making children wards of court, the social welfare system, reform schools, all these must now perform, here in France, all the roles that used to be taken on by the army and colonisation in geographically relocating people and in sending them abroad.

The Resistance, the Algerian war, May ’68 have been crucial episodes in this story, involving the revival, in the various struggles, of clandestinity, of arms, and of action in the streets. At the same time there has also been the establishment of an apparatus for fighting internal subversion (an apparatus which has been strengthened, adapted and refined in response to each of these episodes, but from which, of course, all the corrupt elements have never been purged); an apparatus which has been in continuous operation now for thirty years. We can say that the techniques employed up to 1940 relied primarily on the policy of imperialism (the army/the colonies), whereas those employed since then are closer to a fascist model (police, internal surveillance, confinement).

VICTOR: Still, you haven’t answered my question, which was: is this the principal contradiction among the people?

FOUKALI: I am not saying that it is the principal contradiction.

VICTOR: You are not asserting that, but the way you tell the story speaks for itself: uprisings are the result of a fusion between the proletarianised and the non-proletarianised people. You have described for us all the mechanisms which operate to draw a dividing line between the proletarianised and the non-proletarianised people. So, obviously, given this dividing line, there are no uprisings, whereas were the fusion to be reestablished then there would be uprisings. Although you say that you don’t consider this to be the principal contradiction, it in fact becomes the principal contradiction on your interpretation of history. I’m not going to respond to this in relation to the twentieth century. I’ll stick to the nineteenth century, and introduce a little extra historical evidence, evidence which is somewhat contradictory, taken from a text by Engels on the development of large-scale modern industry. Engels said that the first form of revolt of the modern proletariat against large-scale industry was criminality, that of those workers who killed their bosses. He made no attempt to discover the underlying causes of this criminality, nor the conditions in which it operated, and he did not write a history of the penal system. He was speaking from the point of view of the masses and not from the point of view of the state apparatuses, and he said that criminality was an initial form of revolt; then he went on quickly to demonstrate that this was very embryonic and not very effective. The second, and superior, form was machine-breaking. But here again it did not get very far, because as soon as the machines were broken others immediately took their place. This hit at one aspect of the social order but did not attack the root causes. Where revolt took on a conscious form it was with the formation of ‘combinations’, that is, of unions in the original sense of the word. Combination is the superior form of the revolt of the modern proletariat because it resolves the principal contradiction among the masses, namely the internal contradiction among the masses which results from the social system and from its core, the capitalist mode of production. It was, Engels tells us, simply the struggle against competition between the workers, and thus combination, to the extent that this united the workers, which made it possible to transfer competition to the level of competition among the bosses. It is in this context that he situates his early descriptions of union struggles over wages or for the reduction of the working day. This little extra historical evidence suggests to me that the principal contradiction among the masses is the opposition between egoism and collectivism, competition and combination, and that it is when you have combination, that is, the victory of collectivism over competition, that you have the working masses, and thus a unity among the proletarianised people, and that then there will be a mass movement. It is only then that the first condition for the possibility of subversion, for revolt, is achieved. The second condition is that these masses gain a hold on all people in revolt throughout the social system and do not confine themselves to the workshops and the factories as the site of revolt, and it is then that you will in fact find them coming together with the non-proletarianised people, and you will also find them joining together with other social classes, with young intellectuals, the self-
employed petty bourgeoisie, small tradesmen, in the first revolutions of the nineteenth century.

FOUCAULT: I don’t think I said that it was the basic contradiction. I meant that the bourgeoisie saw sedition as being the main danger. This is how the bourgeoisie viewed things: but this does not mean that things will happen in the way that they fear, and that the joining up of the proletariat with the marginal elements of the population will spark off the revolution. All that you have just said in relation to Engels I would by and large agree with. It does in fact seem that at the end of the eighteenth century and at the beginning of the nineteenth century criminality was perceived, by the proletarians themselves, to be a form of social struggle. By the time that struggles take the form of combinations criminality no longer has quite this role; or rather, breaking the law, the transitory and individual overturning of power and order which criminality represents, can no longer have the same meaning, nor the same function in struggles. But we should take note of the fact that the bourgeoisie, forced to retreat in the face of these proletarian forms of organisation, did everything that it could to divorce this new force from a segment of the population which was thought of as violent, dangerous, without respect for the law, and consequently liable to revolt. Among the methods employed some were of enormous consequence (as, for example, the morality taught in primary schools, that is, the gradual imposition of a whole system of values disguised as the teaching of literacy, reading and writing covering up the imposition of values) and some were rather smaller innovations, tiny and horrible machiavellianisms. (Since unions had no legal status those in power could use great ingenuity in getting them run by people who one fine day would run off with the funds; it was impossible for the unions to sue them; thus there was a backlash of hatred against thieves, a desire to be protected by the law, etc.)

VICTOR: I think that it is necessary to make a point of clarification, to be somewhat more accurate and dialectical in the use of this concept of the non-proletarianised people. The main, principal, cleavage introduced by the unions, which would turn out to be the cause of their degeneration, was not between the proletarianised people—in the sense of the fully formed, established proletariat—and the lumpenproletariat—that is, in the strict sense, the marginalised proletariat, those who had been thrown out of the proletariat. The principal cleavage was between a minority of the workers and the great mass of the workers, that is, the people who were being proletarianised. These latter were workers who were coming from the countryside; they were not hooligans, brigands, street brawlers.

FOUCAULT: I think I have never, in anything that I have just said, tried to show that this was a basic contradiction. I have described a certain number of factors and effects, and I have tried to show how they were all interconnected, and how the proletariat was able, up to a certain point, to come to terms with the moral ideology of the bourgeoisie.

VICTOR: You say: ‘This is one factor among others, it is not the principal contradiction’. But all of your examples, the whole history of these mechanisms as you’ve described it, tend to put the emphasis on this contradiction. For you the proletariat first sold out to the devil in having adopted the ‘moral’ values by means of which the bourgeoisie established a divorce between the non-proletarianised people and the proletariat, between the hooligans and the honest workers. I reply, not so. The first selling out to the devil by the workers’ organisations was to have made belonging to a trade a condition of membership. It was this which allowed the first unions to become corporations which excluded the mass of unskilled workers.

FOUCAULT: This restriction on membership which you mention was certainly the most fundamental one. But notice what its implications were: if workers who had no trade didn’t belong to the unions this was all the more so for those who were not proletarian. So, once again, we can ask how did the judicial apparatus, and more generally the penal system, operate? My answer is that it has always operated in such a way as to introduce contradictions among the people. I am not saying (it would be ridiculous to do so) that the penal system introduced the basic contradictions, but I am rejecting the idea that the penal system is a nebulous superstructure. It has played a determining role in the divisions of present-day society.

GILLES: I am wondering whether we shouldn’t distinguish
two different kinds of 'plebs' (or non-proletarianised common people) in this story. Can the 'plebs' really be identified as those who refuse to be workers, with the consequence of this being that the 'plebs' would then have a monopoly on violence, whereas the workers, the proletarians in the strict sense of the word, would be inclined to be non-violent? Isn't this the effect of a bourgeois view of the world, in that it classifies the workers as a group organised within the state, and similarly the peasants, and so on . . . whereas all the rest would be the 'plebs', a rebellious residue in this pacified, organised world as the bourgeoisie would have it, in which the judicial system has the mission of controlling the borders. But the 'plebeians' can themselves well be trapped within this bourgeois view of things, that is, they can conceive themselves as being of another world. And I am not sure that, being trapped within this view of things, their other world would not be a duplicate of the bourgeois world. Obviously this wouldn't be completely so, because there are traditions, but it would be so in part. Moreover, there is yet another fact: this bourgeois world, divided but stable, the realm of the familiar judicial system, does not exist. Is there not, behind the opposition between the proletariat and the 'plebs' who monopolise violence, the coming together of the proletariat and the peasantry, not the 'safe' peasantry, but the peasantry in potential rebellion? Isn't that which threatens the bourgeoisie then rather the coming together of the workers and the peasants?

FOUCAULT: I completely agree with you in saying that we must distinguish between the common people as they are seen by the bourgeoisie and the common people as they are in reality. But what we have been trying to see is how the judicial system operates. Penal law was not created by the common people, nor by the peasantry, nor by the proletariat, but entirely by the bourgeoisie as an important tactical weapon in this system of divisions which they wished to introduce. That this tactical weapon was not based on a true assessment of what the actual possibilities of revolution were is a fact, and a fortunate one at that. This is to be expected, because the bourgeoisie cannot have an accurate perception of real relations and real processes. And in fact, to speak of the peasantry, we can say that relations between workers and peasants were not at all the target of the Western penal system in the nineteenth century; the general impression is that the bourgeoisie in the nineteenth century were relatively confident about the peasants.

GILLES: If this is so then it is possible that the real solution to the problem of the relations between proletariat and plebs is contained in the capacity to resolve the problem of popular unity, that is, the fusion of proletarian methods of struggle and the methods of peasant warfare.

VICTOR: This would not be sufficient to resolve the problem of fusion. There is also the problem of methods suitable for those who are mobile. An army is the only solution to the problem.

GILLES: This means that the solution to the opposition between proletariat and non-proletarianised plebs involves an attack on the state, taking over state power. This is also why there is a need for people's courts.

FOUCAULT: If what has been said is true then the struggle against the judicial apparatus is an important struggle—I do not say a basic struggle, but it is as important as was that judicial system in the division which the bourgeoisie created and maintained. Between the proletariat and the plebs, this judicial apparatus has had specific ideological effects on each of the dominant classes, and there is in particular a proletarian ideology into which certain bourgeois ideas about what is just and what unjust, about theft, property, crime and criminals have infiltrated. This does not mean that the non-proletarianised plebs has remained unsullied and resolute. On the contrary, for one-and-a-half centuries the bourgeoisie offered it the following choices: you can go to prison or join the army, you can go to prison or go to the colonies, you can go to prison or you can join the police. So this non-proletarianised plebs has been racist when it has been colonialist; it has been nationalist, chauvinist, when it has been armed; and it has been fascist when it has become the police force. These ideological effects on the plebs have been uncontestable and profound. The effects on the proletariat are also uncontestable. This system is, in a sense, very subtle and works relatively well, even though the bourgeoisie is blind to the basic relations and real processes.

VICTOR: From the strictly historical discussion we have
learned that the struggle against the penal apparatus constitutes a relative unity and that everything which you have described as the introduction of contradictions among the people does not represent a major contradiction but a series of contradictions which have had great importance from the point of view of the bourgeoisie, in its struggle against the revolution. But with what you have just said we are now at the heart of popular justice, which goes far beyond the struggle against the judicial apparatus: beating up the foreman has nothing to do with the struggle against the judge. Similarly for the peasant who executes a landowner. This is popular justice and it is far broader than the struggle against the judicial apparatus. Even if we take the example of the past year we can see that popular justice was put into practice before the broad struggles against the judicial apparatus, that it was the former which paved the way for the latter: it was the first locking up of the bosses, and beating up of their lackeys, which mentally prepared people for the big struggle against injustice and against the judicial apparatus, Guiot, the prisons, etc. In the aftermath of May 68 it was really this that happened.

Grosso modo what you’re saying is this: the proletariat has an ideology which is a bourgeois ideology and which incorporates the system of bourgeois values, the opposition between the moral and the immoral, the just and the unjust, the honest and the dishonest, etc. Therefore there results from this a corruption of ideology among the proletarianised people, and corruption of ideology among the non-proletarianised people, brought about by all the mechanisms of integration and the various tools of repression of the people. Now, and this is exactly the point, the development of the unifying idea, the raising of the banner of popular justice, is the struggle against alienated ideas within the proletariat and elsewhere, hence also among those sons of the proletariat who have been ‘led astray’. We must find a way of putting this so as to clarify this struggle against these forms of alienation, this fusion of ideas coming from all the different fractions of the people—a fusion of ideas which enables the divided fractions of the people to be reunited—because it is not with ideas that history is made to move forward, but with a material force, that of the people reunited in the streets. We can take as an example the slogan used by the Communist Party in the early years of the occupation, to justify the looting of shops, particularly those on the Rue Buci: ‘Housewives, it is right to steal from the thieves’. This is perfect. You can see how the fusion works: you have a demolition of the system of bourgeois values (thieves contrasted with honest people) but it is a particular kind of demolition, because when you get down to it there are always thieves. But now we have a new classification. The whole people are reunited; they are the non-thieves: and it is the class enemies who are the thieves. This is why I have no hesitation in saying, for example, ‘To jail with Rives-Henry’.

If we look to fundamentals we see that the revolutionary process is always the fusion of the rebellion of those classes which are constituted as such, with that of classes which are fragmented. But this fusion comes about in a very specific direction. The ‘vagabonds’, and there were millions upon millions of them in semi-colonial and semi-feudal China, were the mass basis of the first Red Army. The ideological problems within this army derived precisely from the mercenary ideology of these ‘vagabonds’. And Mao—from his red base where he was surrounded—sent appeals to the Central Committee of the Party, saying roughly, ‘Send me just three cadres from a factory, to counteract a bit the ideology of all my “bare-foot” people’. The discipline of the war against the enemy was not enough. It was necessary to counteract mercenary ideology with ideology from the factory.

The Red Army under the leadership of the Party, that is, the peasant war under the direction of the proletariat, was the crucible which made possible the fusion between the fragmenting peasant classes and the proletariat. Therefore, in order to have modern subversion, that is, a rebellion as the first stage of a continuous revolutionary process, it is necessary for there to be a fusion of rebellious elements from among the non-proletarianised people with the proletarianised people, under the leadership of the factory proletariat and its ideology. There is an intense class struggle between ideas which come from the non-proletarianised people and those which come from the proletariat: the latter must be in command. The looter who joins the
Red Army must give up looting. At the beginning he was executed on the spot for stealing a single sewing needle belonging to a peasant. In other words, the fusion only develops with the setting up of rules, of a dictatorship. To return to my very first example, acts of popular justice coming from all the various strata of the people who have been subjected to material and emotional suffering at the hands of class enemies, do not develop into a broad movement which advances the cause of the revolution in ideology or in practice unless they are brought under a system of rules. This is why a state apparatus develops, an apparatus which derives from the masses of the people but which, in a certain way, becomes detached from them (which is not to say that it becomes cut off from them). And this apparatus, in a certain way, has the role of arbitrator, not between the masses and the class enemy, but between the warring ideas among the masses, with the aim of resolving the contradictions among the masses, so that the overall battle against the class enemy may be as effective, as focussed as possible.

Thus in periods of proletarian revolution it always comes about that a state apparatus of a revolutionary kind is set up, between the masses and the class enemy, of course always with the possibility that this apparatus might become repressive in relation to the masses. Therefore there would never be people’s courts without these courts being controlled by the people, and hence the possibility of their being challenged by the masses.

FOUCAULT: I would like to respond to you on two points. You say that it is under the leadership of the proletariat that the non-proletarianised people will join in the revolutionary battle. I entirely agree. But when you say that this happens under the leadership of the ideology of the proletariat, then I want to ask you what you mean by the ideology of the proletariat.

VICTOR: I mean, by that, the thought of Mao Tse-tung.

FOUCAULT: Fine. But you will grant me that what is thought by the mass of the French proletariat is not the thought of Mao Tse-Tung and it is not necessarily a revolutionary ideology. Moreover, you say that there must be a revolutionary state apparatus in order to regulate this new unity between the proletariat and the marginalised people. Agreed, but you will also grant me that the forms of state apparatus which we inherit from the bourgeois apparatus cannot in any way serve as a model for the new forms of organisation. The court, dragging along with it the ideology of bourgeois justice and those forms of relations between judge and judged, between judge and the parties to the action, between judge and litigant, which typify bourgeois justice, seems to me to have played a very significant role in the domination of the bourgeoisie. When we talk about courts we’re talking about a place where the struggle between the contending forces is willy-nilly suspended: where in every case the decision arrived at is not the outcome of this struggle but of the intervention of an authority which necessarily stands above and is foreign to the contending forces, an authority which is in a position of neutrality between them and consequently can and must in every case decide which party to the dispute has justice on its side. The court implies, therefore, that there are categories which are common to the parties present (penal categories such as theft, fraud; moral categories such as honesty and dishonesty) and that the parties to the dispute agree to submit to them. Now, it is all this that the bourgeoisie wants to have believed in relation to justice, to its justice. All these ideas are weapons which the bourgeoisie has put to use in its exercise of power. This is why I find the idea of a people’s court difficult to accept, especially if intellectuals must play the roles of prosecutor or judge in it, because it is precisely the intellectuals who have been the intermediaries in the bourgeoisie’s spreading and imposing of the ideological themes that I’m talking about.

This justice must therefore be the target of the ideological struggle of the proletariat, and of the non-proletarianised people: thus the forms of this justice must be treated with the very greatest suspicion by the new revolutionary state apparatus. There are two forms which must not under any circumstances be adopted by this revolutionary apparatus: bureaucracy and judicial apparatus. Just as there must be no bureaucracy in it, so there must be no court in it. The court is the bureaucracy of the law. If you bureaucratis popular justice then you give it the form of a court.
VICTOR: Then how is it to be regularised?

FOUCAULT: I'll reply to that by what is, of course, an evasion: it remains to be discovered. The masses—proletarian and non-proletarian—have suffered too much over the centuries from this judicial system for its old form to be reimposed upon them, even with a new content. They have struggled since the Middle Ages against this system of justice. After all, the French Revolution was a rebellion against the judiciary. The first thing that it got rid of was the judicial apparatus. The Commune was also profoundly against the judicial system.

The masses will discover a way of dealing with the problem of their enemies, of those who individually or collectively have harmed them, methods of retribution which will range from punishment to reeducation, without involving the form of the court which—in any case in our society, I don't know about China—is to be avoided.

This is why I was against the people's court as a solemn form, designed to synthesise, to replace, all other forms of struggle against the judicial system. This seemed to me to re-legitimate a form which drags along with it too much of the ideology imposed by the bourgeoisie, with the divisions which result from this between the proletariat and the non-proletarianised people. At the present time it is a dangerous weapon because it will act as a precedent, and will be dangerous later on, within a revolutionary state apparatus, because forms of legal proceedings will be subtly introduced into it which will threaten to re-establish these divisions.

VICTOR: I'm going to reply to you in a provocative way. It is likely that socialism will invent something different from the assembly-line. So if someone were to say 'put Dreyfus on the assembly-line' this would be a politically inventive idea because Dreyfus doesn't work on the assembly-line, but it would be an invention heavily influenced by the past (the assembly-line). The moral is Marx's old idea: the new is born from the old.

You say, 'The masses will discover something'. But at the present time there is a practical problem to be solved. I agree that all the forms of the procedures of popular justice would need to be new, that there would no longer be either the bench or the robe. What remains is a regulatory instance. It is this that we call the people's court.

FOUCAULT: If you define the people's court as a regulatory instance—I would prefer to say, an instance of political elucidation—on the basis of which acts of popular justice can be integrated with the overall political line of the proletariat, then I entirely agree. But I feel some difficulty in calling such an institution a 'court'.

I think, just as you do, that acts of justice by which the class enemy is repaid cannot be limited to a kind of thoughtless, instant spontaneity, unintegrated into an overall struggle. It is necessary to find forms through which this need for retribution, which is in fact real among the masses, can be developed, by discussion, by information... In any case, the court, with its triple division into two disputing parties and the neutral institution, which comes to decisions on the basis of some concept of justice which exists in and for itself, seems to me a particularly disastrous model for the clarification and political development of popular justice.

VICTOR: If a States General were convened tomorrow, where all groups of citizens involved in struggles were to be represented (groups such as action committees, anti-racialism committees, committees for the investigation of the prisons, and so on, in short all those who happen to be at present representatives of the people, the people in the Marxist sense of the term) would you be against this on the grounds that it invoked an old model?

FOUCAULT: The States General have often enough at least functioned as an instrument, not of course of proletarian revolution, but of the bourgeois revolution, but we well know that there were revolutionary processes in the wake of this bourgeois revolution. After the States General of 1357 there was the peasant uprising; after 1789 there was 1793. Consequently this might be a good model. On the other hand, it seems to me that the bourgeois judicial system has always operated to increase oppositions between the proletariat and the non-proletarianised people. This is the reason that it is a bad instrument, not because it is old.

The very form of the court contains the statement to the two parties, 'Before the proceedings your case is neither just nor unjust. It will only be so on the day when I pronounce it
so, because I will have consulted the law or the canons of
eternal equity'. This is the very essence of the court, and it is
in complete contradiction with the point of view of popular
justice.

GILLES: The court says two things: 'There is a problem'.
And then, 'Being a third party I will make a decision
about this problem, etc.' The problem is that the power
to exercise justice is in the hands of forces which work against
popular unity. This is why it is necessary for there to be a
representation of this popular unity when it comes to
exercise justice.

FOUCAULT: Do you mean that popular unity must
represent and make manifest that it has— provisionally or
definitively— taken possession of the power to judge?

GILLES: I mean that the question of the court at Lens
was not settled exclusively by the miners and the Houillères
(National Coal Board). It was a matter which concerned all
the popular classes.

FOUCAULT: The necessity that unity be affirmed does not
have to take the form of a court. I would even say— though
perhaps the analogy is a bit strained— that the court sets up
again a kind of division of labour. There are those who
judge— or who pretend to judge— with total tranquillity,
without being in any way involved. This re-inforces the idea
that for judicial proceedings to be just they must be con-
ducted by someone who can remain quite detached, by an
intellectual, an expert in the realm of ideas. When, into the
bargain, the people's court is organised or presided over by
intellectuals, who come along to hear what on the one hand
the workers and on the other hand the bosses have got to
say, and to pronounce: 'This one is innocent, that one
guilty', then the whole thing is infused with idealism. When
it comes to proposing this as a general model of what
popular justice should be like, I'm afraid that the worst
possible model has been picked.

VICTOR: I would like us to summarise the results of our
discussion. The first conclusion is this: an act of popular
justice is an action carried out by the masses—a homo-

genous fraction of the people— against their immediate
enemy identified as such . . .

FOUCAULT: . . . In response to some specific injury.

VICTOR: The full range of present-day acts of popular
justice includes all those subversive actions which are at
the present time being led by the various strata among the
people.

Second conclusion: the transition of popular justice to a
higher form presupposes the setting up of regulations which
aim to resolve the contradictions among the people, to
distinguish between authentic cases of justice and cases
which are merely settling of accounts, which can be
manipulated by the enemy so as to discredit popular justice,
fracture the unity of the masses, thereby to impede the
revolutionary movement. Do we agree?

FOUCAULT: Not quite when it comes to talking about
regulations. I would prefer to say that an act of popular
justice cannot achieve its full significance unless it is clarified
politically, under the supervision of the masses themselves.

VICTOR: Acts of popular justice enable the people to start
to seize power when they take place within the context of a
coherent overall line, that is, when they are under political
command, on condition that this political leadership is not
external to the mass movement, and that the popular masses
are unified around it. This is what I mean by the setting up
of regulations, the setting up of new state apparatuses.

FOUCAULT: Imagine that in some factory or other there is
a conflict between a worker and one of the bosses, and that
this worker suggests to his comrades that some retribution
is called for. This would not be a real act of popular justice
unless the target and the potential outcome were integrated
into the overall political struggle of the workers in that
factory . . .

VICTOR: Yes, but in the first place it must be that the
action is a just one. This presupposes that all the workers
agree that this boss is a sod.

FOUCAULT: This assumes that there will be discussion
among the workers and a collective decision, before any
action is taken. I can't see any embryonic state apparatus
here, and yet we've gone from some particular demand for
retribution to an act of popular justice.

VICTOR: It's a matter of stages. First there is rebellion,
following that there is uprising, and finally revolution. What
you are saying is correct for the first stage.
FOUCAULT: I had got the impression that you thought that only the existence of a state apparatus could change a desire for retribution into an act of popular justice.

VICTOR: At the second stage. At the first stage of the ideological revolution I'm in favour of looting. I'm in favour of 'excesses'. The stick must be bent in the other direction, and the world cannot be turned upside down without breaking eggs . . .

FOUCAULT: Above all it is essential that the stick be broken . . .

VICTOR: That comes later. At the beginning you say, 'Put Dreyfus on the assembly-line', later on you break the assembly-line system. At the first stage there can be an act of retribution against a boss which is an act of popular justice, even if not everyone in the workshop agrees with it, because there are informers and creeps, and even a small handful of workers who are shocked by the idea: 'He is the boss after all'. Even if things go too far, if he gets three months in hospital when he really only deserved two, it is still an act of popular justice. But when all these actions take the form of a movement, of the growth of popular justice—which for me only makes sense with the constitution of a people's army—then you have the setting up of regulations, of a revolutionary state apparatus.

FOUCAULT: I understand perfectly as far as the stage of armed struggle is concerned, but I'm not so sure that afterwards it will be so absolutely necessary for there to be a state judicial apparatus in order for the people to perform acts of justice. The danger is that a state judicial apparatus would take over acts of popular justice.

VICTOR: Let's restrict ourselves to questions which confront us here and now. Let's not talk about people's courts in France during a period of armed struggle, but about the stage we are actually at, that of ideological revolution. One thing that is typical of this is that as a result of rebellions there is an increase in acts of subversion, of justice, of real alternative power. And these are instances of alternative power in the strict sense, that is, where things are turned upside down, with that profoundly subversive message that it is we who are really powerful, that it is us who are setting things right way up, and that it is the world as it exists at present which is upside down.

What I say is that one kind of creation of alternative power among all the others is this, the setting up of people's courts in the place of bourgeois courts. In what context would this be justified? Not for the carrying out of acts of justice within a workshop, where there is an immediate confrontation between the masses and the class enemy. As long as the masses are mobilised to struggle against this enemy then justice can be carried out directly. The boss is judged, but there is no court. There are the two opponents and things are settled between them, and this involves ideological values; we're in the right, he's a sod. To say: 'He's a sod', is to assert a value which, in a way, makes reference to the system of bourgeois values (the hooligans against the honest people) but only in order to subvert it. This is how it would be understood at the level of the masses.

In the context of a city, where the masses are heterogeneous and where they must be unified by an idea—for example, the idea of judging the police—where, therefore, the truth has to be won, where the unity of the people has to be won, there it could be an excellent way of creating alternative power to set up a people's court to challenge the constant collusion between the police and the courts which legitimize their dirty work.

FOUCAULT: You are saying that it is a victory to exercise alternative power in opposition to, in the place of, an existing power. When Renault workers grab a foreman and stick him underneath a car and tell him, 'You're going to have to tighten the bolts yourself', this is fine. They are actually exercising alternative power. But when it comes to the courts we must ask two questions. What would it amount to exactly to exercise alternative power over the judicial system? And, what is the real power that is exercised in a people's court like that at Lens?

The struggle in relation to the judicial system can take various forms. Firstly it can be played according to its own rules. For example, one can sue the police. This is obviously not an act of popular justice, it is bourgeois justice caught in a trap. Secondly, one can conduct guerrilla operations against the power of the judicial system and prevent it from
being exercised: for example, escaping from the police, heckling in the courts, demanding that a judge be made to account for what he’s done. These are all anti-judicial operations, but they are still not a counter-justice. A counter-justice would be one that enabled one to put into operation, in relation to some person who would in the normal course of events get away with what he’s done, some kind of judicial proceedings (that is, to seize him, bring him before a court, persuade a judge, who would judge him by reference to certain forms of equity, and who would effectively sentence him to some punishment which the person would be compelled to undergo). In this way one would precisely be taking the place of the judicial system.

In a court like that at Lens there was no real exercise of alternative judicial power but primarily of the power to disseminate information. Information which had been withheld from the masses was seized from the bourgeoisie, from the colliery management, from the technical staff. Secondly, the means for distributing information is in the hands of those in power, and the people’s court made it possible to break this monopoly on information. So two important kinds of power were put into effect here, the power of knowledge of the truth and the power to disseminate this knowledge. This is very important, but it is not the same as the power to judge. The ritual form of the court was not in reality a true expression of the powers that were exercised. Now when a kind of power is exercised, the manner in which it is exercised—which must be visible, solemn, symbolic—must only refer us to that kind of power which is exercised in reality and not to some other kind of power which is not exercised in reality at that particular time.

VICTOR: Your example of counter-justice is completely idealist.

FOUCAULT: Exactly; I think that it is impossible for there to be a counter-justice in the strict sense. The judicial system as it operates, as a state apparatus, can only have the function of dividing the masses: therefore the idea of a proletarian counter-justice is a contradiction; there can be no such thing.

VICTOR: If we consider the court at Lens, in fact the most important thing was not the seizure of the power of knowledge and its dissemination. It was that the idea ‘Colliery owners, murderers’ became a powerful idea, which took the place in people’s minds of the idea ‘The blokes who threw the Molotov cocktails are the guilty ones’. I maintain that this power to pronounce an unenforceable sentence is a real power, which has its material expression in an ideological transformation in the minds of those people to whom it is addressed. It is not a judicial power, this goes without saying; it is ridiculous to imagine a counter-justice because there can be no such thing as a counter-judicial power. But there is a counter-tribunal which can operate effectively at the level of the revolution in people’s minds.

FOUCAULT: I accept that the Lens court expressed one of the forms of anti-judicial struggle. It played an important role. In fact it took place at the very same time that another trial was going on, in which the bourgeoisie was exercising its power to judge, as it really can exercise it. At a single time it was possible to take word-by-word, fact-by-fact, everything that was said at this court in order to expose what was really going on. The court at Lens was the inverse of what was going on in the bourgeois court: what was black in the latter was made to look white by the former. This does seem to me a perfectly appropriate form for getting to know and to familiarise people with what really goes on in the factories on the one hand and in the courts on the other. It is an excellent means of informing people about the way that justice is exercised in relation to the working class.

VICTOR: So we agree on a third point: conducting a counter-trial, a people’s court, in the very specific sense of one that operates as the inverse of the bourgeois court, as what the bourgeois press calls a ‘parody of justice’, is the exercise of a counter-power.

FOUCAULT: I do not think that the three theses which you have put forward adequately represent the discussion, or the points on which we are in agreement. For my part, the idea that I wanted to introduce into the discussion is that the bourgeois judicial state apparatus, of which the visible, symbolic form is the court, has the basic function of introducing and augmenting contradictions among the masses, principally between the proletariat and the non-proletarianised people, and that it follows from this that the
forms of this judicial system, and the ideology which is associated with them, must become the target of our present struggle. And moral ideology—for what are our moral values but those which are over and over again associated with and re-confirmed by the decisions of the courts—this moral ideology, just like the forms of justice operated by the bourgeois apparatus, must be submitted to the scrutiny of the most rigorous criticism . . .

VICTOR: But there can be created a counter-power in relation to morality as well: 'the real thief is not who you think he is . . .'.

FOUCAULT: Here the problem becomes very difficult. It is from the point of view of property that there are thieves and stealing. I would like to say in conclusion that re-employing a form like that of the court, with all that is implied in it—the third-party place of the judge, reference to a law or to impartiality, effective sentencing—must also be subjected to very rigorous criticism; and, for my part, I cannot see using this form as valid except in a case where one can, in parallel with a bourgeois trial, conduct an alternative trial which can expose as lies what is taken as truth in the former, and its decisions as an abuse of power. Apart from this situation, I can see thousands of possibilities on the one hand for anti-judicial guerrilla operations, and on the other hand for acts of popular justice; but neither of these involve using the form of the court.

VICTOR: I think we are in agreement about the interpretation of actual practices. But perhaps we have not really got to the bottom of our philosophical differences . . .

5 February 1972

2 PRISON TALK

Interviewer: J.-J. Brochier.

One of the concerns of Discipline and Punish is to criticise certain blank areas in historical studies. You remark for instance that no one has ever written, or even thought of writing the history of the practice of examining. This is hard to believe.

Historians, like philosophers and literary historians, have been accustomed to a history which takes in only the summits, the great events. But today, unlike the others, historians are becoming more willing to handle 'igneble' materials. The emergence of this plebeian element in history dates back fifty years or more. This means that I have fewer problems about talking to historians. You would never hear a historian say what someone or other wrote about Buffon and Ricardo in an incredible journal called Raison Présente: 'Foucault concerns himself only with mediocrities!'

In your study of the prisons, you seem to regret the absence of a certain kind of source material, of monographs on particular prisons, for instance.

At the moment, people are returning increasingly to the monograph form, but no longer so much in terms of studying a particular object as of rendering apparent the point at which a certain type of discourse is produced and formed. What would it signify today to write a study of a particular prison or psychiatric hospital? Hundreds of such studies were written in the nineteenth century, mostly of hospitals, dealing with the histories of the institutions, chronologies of their directors, and so forth. Today, writing a monograph history of a hospital would involve making the

Notes
2 A lycée student arrested in Paris in February 1971 during a demonstration against the prisons.
3 A Gaulist deputy charged with fraudulent property speculations and saved from prison by his parliamentary immunity.
4 Managing Director of Renault.
5 A coal-mining town in Northern France where a group of Maoists, together with Jean-Paul Sartre, set up a people's court after a mining disaster to investigate the management's responsibility for the casualties.
By the same author

Madness and Civilization: A History of Insanity in the Age of Reason
The Order of Things: An Archaeology of the Human Sciences
The Archaeology of Knowledge (and The Discourse on Language)
The Birth of the Clinic: An Archaeology of Medical Perception
I, Pierre Rivière, having slaughtered my mother, my sister, and my brother... A Case of Parricide in the Nineteenth Century
Discipline and Punish: The Birth of the Prison
The History of Sexuality, vol. 1
Herculine Barbin, Being the Recently Discovered Memoirs of a Nineteenth-Century French Hermaphrodite

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