

21 MARCH 1979

American neo-liberalism (II). ~ The application of the economic grid to social phenomena. ~ Return to the ordoliberal problematic: the ambiguities of the Gesellschaftspolitik. The generalization of the “enterprise” form in the social field. Economic policy and Vitalpolitik: a society for the market and against the market. ~ The unlimited generalization of the economic form of the market in American neo-liberalism: principle of the intelligibility of individual behavior and critical principle of governmental interventions. ~ Aspects of American neo-liberalism: (2) Delinquency and penal policy. ~ Historical reminder: the problem of the reform of penal law at the end of the eighteenth century. Economic calculation and principle of legality. The parasitic invasion of the law by the norm in the nineteenth century and the birth of criminal anthropology. ~ The neo-liberal analysis: (1) the definition of crime; (2) the description of the criminal subject as homo oeconomicus; (3) the status of the penalty as instrument of law “enforcement.” The example of the drugs market. ~ Consequences of this analysis: (a) anthropological erasure of the criminal; (b) putting the disciplinary model out of play.

TODAY I WOULD LIKE to talk a little about one aspect of American neo-liberalism, that is to say, the way in which [the American neo-liberals]*

* M.F.: they

try to use the market economy and the typical analyses of the market economy to decipher non-market relationships and phenomena which are not strictly and specifically economic but what we call social phenomena.* In other words, this means that I want to talk about the application of the economic grid to a field which since the nineteenth century, and we can no doubt say already at the end of the eighteenth century, was defined in opposition to the economy, or at any rate, as complementary to the economy, as that which in itself, in its own structure and processes, does not fall within the economy, even though the economy itself is situated within this domain. In other words again, what I think is at stake in this kind of analysis is the problem of the inversion of the relationships of the social to the economic.

Let's go back to the theme of German liberalism, or ordoliberalism. You recall that in this conception—of Eucken, Röpke, Müller-Armack, and others—the market was defined as a principle of economic regulation indispensable to the formation of prices and so to the consistent development of the economic process. What was the government's task in relation to this principle of the market as the indispensable regulating function of the economy? It was to organize a society, to establish what they call a *Gesellschaftspolitik* such that these fragile competitive mechanisms of the market can function to the full and in accordance with their specific structure.¹ Such a *Gesellschaftspolitik* was therefore orientated towards the formation of a market. It was a policy that had to take charge of social processes and take them into account in order to make room for a market mechanism within them. But what did this policy of society, this *Gesellschaftspolitik* have to consist in for it to succeed in constituting a market space in which competitive mechanisms could really function despite their intrinsic fragility? It consisted in a number of objectives which I have talked about, such as, for example, avoiding centralization, encouraging medium sized enterprises, support for what they call non-proletarian enterprises, that is to say, broadly, craft enterprises, small businesses, etcetera, increasing access to property ownership, trying to replace the social insurance of risk with individual

* In the manuscript, this lecture has the title: "The market economy and non-market relationships."

insurance, and also regulating all the multiple problems of the environment.

Obviously, this *Gesellschaftspolitik* includes a number of ambiguities and raises a number of questions. There is the question, for example, of its purely optative and “light”^{*} character in comparison with the heavy and far more real processes of the economy. There is also the fact that it entails a weight, a field, an extraordinarily large number of interventions which raise the question of whether they do in fact correspond to the principle that they must not act directly on the economic process but only intervene in favor of the economic process. In short, there are a number of questions and ambiguities, but I would like to emphasize the following: in this idea of a *Gesellschaftspolitik* there is what I would call an economic-ethical ambiguity around the notion of enterprise itself, because what does it mean to conduct a *Gesellschaftspolitik* in the sense this is given by Röpke, Rüstow, and Müller-Armack? On one side it means generalizing the “enterprise” form within the social body or social fabric; it means taking this social fabric and arranging things so that it can be broken down, subdivided, and reduced, not according to the grain of individuals, but according to the grain of enterprises. The individual’s life must be lodged, not within a framework of a big enterprise like the firm or, if it comes to it, the state, but within the framework of a multiplicity of diverse enterprises connected up to and entangled with each other, enterprises which are in some way ready to hand for the individual, sufficiently limited in their scale for the individual’s actions, decisions, and choices to have meaningful and perceptible effects, and numerous enough for him not to be dependent on one alone. And finally, the individual’s life itself—with his relationships to his private property, for example, with his family, household, insurance, and retirement—must make him into a sort of permanent and multiple enterprise. So this way of giving a new form to society according to the model of the enterprise, or of enterprises, and down to the fine grain of its texture, is an aspect of the German ordoliberal’s *Gesellschaftspolitik*.²

^{*} In inverted commas in the manuscript.

What is the function of this generalization of the “enterprise”^{*} form? On the one hand, of course, it involves extending the economic model of supply and demand and of investment-costs-profit so as to make it a model of social relations and of existence itself, a form of relationship of the individual to himself, time, those around him, the group, and the family. So, it involves extending this economic model. On the other hand, the ordoliberal idea of making the enterprise the universally generalized social model functions in their analysis or program as a support to what they designate as the reconstruction of a set of what could be called “warm”[†] moral and cultural values which are presented precisely as antithetical to the “cold”[‡] mechanism of competition. The enterprise schema involves acting so that the individual, to use the classical and fashionable terminology of their time, is not alienated from his work environment, from the time of his life, from his household, his family, and from the natural environment. It is a matter of reconstructing concrete points of anchorage around the individual which form what Rüstow called the *Vitalpolitik*.³ The return to the enterprise is therefore at once an economic policy or a policy of the economization of the entire social field, of an extension of the economy to the entire social field, but at the same time a policy which presents itself or seeks to be a kind of *Vitalpolitik* with the function of compensating for what is cold, impassive, calculating, rational, and mechanical in the strictly economic game of competition.

The enterprise society imagined by the ordoliberals is therefore a society for the market and a society against the market, a society oriented towards the market and a society that compensates for the effects of the market in the realm of values and existence. This is what Rüstow said in the Walter Lippmann colloquium I have talked about:⁴ “We have to organize the economy of the social body according to the rules of the market economy, but the fact remains that we still have to satisfy new and heightened needs for integration.”⁵ This is the *Vitalpolitik*. A bit later, Röpke said: “Competition is a principle of order in the domain of

* In inverted commas in the manuscript.

† In inverted commas in the manuscript.

‡ In inverted commas in the manuscript.

the market economy, but it is not a principle on which it would be possible to erect the whole of society. Morally and sociologically, competition is a principle that dissolves more than it unifies." So, while establishing a policy such that competition can function economically, it is necessary to organize "a political and moral framework," Röpke says.⁶ What will this political and moral framework comprise? First, it requires a state that can maintain itself above the different competing groups and enterprises. This political and moral framework must ensure "a community which is not fragmented," and guarantee cooperation between men who are "naturally rooted and socially integrated."⁷

In comparison with the ambiguity, if you like, of German ordoliberalism, American neo-liberalism evidently appears much more radical or much more complete and exhaustive. American neo-liberalism still involves, in fact, the generalization of the economic form of the market. It involves generalizing it throughout the social body and including the whole of the social system not usually conducted through or sanctioned by monetary exchanges. This, as it were, absolute generalization, this unlimited generalization of the form of the market entails a number of consequences or includes a number of aspects and I would like to focus on two of these.

First, the generalization of the economic form of the market beyond monetary exchanges functions in American neo-liberalism as a principle of intelligibility and a principle of decipherment of social relationships and individual behavior. This means that analysis in terms of the market economy or, in other words, of supply and demand, can function as a schema which is applicable to non-economic domains. And, thanks to this analytical schema or grid of intelligibility, it will be possible to reveal in non-economic processes, relations, and behavior a number of intelligible relations which otherwise would not have appeared as such—a sort of economic analysis of the non-economic. The neo-liberals do this for a number of domains. I referred to some of these problems last week, with regard to investment in human capital. In their analysis of human capital, you recall, the neo-liberals tried to explain, for example, how the mother-child relationship, concretely characterized by the time spent by the mother with the child, the quality of the care she gives, the affection she shows, the vigilance with which she follows its development, its education, and not only its scholastic but also its physical progress, the way

in which she not only gives it food but also imparts a particular style to eating patterns, and the relationship she has with its eating, all constitute for the neo-liberals an investment which can be measured in time. And what will this investment constitute? It will constitute a human capital, the child's human capital, which will produce an income.⁸ What will this income be? It will be the child's salary when he or she becomes an adult. And what will the income be for the mother who made the investment? Well, the neo-liberals say, it will be a psychological income. She will have the satisfaction a mother gets from giving the child care and attention in seeing that she has in fact been successful. So, everything comprising what could be called, if you like, the formative or educational relationship, in the widest sense of the term, between mother and child, can be analyzed in terms of investment, capital costs, and profit—both economic and psychological profit—on the capital invested.

In the same way, the neo-liberals turn to the study of the problem of the birth rate and try to analyze again the fact that wealthy, or wealthier families are clearly more Malthusian than poorer families, in the sense that the higher the income the smaller the family is an old law that everyone knows. But even so, they say, this is paradoxical, since in strictly Malthusian terms more income should enable one to have more children. To which they [answer]: But is the Malthusian conduct of these wealthy people really an economic paradox? Is it due to non-economic factors of a moral, ethical, or cultural kind? Not at all, they say. Economic factors are still and always at work here inasmuch as people with high incomes are people who possess a high human capital, as is proven by their high incomes. Their problem is not so much to transmit to their children an inheritance in the classical sense of the term, as the transmission of this other element, human capital, which also links the generations to each other but in a completely different way. Their problem is the formation and transmission of human capital which, as we have seen, implies the parents having the time for educational care and so on. A wealthy family, that is to say, a high income family, that is to say, a family whose components have a high human capital, will have as its immediate and rational economic project the transmission of a human capital at least as high to its children, which implies a set of investments, both in financial terms and in terms of time, on the part of the parents.

Now these investments are not possible for a large family. So, according to the American neo-liberals, it is the necessity to transmit a human capital to the children which is at least equal to that of the parents that explains the smaller size of wealthy families.

It is still in terms of this same project, this same perspective of an economic analysis of types of relations that previously fell more in the domains of demography, sociology, psychology, and social psychology, that the neo-liberals have tried to analyze, for example, the phenomena of marriage and what takes place within a household, that is to say, the specifically economic rationalization constituted by marriage in the coexistence of individuals. There are a number of works and communications on this by a Canadian economist Jean-Luc Migué,⁹ who wrote this, which is worth reading.¹⁰ I will not go into the rest of the analysis, but he says this: “One of the great recent contributions of economic analysis [he is referring to the neo-liberal analysis; M.F.] has been to apply fully to the domestic sector the analytical framework traditionally reserved for the firm and the consumer (...). This involves making the household a unit of production in the same way as the classical firm. (...) What in actual fact is the household if not the contractual commitment of two parties to supply specific *inputs* and to share in given proportions the benefits of the households’ *output*?” What is the meaning of the long-term contract entered into by people who live together in matrimony? What justifies it economically and on what is it based? Well, it is that this long-term contract between spouses enables them to avoid constantly renegotiating at every moment the innumerable contracts which would have to be made in order for domestic life to function.¹¹ Pass me the salt; I will give you the pepper. This type of negotiation is resolved, as it were, by a long-term contract, which is the marriage contract itself, which enables what the neo-liberals call—and I think they are not the only ones to call it this moreover—an economy to be made at the level of transaction costs. If you had to make a transaction for each of these actions there would be a cost of time, and therefore an economic cost, that would be absolutely insuperable for the individuals. It is resolved by the marriage contract.

This may appear amusing, but those of you who are familiar with the text left by Pierre Rivière before his death, in which he describes how his parents lived,¹² will realize that in fact the married life of a peasant

couple at the beginning of the nineteenth century was endlessly forged and woven by a whole series of transactions. I will work on your field, the man says to the woman, but on condition that I can make love with you. And the woman says: You will not make love with me so long as you have not fed my chickens. In a process like this we see a sort of endless transaction emerging, in relation to which the marriage contract was supposed to constitute a form of general economy to avoid having to renegotiate at every moment. And in a way, the relationship between the father and the mother, between the man and the woman, was just the daily unfolding of this kind of contractualization of their common life, and all these conflicts were nothing other than the actualization of the contract. But at the same time the contract did not perform its role: in actual fact it did not [enable]* an economy to be made on the transaction costs that it should have assured. In short, let's say that in these economic analyses of the neo-liberals, we have an attempt to decipher traditionally non-economic social behavior in economic terms.

The second interesting use of these neo-liberal analyses is that the economic grid will or should make it possible to test governmental action, gauge its validity, and to object to activities of the public authorities on the grounds of their abuses, excesses, futility, and wasteful expenditure. In short, the economic grid is not applied in this case in order to understand social processes and make them intelligible; it involves anchoring and justifying a permanent political criticism of political and governmental action. It involves scrutinizing every action of the public authorities in terms of the game of supply and demand, in terms of efficiency with regard to the particular elements of this game, and in terms of the cost of intervention by the public authorities in the field of the market. In short, it involves criticism of the governmentality actually exercised which is not just a political or juridical criticism; it is a market criticism, the cynicism of a market criticism opposed to the action of public authorities. This is not just an empty project or a theorist's idea. In the United States a permanent exercise of this type of criticism has developed especially in an institution which was not in fact created for

* M.F.: avoid

this, since it was created before the development of the neo-liberal school, before the development of the Chicago School. This institution is the *American Enterprise Institute*¹³ whose essential function, now, is to measure all public activities in cost-benefit terms, whether these activities be the famous big social programs concerning, for example, education, health, and racial segregation developed by the Kennedy and Johnson administrations in the decade 1960-1970. This type of criticism also involves measuring the activity of the numerous federal agencies established since the New Deal and especially since the end of the Second World War, such as the *Food and Health Administration*, the *Federal Trade Commission*, and so on.¹⁴ So, it is criticism in the form of what could be called an “economic positivism”; a permanent criticism of governmental policy.

Seeing the deployment of this type of criticism one cannot help thinking of an analogy, which I will leave as such: the positivist critique of ordinary language. When you consider the way in which the Americans have employed logic, the logical positivism of the Vienna School, in order to apply it to scientific, philosophical, or everyday discourse, you see there too a kind of filtering of every statement whatsoever in terms of contradiction, lack of consistency, nonsense.¹⁵ To some extent we can say that the economic critique the neo-liberals try to apply to governmental policy is also a filtering of every action by the public authorities in terms of contradiction, lack of consistency, and nonsense. The general form of the market becomes an instrument, a tool of discrimination in the debate with the administration. In other words, in classical liberalism the government was called upon to respect the form of the market and *laissez-faire*. Here, *laissez-faire* is turned into a *do-not-laissez-faire* government, in the name of a law of the market which will enable each of its activities to be measured and assessed. *Laissez-faire* is thus turned round, and the market is no longer a principle of government's self-limitation; it is a principle turned against it. It is a sort of permanent economic tribunal confronting government. Faced with excessive governmental action, and in opposition to it, the nineteenth century sought to establish a sort of administrative jurisdiction that would enable the action of public authorities to be assessed in terms of right, whereas here we have a sort of economic tribunal that claims to assess government action in strictly economic and market terms.

These two aspects—the analysis of non-economic behavior through a grid of economic intelligibility, and the criticism and appraisal of the action of public authorities in market terms—are found again in the analysis of criminality and the penal justice system made by some neo-liberals. I would like now to talk about the way in which the problem of criminality is taken up in a series of articles by Ehrlich,¹⁶ Stigler,¹⁷ and Gary Becker¹⁸ as an example of these two uses of economic analysis. Their analysis of criminality at first appears to be the simplest possible return to the eighteenth century reformers like Beccaria¹⁹ and especially Bentham.²⁰ After all, it is true that when the problem of the reform of penal law is taken up at the end of the eighteenth century the question posed by the reformers really was a question of political economy, in the sense that it involved an economic analysis or at any rate an economic style of reflection on politics or the exercise of power. It was a matter of using economic calculation, or at any rate of appealing to an economic logic and rationality to criticize the operation of penal justice as it could be observed in the eighteenth century. Hence, in some texts, more clearly in Bentham than in Beccaria, but also in people like Colquhoun,²¹ there are considerations based on rough calculations of the cost of delinquency: how much does it cost a country, or at any rate a town, to have thieves running free? There is the problem of the cost of judicial practice itself and of the judicial institution in the way that it operates. And there is criticism of the ineffectiveness of the system of punishment, with reference to the fact, for example, that public torture and executions or banishment had no perceptible effect on lowering the rate of criminality, insofar as it was possible to measure this at the time. In any case, there was an economic grid underlying the critical reasoning of the eighteenth century reformer. I have already drawn attention to this²² and will not dwell on it.

What the reformers sought by filtering the whole of penal practice through a calculation of utility was precisely a penal system with the lowest possible cost, in all the senses I have just mentioned. And I think we can say that the solution sketched by Beccaria, supported by Bentham, and ultimately chosen by the legislators and codifiers at the end of the eighteenth and beginning of the nineteenth century was a legalistic solution. This great concern of the law, the principle constantly

recalled that for a penal system to function well a good law is necessary and almost sufficient, was nothing other than the desire for what could be called, in economic terms, a reduction in the transaction cost. The law is the most economical solution for punishing people adequately and for this punishment to be effective. First, the crime must be defined as an infraction of a formulated law, so that in the absence of a law there is no crime and an action cannot be incriminated. Second, penalties must be fixed once and for all by the law. Third, penalties must be fixed in law according to the degree of seriousness of the crime. Fourth, henceforth the criminal court will only have one thing to do, which is to apply to an established and proven crime a law which determines in advance what penalty the criminal must suffer according to the seriousness of his crime.²³ An absolutely simple, apparently completely obvious mechanics constitutes the most economic form, that is to say, the least costly and most effective form for obtaining punishment and the elimination of conducts deemed harmful to society. At the end of the eighteenth century, law, the mechanism of the law, was adopted as the economic principle of penal power, in both the widest and most exact sense of the word economic. *Homo penalis*, the man who can legally be punished, the man exposed to the law and who can be punished by the law is strictly speaking a *homo æconomicus*. And it is precisely the law which enables the problem of penal practice to be connected to the problem of economy.

During the nineteenth century it was discovered that this economy in fact led to a paradoxical effect. What is the source, the reason for this paradoxical effect? It is an ambiguity due to the fact that the law as law, as general form of the penal economy, was obviously indexed to the acts which breach the law. The law only sanctions acts, of course. But, in another respect, the principles of the existence of the criminal law, the need to punish in other words, as well as the grading of punishment, the actual application of the law, only have meaning inasmuch as it is not the act that is punished—since there is no sense in punishing an act—but an individual, an offender, who must be punished, corrected, and made to serve as an example to other possible offenders. So we can see how it was possible for an inner tendency of the whole system to emerge in this ambiguity between a form of the law which defines a relationship between the act and the actual application of the law which can only be

directed at an individual, in this ambiguity between the crime and the criminal. A tendency towards what? Well, it is a tendency towards an increasingly individualizing modulation of the application of the law and, as a consequence of this, a reciprocally psychological, sociological, and anthropological problematization of the person on whom the law is applied. That is to say, throughout the nineteenth century, the *homo penalis* drifts towards what could be called the *homo criminalis*. And when criminology is formed at the end of the nineteenth century, exactly one century after the reform recommended by Beccaria and schematized by Bentham, when *homo criminalis* is formed a century later, we arrived in a sense at the end of the ambiguity. *Homo legalis*, *homo penalis* is now taken up within an anthropology of crime which replaces, of course, the rigorous and very economic mechanics of the law: there is an inflation of forms and bodies of knowledge, of discourse, a multiplication of authorities and decision-making elements, and the parasitic invasion of the sentence in the name of the law by individualizing measures in the name of the norm. So that the economic principle of reference to the law and of the pure mechanism of the law, this rigorous economy, lead to an inflation within which the legal system has continued to flounder since the end of the nineteenth century. Anyway, this is how I would see things were I to adopt a possible neo-liberal perspective on this evolution.

So the analysis of the neo-liberals, who are not concerned with these historical problems, Gary Becker's analysis—in an article entitled “Crime and punishment” which appeared in the *Journal of Political Economy* in 1968²⁴—basically consists in taking up Beccaria's and Bentham's utilitarian filter again while as far as possible trying [to avoid]* the series of slippages which took us from *homo æconomicus* to *homo legalis*, to *homo penalis*, and finally to *homo criminalis*. It consists in keeping as far as possible, and thanks to a purely economic analysis, to *homo æconomicus* and to seeing how crime and maybe criminality can be analyzed on that basis. In other words, the analysis tries to neutralize all those effects that arise when—as in the case of Beccaria and Bentham—one seeks to reconsider the economic problems and give them a form within

* Conjecture; word omitted.

an absolutely adequate legal framework. In other words—and here again I am not saying what they say, since [history is not their problem],* but I think the neo-liberals could say this—the fault, the source of the slippage in eighteenth century criminal law, was Beccaria's and Bentham's idea that the utilitarian calculus could be given an adequate form within a legal structure. The idea of utility taking shape within law and law being constructed entirely on the basis of a calculus of utility really was one of the stakes or dreams of all political criticism and all the projects of the end of the eighteenth century. The history of criminal law has shown that the perfect fit could not be made. Therefore it is necessary to maintain the problem of *homo œconomicus* without aiming to translate it immediately into the terms and forms of a legal structure.

So, how do they go about analyzing or maintaining the analysis of the problem of crime within an economic problematic? First, the definition of crime. In his article "Crime and punishment" Becker gives this definition of crime: I call crime any action that makes the individual run the risk of being condemned to a penalty.²⁵ [*Some laughter.*] I am surprised you laugh, because it is after all very roughly the definition of crime given by the French penal code, and so of the codes inspired by it, since you are well aware how the code defines a criminal offence: a criminal offence is that which is punished by correctional penalties. What is a crime according to the penal code, that is to say, your penal code? It is that which is punished by physical penalties involving the loss of civil rights.²⁶ In other words, the penal code does not give any substantive, qualitative, or moral definition of the crime. The crime is that which is punished by the law, and that's all there is to it. So, you can see that the neo-liberals' definition is very close: crime is that which makes the individual incur the risk of being sentenced to a penalty. It is very close, with however, as you can see, a difference, which is a difference of point of view, since while avoiding giving a substantive definition of the crime, the code adopts the point of view of the act and asks what this act is, in short, how to characterize an act which we can call criminal, that is to say, which is punished precisely as a crime. It is the point of view of the act, a kind of

* A set of words which are difficult to hear.

operational characterization, as it were, which can be employed by the judge: You will have to consider as a crime any act which is punished by the law. It is an objective, operational definition made from the judge's point of view. You can see that it is the same definition when the neo-liberals say that crime is any action which makes an individual run the risk of being sentenced to a penalty, but the point of view has changed. We now adopt the point of view of the person who commits the crime, or who will commit the crime, while keeping the same content of the definition. We ask: What is the crime for him, that is to say, for the subject of an action, for the subject of a form of conduct or behavior? Well, it is whatever it is that puts him at risk of punishment.

You can see that this is basically the same kind of shift of point of view as that carried out with regard to human capital and work. Last week I tried to show you how the neo-liberals tried to address the problem of work from the point of view of the person who decides to work rather from the point of view of capital or of economic mechanisms. Here again we move over to the side of individual subject, but doing this does not involve throwing psychological knowledge or an anthropological content into the analysis, just as analyzing work from the point of view of the worker did not involve an anthropology of work. We only move over to the side of the subject himself inasmuch as—and we will come back to this, because it is very important, I am telling you this in a very rough way—we can approach it through the angle, the aspect, the kind of network of intelligibility of his behavior as economic behavior. The subject is considered only as *homo æconomicus*, which does not mean that the whole subject is considered as *homo æconomicus*. In other words, considering the subject as *homo æconomicus* does not imply an anthropological identification of any behavior whatsoever with economic behavior. It simply means that economic behavior is the grid of intelligibility one will adopt on the behavior of a new individual. It also means that the individual becomes governmentalizable,* that power gets a hold on him to the extent, and only to the extent, that he is a *homo æconomicus*. That is to say, the surface of contact between the individual and the power

* Foucault stumbles a bit on this word, adding: or government ... , well, yes, governmentalizable.

exercised on him, and so the principle of the regulation of power over the individual, will be only this kind of grid of *homo æconomicus*. *Homo æconomicus* is the interface of government and the individual. But this does not mean that every individual, every subject is an economic man.

So we move over to the side of the individual subject by considering him as *homo æconomicus*, with the consequence that if crime is defined in this way as the action an individual commits by taking the risk of being punished by the law, then you can see that there is no difference between an infraction of the highway code and a premeditated murder. This also means that in this perspective the criminal is not distinguished in any way by or interrogated on the basis of moral or anthropological traits. The criminal is nothing other than absolutely anyone whomsoever. The criminal, any person, is treated only as anyone whomsoever who invests in an action, expects a profit from it, and who accepts the risk of a loss. From this point of view, the criminal is and must remain nothing more than this. You can see that in view of this the penal system will no longer have to concern itself with that split reality of the crime and the criminal. It has to concern itself with a conduct or a series of conducts which produce actions from which the actors expect a profit and which carry a special risk, which is not just the risk of economic loss, but the penal risk, or that economic loss which is inflicted by a penal system. The penal system itself will not have to deal with criminals, but with those people who produce that type of action. In other words, it will have to react to the supply of crime.

What will punishment be under these conditions? Well, punishment—and here again I am referring to Becker's definition—is the means employed to limit the negative externalities²⁷ of certain acts.²⁸ Here again, you can see that we are very close to Beccaria or Bentham, to the eighteenth century problematic in which punishment is justified by the fact that the act punished was harmful and that a law was made precisely for that reason. The same principle also had to be applied to the scale of the punishment: You had to punish in such a way that the action's harmful effects are either annulled or prevented. So, we are still very close to the problematic of the eighteenth century, but, here again, with an important change. While classical theory simply tried to connect up the different, heterogeneous effects expected from punishment, that is to say, the

problem of reparation, which is a civil problem, the problem of the individual's correction, and the problem of prevention with regard to other individuals, etcetera, the neo-liberals will make a connection, or rather, a different disconnection of punishment. They distinguish between two things, or rather, they basically only take up a problematic current in Anglo-Saxon legal thought and reflection. They say: On the one hand there is the law, but what is the law? The law is nothing other than a prohibition, and the formulation of the prohibition is, on the one hand, of course, an institutional reality. Referring to a different problematic, we could say, if you like, that it is a *speech act* with a number of effects.²⁹ This act, moreover, has a certain cost, since formulation of the law implies a parliament, discussion, and decisions taken. It is in fact a reality, but it is not only this reality. So then, on the other hand, there is the set of instruments by which this prohibition will be given a real "force."* This idea of a force of law is expressed in the frequently encountered word, *enforcement*, which is often translated in French by "reinforcement (*renforcement*)" of the law. It is not reinforcement. *Law enforcement* is more than the application of the law, since it involves a whole series of real instruments which have to be employed in order to apply the law. But this is not the reinforcement of the law, it is less than the reinforcement of the law, inasmuch as reinforcement would mean that the law is too weak and that it needs a small supplement or to be made stricter. *Law enforcement* is the set of instruments employed to give social and political reality to the act of prohibition in which the formulation of the law consists.

What will these instruments of law "enforcement" be—forgive the neologism of this transcription?[†] It will be the quantity of punishment provided for each crime. It will be the size, activity, zeal, and competence of the apparatus responsible for detecting crimes. It will be the size and quality of the apparatus responsible for convicting criminals and providing effective proof that they have committed a crime. It will be how quickly judges make their judgments, and how severe they are within the margins the law leaves them. It will also be the degree of effectiveness of punishment, and the degree to which the penalty

* In inverted commas in the manuscript.

[†] Foucault creates a French word—*enforcement*—to translate the English "enforcement"; G.B.

applied can be modified, lessened, or possibly increased by the prison administration. All of these things constitute law enforcement, everything therefore that will respond to the supply of criminal conduct with what is called a negative demand. Law enforcement is the set of instruments of action which, on the market for crime, opposes a negative demand to the supply of crime. Now this law enforcement is clearly neither neutral nor indefinitely extendable for two correlative reasons.

The first, of course, is that the supply of crime is not indefinitely or uniformly elastic. That is to say, it does not respond in the same way to all the forms and levels of the negative demand opposed to it. To put things very simply: you have certain forms of crime, or certain brackets of criminal behavior, which give way very easily before a modification or very slight intensification of negative demand. Take the most current example: consider a big store in which 20% of the turnover, a completely arbitrary figure, is misappropriated by theft. Now, it is easy to reduce this figure to 10% without making a considerable outlay on surveillance or excessive law enforcement. To reduce it to between 5% and 10% is still relatively easy. To manage to reduce it to below 5% becomes very difficult, below 2%, and so on. In the same way, it is clear that there is a whole primary bracket of crimes of passion which we could easily get rid of by making divorce easier. And then you have a core of crimes of passion which will not be changed by relaxing divorce law. So the elasticity, that is to say, the modification of supply in relation to the effects of negative demand, is not homogeneous in the different brackets or types of action considered.

Second, and this is a different aspect absolutely linked to the first, enforcement itself has a cost and negative externalities. It has a cost, that is to say, it calls for an alternative remuneration. Investment in the law enforcement apparatus cannot be employed elsewhere. It goes without saying that this calls for an alternative remuneration. It has a cost, that is to say, it involves political, social, and other drawbacks. So, the objective or target of a penal policy will not be the same as that of the eighteenth century reformers when they developed their system of universal legality, namely, the total disappearance of crime. Criminal law and the whole penal mechanism of Bentham's dreams had to be such that, at the end of the day, there would be no crime, even if this could never happen in reality. And the idea of the Panopticon—the idea of transparency, of a gaze

focusing on each individual, of a scale of penalties sufficiently subtle that every individual in his calculations, in his heart of hearts, in his economic calculation, could say to himself: No, in no way, if I were to commit this crime, the penalty I would incur is too significant, and so I am not going to commit it—the idea of having this kind of general nullification of crime in its sights, was the principle of rationality, the organizing principle of penal calculation in the reforming mind of the eighteenth century. Here, instead, penal policy has absolutely renounced the objective of the complete suppression and exhaustive nullification of crime. The regulatory principle of penal policy is a simple intervention in the market for crime and in relation to the supply of crime. It is an intervention which will limit the supply of crime solely by a negative demand, the cost of which must obviously never exceed the cost of the supply of the criminality in question. This is the definition that Stigler gives of the objective of a penal policy: “The goal of law enforcement,” he says, “is to achieve a degree of compliance with the rule of prescribed behavior that society believes it can procure while taking account of the fact that enforcement is costly.” This is in the *Journal of Political Economy* in 1970.³⁰ You can see that at this point society appears as the consumer of conforming behavior, that is to say, according to the neo-liberal theory of consumption, society appears as the producer of conforming behavior with which it is satisfied in return for a certain investment. Consequently, good penal policy does not aim at the extinction of crime, but at a balance between the curves of the supply of crime and negative demand. Or again: society does not have a limitless need for compliance. Society does not need to conform to an exhaustive disciplinary system. A society finds that it has a certain level of illegality and it would find it very difficult to have this rate indefinitely reduced. This amounts to posing as the essential question of penal policy, not, how should crimes be punished, nor even, what actions should be seen as crimes, but, what crime should we tolerate? Or again: what would it be intolerable to tolerate? This is Becker’s definition in “Crime and punishment.” There are two questions, he says: “How many offences should be permitted? Second, how many offenders should go unpunished?”³¹ This is the question of penal practice.

What does this give us in concrete terms? There are not many analyses in this style. There is an analysis of the death penalty by Ehrlich in which

he concludes that, in the end, the death penalty is after all quite useful.³² But let's leave this. This genre of analysis does not seem to me to be the most interesting or effective with regard to the object it deals with. On the other hand, it is certain that in [other] domains, and in particular where criminality more closely affects market phenomena, the results are a bit more interesting to discuss. Obviously, being itself a market phenomenon, the problem of drugs is subject to a much more accessible and immediate economic analysis, an economics of criminality.³³ Drugs, then, appear as a market and let's say that, roughly up until the seventies, the policy of law enforcement with regard to drugs was basically aimed at reducing the drug supply. What did reducing the supply of drugs, drugs crime, and drugs delinquency mean? It meant, of course, reducing the amount of drugs brought onto the market. And what did this mean? It meant controlling and dismantling the refining networks and, secondly, controlling and dismantling the distribution networks. Now we know full well what the results of this policy of the sixties were. What was achieved by dismantling the refining and distribution networks, albeit only partially and never completely, for reasons we could discuss? First, it increased the unit price of the drug. Second, it favored and strengthened the monopoly or oligopoly of some big drug sellers, traffickers, and big drug refining and distribution networks, with, as a monopoly or oligopoly effect, a rise in prices, inasmuch as the laws of the market and competition were not respected. And finally, third, another more important phenomenon at the level of criminality strictly speaking, is that drug consumption, the demand for drugs, at least for serious addicts and for particular drugs, is absolutely inelastic. That is to say, the addict will want to find his commodity and will be prepared to pay any price for it. And this inelasticity of a segment of the demand for drugs will increase criminality; in plain terms, one will bump off someone in the street for the ten dollars to buy the drug one needs. So, from this point of view, the legislation, the style of legislation, or rather, the style of law enforcement which was developed in the sixties proved to be a sensational failure.

From this came the second solution, formulated in terms of liberal economics by Eatherly and Moore in 1973.³⁴ They say: It is completely mad to want to limit the supply of drugs. We should free up the drug supply, that is to say, very generally and roughly, see to it that the drug

is more accessible and less costly, but with the following modulations and points. What in actual fact takes place in the real drugs market? There are basically two categories of buyers and people looking for drugs: those who begin to consume drugs and whose demand is elastic because they may come up against excessively high prices and forgo consumption of the drug which certainly offers them pleasure, but which they cannot afford. And then you have the inelastic demand, that is to say, those who will buy it anyway whatever the price. What, then, is the attitude of the drug pushers? It is to offer a relatively low market price to the consumers whose demand is elastic, that is to say, to the beginners, the small consumers, and when—and only when—they have become habitual consumers, that is to say, when their demand has become inelastic, the price will be raised and the drugs provided will have the extremely high monopolistic prices which result in the phenomena of criminality. So what should the attitude be of those who direct law enforcement policy? They will have to ensure that what is called the opening price, that is to say, the price for new consumers, is as high as possible so that price itself is a weapon of dissuasion and small, potential consumers cannot take the step of becoming consumers because of the economic threshold. On the other hand, those whose demand is inelastic and who will pay any price should be given the drug at the best possible price, that is to say, at the lowest possible price, so that, since they will buy the drug anyway, they are not forced to get the money by any means to buy it—in other words, [so] that their drug consumption does not encourage crime. So we need low prices for addicts and very high prices for non-addicts. You know that this is a view which sought expression in a policy of distinguishing not so much between so-called soft drugs and hard drugs, as between drugs with an inductive value and drugs without an inductive value, and above all between elastic and inelastic types of drug consumption. From this stems a policy of law enforcement directed towards new and potential consumers, small dealers, and the small trade that takes place on street corners; a policy of law enforcement according to an economic rationality of the market differentiated in terms of the elements I have referred to.

What conclusions can be drawn from all this? First of all, there is an anthropological erasure of the criminal. It should be said that this does

not mean that the level of the individual is suppressed,* but rather that an element, dimension, or level of behavior can be postulated which can be interpreted as economic behavior and controlled as such.† In his article on capital punishment, Ehrlich said: “The abhorrent, cruel, or pathological nature of the crime is of absolutely no importance. There are no reasons for thinking that people who love or hate others are less ‘responsive,’‡ less accessible, or respond less easily to changes in the gains and losses associated with their activity than persons indifferent toward the well-being of others.”³⁵ In other words, all the distinctions that have been made between born criminals, occasional criminals, the perverse and the not perverse, and recidivists are not important. We must be prepared to accept that, in any case, however pathological the subject may be at a certain level and when seen from a certain angle, he is nevertheless “responsive” to some extent to possible gains and losses, which means that penal action must act on the interplay of gains and losses or, in other words, on the environment; we must act on the market milieu in which the individual makes his supply of crime and encounters a positive or negative demand. This raises the problem, which I will talk about next week, of the new techniques of environmental technology or environmental psychology which I think are linked to neo-liberalism in the United States.

Second, but I will come back to this too,³⁶ you can see that what appears on the horizon of this kind of analysis is not at all the ideal or project of an exhaustively disciplinary society in which the legal network hemming in individuals is taken over and extended internally by, let’s say, normative mechanisms. Nor is it a society in which a mechanism of general normalization and the exclusion of those who cannot be normalized is needed. On the horizon of this analysis we see instead the image, idea, or theme-program of a society in which there is an optimization of systems of difference, in which the field is left open to fluctuating processes, in which minority individuals and practices are

* The manuscript, p. 19, adds: “not a nullification of the technologies aiming to influence individual behavior.”

† Ibid.: “An economic subject is a subject who, in the strict sense, seeks in any case to maximize his profit, to optimize the gain/loss relationship; in the broad sense: the person whose conduct is influenced by the gains and losses associated with it.”

‡ In English in the lecture; G.B.

tolerated, in which action is brought to bear on the rules of the game rather than on the players, and finally in which there is an environmental type of intervention instead of the internal subjugation of individuals. I will try to develop some of all this next week.^{37*}

* The manuscript includes here six unnumbered pages, which continue the preceding argument: "These kinds of analysis pose a number of problems.

1. Concerning human technology

On the one hand, a massive withdrawal with regard to the normative-disciplinary system. The correlate of the system formed by a capitalist type of economy and political institutions indexed to the law was a technology of human behavior, an 'individualizing' governmentality comprising: disciplinary control (*quadrillage*), unlimited regulation, subordination/classification, the norm.

[2nd page] Considered overall, liberal governmentality was both legalistic and normalizing, disciplinary regulation being the switch-point between the two aspects. With, of course, a series of problems concerning

—autonomy, the [...]ation [division into sectors (*sectorisation*)?] of spaces and [...] regulation
—the ultimate incompatibility between legal forms and normalization.

This system no longer seems to be indispensable. Why? Because the great idea that the law was the principle of governmental frugality turns out to be inadequate:

—because '*the* law' does not exist as [principle?]. You [can have?] as many laws as you like, the overflow with regard to the law is part of the legal system.

—[3rd page] because the law can only function ballasted by something else that is its counterweight, its interstices, its supplement → prohibition (*interdiction*).

It is necessary

1 to change the conception of law, or at least elucidate its function. In other words, not confuse its form (which is always to prohibit and constrain) and its function, which must be that of rule of the game. The law is that which must favor the game, i.e., the [...]ations, enterprises, initiatives, changes, and by enabling everybody to be a rational subject, i.e., to maximize the functions of utility.

2 and consider calculating its 'enforcement' instead of supplementing it with regulation, planning, and discipline

—that is to say, we must not ballast it with something else, but with that which must simply give it force;

—[4th page] but while saying clearly that this enforcement is basically the main element,

—because the law does not exist without it

—because it is elastic

—because it can be calculated

How to remain in the *Rule of law* [English in the manuscript; G.B.]? How to rationalize this enforcement, it being understood that the law itself cannot be a principle of rationalization?

—through the calculation of costs

—the utility of the law

—and the cost of its enforcement

—and by the fact that if you do not want to get out of the law and you do not want to divert its true function as rule of the game, the technology to be employed is not discipline-normalization, but action on the environment. Modifying the terms of the game, not the players' mentality.

[5th page] We have here a radicalization of what the German ordoliberals had already defined with regard to governmental action: leave the economic game as free as possible and create a *Gesellschaftspolitik*. The American liberals say: if you want to maintain this *Gesellschaftspolitik* in the order of the law, you must consider everyone as a player and only intervene on an environment in which he is able to play. An environmental technology whose main aspects are:

- the definition of a framework around the individual which is loose enough for him to be able to play;
- the possibility for the individual of regulation of the effects of the definition of his own framework;
- the regulation of environmental effects
- non damage
- non absorption
- the autonomy of these environmental spaces.

[6th page] Not a standardizing, identificatory, hierarchical individualization, but an environmentalism open to unknowns and transversal phenomena. Lateralism.

Technology of the environment, unknowns, freedoms of [interplays?] between supplies and demands.

—But does this mean that we are dealing with natural subjects?" [*end of the manuscript*]

1. See above, lecture of 14 February 1979, pp. 145-146.
2. See F. Bilger, *La Pensée économique libérale*, p. 186: "The sociological policy breaks down ... into several, very varied particular policies of which the main ones are, for these authors, a development of the economic space, an encouragement of small and medium sized enterprises, and above all a de-proletarianization of society through the development of private saving and the widest possible distribution of the national capital between all the citizens. By making all individuals capitalists, by establishing a popular capitalism, the social flaws of capitalism are eliminated, and this independently of the fact of an expanding 'salaried' in the economy. Someone earning a salary who is also a capitalist is no longer a proletarian."
3. See above, lecture of 14 February 1979, p. 148.
4. See above, lectures of 14 and 21 February 1979.
5. A. Rüstow, in *Colloque Walter Lippmann*, p. 83: "If, in the interests of the optimum productivity of the collectivity and the maximum independence of the individual, we organize the economy of the social body according to the rules of the market economy, there remain new and heightened needs for integration to be satisfied."
6. W. Röpke, *The Social Crisis of Our Times*, Part II, ch. 2, p. 236: "(...) we have no intention to demand more from competition than it can give. It is a means of establishing order and exercising control in the narrow sphere of a market economy based on the division of labor, but not a principle on which a whole society can be built. From the sociological and moral point of view it is even dangerous because it tends more to dissolve than to unite. If competition is not to have the effect of a social explosive and is at the same time not to degenerate, its premise will be a correspondingly sound political and moral framework."
7. Ibid.: "(...) a strong state, aloof from the hungry hordes of vested interests, a high standard of business ethics, an undegenerated community of people ready to cooperate with each other, who have a natural attachment to, and a firm place in society."
8. See the previous lecture, 14 March, pp. 229-230.
9. Jean-Luc Migué was then professor at the National School of Public Administration of Quebec.
10. "Méthodologie économique et économie non marchand," communication to the Congress of French-speaking Economists (Quebec, May 1976), partially reproduced in the *Revue d'économie politique*, July-August 1977 (see H. Lepage, *Demain le capitalisme*, p. 224).
11. J.L. Migué, cited by H. Lepage, *Demain le capitalisme*, p. 346: "One of the great recent contributions of economic analysis has been the full application to the domestic sector of the analytical framework traditionally reserved for the firm and the consumer. By making the household a unit of production in the same way as the classical firm, we discover that its analytical foundations are actually identical to those of the firm. As in the firm, the two parties living together, thanks to a contract that binds them for long periods, avoid the transaction costs and the risk of being deprived at any moment of the *inputs* of the spouse and, hence, of the common *output* of the household. What in actual fact is the household if not the contractual commitment of two parties to supply specific *inputs* and to share in given proportions the benefits of the household's *output*? In this way then, instead of engaging in a costly process of constantly renegotiating and supervising the innumerable *contracts* inherent in the exchanges of everyday life, the two parties fix in a long term contract the general terms of exchange that will govern them."
12. See, *Moi, Pierre Rivière, ayant égorgé ma mère, ma sœur et mon frère ...*, presented by Michel Foucault (Paris: Julliard, 1973); English translation by F. Jelinek, *I, Pierre Rivière ...* (New York: Pantheon, 1978, and Harmondsworth: Penguin, 1984).
13. Created in 1943, the *American Enterprise Institute for Public Policy Research (AEI)* is based in Washington. Spearhead of the deregulation struggle, through its publications (books, articles, reports) it represents one of the most important "think tanks" of American neo-conservatism.
14. Among these other agencies there are the *Consumer Safety Product Commission*, the *Occupational Safety and Health Commission*, the *Civil Aeronautics Board*, the *Federal*

Communications Commission, and the *Security Exchange Commission* (see H. Lepage, *Demain le capitalisme*, pp. 221-222).

15. As the later allusion to the theory of *speech acts* (p. 254) suggests, it is doubtless the works of J.R. Searle, one of the American representatives of analytical philosophy, to which Foucault is implicitly referring here. See below, this lecture, note 29. The lecture given in Tokyo the previous year, "La philosophie analytique de la politique" *Dits et Écrits*, 3, pp. 534-551, is evidence of his interest in "Anglo-American analytical philosophy" during these years: "After all, Anglo-Saxon analytical philosophy does not give itself the task of reflecting on the being of language or on the deep structures of language: it reflects on the everyday use of language in different types of discourse. Anglo-Saxon analytical philosophy involves a critical analysis of thought on the basis of the way in which one says things" (p. 541).
16. I. Ehrlich, "The deterrent effect of capital punishment: a question of life and death," *American Economic Review*, vol. 65 (3), June 1975, pp. 397-417.
17. George J. Stigler (1911-1991): professor at the University of Chicago from 1958 to 1981, researcher at the *National Bureau of Economic Research* from 1941 to 1976, he directed the *Journal of Political Economy* from 1973 until his death. He won the Nobel Prize for economics in 1982. Foucault refers here to his article "The optimum enforcement of laws," *Journal of Political Economy*, vol. 78 (3), May-June 1970, pp. 526-536.
18. G. Becker, "Crime and punishment: an economic approach," *Journal of Political Economy*, vol. 76 (2), March-April 1968, pp. 196-217; reprinted in his *The Economic Approach to Human Behavior*, pp. 39-85. On these three authors cited by Foucault, see F. Jenny, "La théorie économique du crime: une revue de la littérature" in J.-J. Rosa and F. Aftalion, eds., *L'Économie retrouvée*, pp. 296-324 (Foucault draws on information provided in this article). See also, since then, G. Radnitsky and P. Bernholz, eds., *Economic Imperialism: The Economic Approach applied outside the field of economics* (New York: Paragon House, 1987).
19. See above, lecture of 17 January 1979, note 10.
20. Jeremy Bentham (see above, lecture of 10 January 1979, p. 12); see in particular the *Traité de législation civile et pénale*, ed. E. Dumont (Paris: Boussange, Masson & Besson, 1802) and *Théorie des peines et des récompenses*, ed. E. Dumont (London: B. Dulau, 1811) 2 volumes. It was these adaptations-translations by Dumont, based on Bentham's manuscripts, which made the latter's thought known at the beginning of the nineteenth century. On the genesis of the edition of the *Traité de législation civile et pénale* based on Bentham's manuscripts, see E. Halévy, *La Formation du radicalisme philosophique* ([vol. 1, Paris: F. Alcan, 1901] Paris: PUF, 1995) Appendix 1, pp. 281-285; English translation by Mary Morris, *The Growth of Philosophical Radicalism* (London: Faber & Faber, 1972), Appendix "Traité de Législation Civile et Pénale," pp. 515-521. The first English edition of these writings dates, for the first, from 1864 (*Theory of Legislation*, translation from the French by R. Hildreth, London: Kegan Paul), and for the second, from 1825 (*The Rationale of Reward*, translation from the French by R. Smith, London: J. & A. Hunt) and 1830 (*The Rationale of Punishment*, translation from the French by R. Smith, London: R. Heward).
21. See Patrick Colquhoun, *A Treatise on the Police of the Metropolis* (London: C. Dilly, 5th ed., 1797).
22. See *Surveiller et Punir; Discipline and Punish*.
23. On these different points, see "La vérité et les formes juridiques" (1974), *Dits et Écrits*, 2, pp. 589-590; English translation by Robert Hurley, "Truth and Juridical Forms" in *Essential Works of Foucault*, 3, pp. 70-71.
24. See above, this lecture, note 18.
25. This phrase is not found in Becker's article. Foucault relies on the synthesis of Becker's and Stigler's works provided by Jenny, "La théorie économique du crime ..." p. 298: "Rejecting, here as in the other domains of economic theory, any moral judgment, the economist distinguishes criminal activities from lawful activities solely on the basis of the type of risk incurred. Criminal activities are those that make the individual engaged in them incur a particular type of risk: that of being caught and condemned to a penalty (amends, imprisonment, execution)."
26. The first article of the 1810 Penal Code, which remained in force in its essential provisions until 1994, based the division of infractions—contraventions, misdemeanors, and

- crimes—on the nature of the penalty decreed. It reserved the qualification of “crime” for “the infraction that the laws punish by a physical penalty involving loss of civil rights.”
27. On this concept, first introduced in 1920 by Pigou in his *Economics of Welfare*, see P. Rosanvallon, *La Crise de l'État-providence*, pp. 59-60. See also, Y. Simon, “Le marché et l'allocation des ressources,” in J.-J. Rosa and F. Aftalion, *L'Économie retrouvée*, p. 268: “Externalities are monetary or non-monetary costs and benefits arising from phenomena of social interdependence. (...) For the theorists of welfare economics (...), externalities reflect the failure of the market in the process of the allocation of resources and require public intervention to reduce the divergence between social and private costs.”
 28. See F. Jenny, “La théorie économique du crime ... ” p. 298: “If crime enables the individual who commits it to maximize his own utility, it nevertheless generates negative externalities at the level of the community. The overall level of this activity or of this industry must therefore be limited. One way of limiting the negative externalities resulting from crimes is to arrest the criminals and inflict penalties on them (...).”
 29. Foucault is referring here to the theory of speech acts developed in the framework of Wittgenstein's pragmatic linguistics by J.L. Austin in *How To Do Things with Words* (London: Oxford University Press, 1962), P.F. Strawson, “Intention and convention in speech-acts” in *Logico-Linguistic Papers* (London: Methuen, 1971), and J.R. Searle, *Speech Acts: An essay in the philosophy of language* (London: Cambridge University Press, 1969). The French translation of the latter, *Les Actes de langage. Essai de philosophie du langage* (Paris: Hermann, 1972) contains an important preface by O. Ducrot, “De Saussure à la philosophie du langage.” These four authors are briefly referred to by Foucault in a round table discussion in Rio de Janeiro in 1973 concerning “the analysis of discourse as strategy” following the lectures “La vérité et les formes juridiques” *Dits et Écrits*, 2, p. 631. [The discussion is omitted from the English translation of these lectures; G.B.] See also, on the notion of speech acts, *L'Archéologie du savoir* (Paris: Gallimard, 1969) pp. 110-111; English translation by A. Sheridan, *The Archeology of Knowledge* (London: Tavistock, and New York: Pantheon, 1972) pp. 83-84, and Foucault's answer to Searle, with whom he was in correspondence some weeks after these lectures: “As to the analysis of speech acts, I am in complete agreement with your remarks. I was wrong in saying that statements were not speech acts, but in doing so I wanted to underline the fact that I see them under a different angle than yours” (letter to Searle of 15 May 1979) quoted by H. Dreyfus and P. Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 1982) p. 46, note 1.
 30. G.J. Stigler, “The optimum enforcement of laws,” p. 40: “The goal of enforcement, let us assume, is to achieve that degree of compliance with the rule of prescribed (or proscribed) behavior that the society believes it can afford. There is one decisive reason why the society must forego ‘complete’ enforcement of the rule: enforcement is costly.”
 31. G. Becker, “Crime and punishment,” p. 40: “(...) how many offenses should be permitted, and how many offenders should go unpunished?”
 32. I. Ehrlich, “The deterrent effect of capital punishment” p. 40: “In view of the new evidence presented here, one cannot reject the hypothesis that law enforcement activities in general and executions in particular do exert a deterrent effect on acts of murder. Strong inferences to the contrary drawn from earlier investigations appear to have been premature.” Ehrlich is aiming especially at the arguments developed by T. Sellin against the death penalty in his book *The Death Penalty: A report for the model penal code project of the American Law Institute* (Philadelphia: Executive Office, American Law Institute, 1959).
 33. On the drugs question, see F. Jenny, “La théorie économique du crime” pp. 315-316.
 34. B.J. Eatherly, “Drug-law enforcement: should we arrest pushers or users?” *Journal of Political Economy*, vol. 82 (1), 1974, pp. 210-214; M. Moore, “Policies to achieve discrimination on the effective price of heroin,” *American Economic Review*, vol. 63 (2), May 1973, pp. 270-278. Foucault relies here on the synthesis of these articles given by F. Jenny, p. 316.
 35. I. Ehrlich, “The deterrent effect of capital punishment” p. 399: “The abhorrent, cruel and occasionally pathological nature of murder notwithstanding, available evidence is at least not inconsistent with these basic propositions [1] that [murder and other crimes against the person] are committed largely as a result of hate, jealousy, and other interpersonal conflicts involving pecuniary and non pecuniary motives or as a by-product of crimes against

property; and 2) that the propensity to perpetrate such crimes is influenced by the prospective gains and losses associated with their commissions] (...) There is no reason a priori to expect that persons who hate or love others are less responsive to changes in costs and gains associated with activities they may wish to pursue than persons indifferent toward the well-being of others.”

36. Foucault does not return to this point in the subsequent lectures.
37. Here again, the following lecture will not keep this promise.