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Foucault's Punitive Society: Visual Tactics of Marking as a History of the Present

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British Journal of Criminology (2015) 55 (2): 231-247.

ABSTRACT

Applying a form of genealogical method rooted in Nietzsche's use of history, this article seeks an understanding of 'marking' punishments in our own mass-mediated culture. First, Foucault's analysis of the punitive tactic of marking in his 1973 course, *The Punitive Society*, will be considered. Second, his concept of 'virtual marking' will be extended and applied to the case of the *pittura infamante* in the early renaissance. Third, I will use these insights in a genealogical spirit in order to examine the rise of virtual marking in modernity. We will discover that Foucault was mistaken to tether marking punishments so closely to sovereign power. Instead, with certain antecedents in ancient Rome, virtual marking emerged in a largely bourgeois society during the early renaissance and re-emerges in our own society of mass, photographic spectacle.

Key words

Visual criminology, spectacle, culture, punishment, Foucault

Introduction

Since 1997, Foucault's *Collège de France* lectures have been reconstructed from manuscripts and tape recordings and, one by one, issued in published form under the direction of François Ewald and Alessandro Fontana. The published series is not yet complete but, so far, it has provided new perspectives on his established publications, as well as on the work in progress never published in his lifetime. Like all professors at the *Collège*, Foucault was expected to present original research in his public lectures and he used the opportunity not only to explore avenues relevant to his publishing projects but also to raise important questions, some of them, at least, as if in an invitation to future researchers (Ewald and Fontana 1997/2003: ix–xi). The most recent publication in the series is the 1973 course, *La Société Punitive*, issued in December 2013 (Foucault 2013a).¹ Previously, only a short course outline has been available (Foucault 1973/2000); the full text of the course illuminates and expands the themes and at the same time gives different emphases, an important case of which will be examined here.

Foucault's described the 'punitive tactic' of 'marking' in the first lecture of his course and this article will explore its wider possibilities to point at a possible history of the present. Because he went on to analyse in detail the origins and effects of confinement as the primary punitive tactic of modernity, Foucault did not elaborate on marking punishments much further except in the extreme form of the 'spectacle of the scaffold' familiar to us from *Discipline and Punish* (Foucault 1975/1981) and in order rhetorically to make a dramatic contrast to the modern age. Taking up his suggestion that marking may be 'virtual' as well as 'actual', a practice of virtual marking, so far not considered in criminology, the case of the *pitture infamanti* of early renaissance Italy, will be examined. Finally, I will suggest that this analysis may contribute to an understanding of our own time, in which an image regime of mass-mediated spectacle is prominent in crime, control and punishment.²

From the outset, we should be aware that Foucault's writings and lectures throw out a multiplicity of insights, understandings and theorisations to the reader, which may discourage those in search of a clear, single, unambiguous approach to any one problem (such as knowledge, punishment, power, sexuality, government, security, ethics and so forth). In approaching these texts as a theoretical frame for this article, Foucault's own counsel will be followed as it emerged in the course of a joint interview with Deleuze in 1972 (Deleuze 1972/2004), where they advise against the attempt to find a unitary essence in a text; instead it is more important how texts *work* in culture and how they are *used* by readers. Emerging from their interview was of a sense of the text in general as having a multiplicity of possibilities but, more specifically, that they wanted their own texts to be taken in this manner. Of course, this should not be understood as declaring some kind of 'post-modern' absence of meaning, or interpretive free-for-all; far from it. It is in the nature of good texts, whether in literature or among, for example, the sociological 'greats', that they are open to interpretation and debate. The key issue for Foucault and Deleuze is not to search for the secret code of a text but, rather, to see how it works and to make use of it to investigate a problem, respecting its multiple possibilities. Hence the purpose of engaging with Foucault as a theoretical frame for this article is not to argue for a single, hidden essence in what he intends to say or mean, because that would be against a genealogical approach.

But what do we mean by genealogy? The concept is set up in Foucault's important, 1971 reading – and use – of Nietzsche's ideas and vocabulary of history, and is operative in his own method (Foucault 1983; 1971/1984; Mahon 1992). As a history of the present, it works in the sense of, first, how we came to be where we are now – our so-called 'descent' from complex historical scenes to the present day – and, second, how the phenomenon in question 'emerged' and continues to 'emerge'.³ Descent will involve a consideration of the body, while emergence is always a political

process, taking place amid power relations. Genealogy respects the complexity, multiplicity, mobility and temporality of things; it avoids taking for granted any 'essence' of the matter. In genealogy the body plays a central role as 'the inscribed surface of events' (Foucault 1971/1984: 83), as well as the place of desires and sentiments. Bodies are *immanent* to history, embedded in social relations, and are not products of an underlying biological constant, evolutionary formula or civilising process. From a genealogical perspective, bodies, along with all their impulses and affects, are 'moulded by a great many distinct regimes' (Foucault 1971/1984: 87).

Using this methodology rooted in Nietzsche's work, I will deploy Foucault's analysis of punitive tactics to examine the defaming pictures of the early renaissance in a genealogical frame. We will discover a punitive tactic directed at the body – a particular kind of painted image of the body – as a practice of virtual marking. In what may be regarded as a bourgeois society, this regime of the body set in urban space utilised an image economy of fame and infamy where elites involved in commerce and banking played a prominent role. Such practices of virtual marking – using the pictorial form of photography – emerge again in modernity in a society of mass-mediated spectacle, a new regime of the body, at the same time as the punitive tactic of actual marking rapidly declines.

The punitive society

In a self-consciously schematic and hesitant way, Foucault lays out the 'four great forms of punitive tactic' in his first lecture (3 January 1973) of the Collège de France course, *The Punitive Society* (Foucault 2013a: 8–14). Preferring to use verbs rather than nouns, he designates the tactics as follows: (1) 'exclude'; (2) 'organise a redemption [*rachat*], impose a compensation; (3) 'mark'; (4) 'confine'. Before focusing on the punitive tactic of marking, I will first look at the general scheme and its genealogical purpose. Foucault hypothesises that there are types of society corresponding to each of these punitive tactics but he is aware that there are possible objections since the formula of the four tactics is, in many ways, abstract and at a high level of generality. Exclusion is the privileged tactic in the punishments of Ancient Greece; marking practices preponderate in Western societies from the high Middle Ages until the 18th century; while confinement predominates in our own time. In the course summary he completes the set by asserting that compensation corresponds to 'Germanic societies' (Foucault 2000: 23), implying the groups that invaded and settled many parts of Europe after the collapse of the western Roman Empire.

One of the issues he emphasises is the way in which the same punitive action can serve different purposes in different social systems. Thus the fine, for example, acts as a form of redemption or

reparation between two parties in societies of compensation, whereas the way in which it can diminish economic status is a trace left by the sovereign in marking societies. Here Foucault's theoretical gesture is based on that of Nietzsche (1887/1996) who, in the Second Essay of *On the Genealogy of Morals*, first differentiates between the act or drama of punishment, on the one hand, and its social function, on the other; second, emphasises the relationship of punitive practices to the operation of power; and, third, points to the multiplicity of punitive forms (Nietzsche 1996: 57–63). Foucault makes his debt to Nietzschean methodology more explicit in his 1971 essay 'Nietzsche, genealogy, history' (Foucault 1971/1984). For Foucault, like Nietzsche, the purpose of punishment has less to do with its justification in law and more from the way in which it is embedded in a matrix of power relations. We can only understand punitive tactics in the context of how power makes them work. Indeed, Foucault's genealogical intentions are clear. 'Penality as an analyser [*analyseur*] of power: that is the theme of this course' (Foucault 2013a: 14).

At times an impression is given, both in *The Punitive Society* and in *Discipline and Punish*, that one social form succeeds another: the organisation of power in a monarchical society is replaced by a very different organisation of power in a liberal-capitalist society, each with their corresponding forms of punishment, marking tactics in the case of the former and confinement measures in the case of the latter. Perhaps Foucault is paying his respects to the structural scheme of Rusche and Kirchheimer (1939; see Foucault 1975/1981: 24–25) but it is clear from the course summary of *The Punitive Society* (Foucault 2000) that he wishes to introduce a greater degree of hybridity. In the 'classical period' (16th – 18th centuries) he sees all four tactics – exclusion, compensation, marking and confinement – mixed together. This view accords with the *genealogical* spirit of Foucault's endeavours, allowing for a greater heterogeneity and hybridity of both power and punishment. This is evident, for example, in Foucault's analysis of vagabondage in the era of the sovereign marking society (Foucault 2013a: 46–53). Though the vagabond may be marked with a brand as an expression of sovereign power, there are other dynamics. He does not make it explicit at this stage, but it is clear that there are also practices that accord much more with the exclusionary rituals of ancient Greek societies in addition to the marking tactic found in the *ancien régime*. Foucault describes how branded vagabonds could be treated like army deserters, exposed to punishment by the populace if found in the wrong place, a punishment that could extend to the infliction of death with impunity (Foucault 2013a: 52). Thus he anticipates in some way Agamben's (1995/1998) description of the *homo sacer*, the body excluded from the protections of the political community that may be killed with impunity, a modality of punishment seen by Foucault as originating in the Ancient Greek societies of exclusion.⁴ In these practices, there is an articulation of the sovereign power of marking, on the one side, with more collective, civic forms of exclusionary punishment, on

the other. Likewise, Foucault's description of the way in which the 17th and 18th century French practice of the *lettre de cachet* – a special letter written by families and community representatives and addressed to the office of the monarch – may lead to practices of confinement (most clearly laid out in his 1973 'Truth and Juridical Forms' lectures delivered in Rio de Janeiro; Foucault 2002) betokens more decentred and distributed forms of power coexisting and functioning in the microsociological field, and making links to, or making use of, the sovereign centre. Hence there is a good deal of plurality and hybridity in the forms of punishment and power, but it is nevertheless useful to categorise them for the purposes of analysis, as Foucault does in *The Punitive Society*. It is against this background of Foucault's four-fold analytic framework of punitive tactics and their relations to strategies of power that I will now look in more detail at the visual practice Foucault called 'marking'.

The marking tactic

There are two main sources for Foucault's analysis of the marking tactic. Until the Collège de France lectures of 1973 were published in 2013, we relied on the course summary published at the time (Foucault 2000). Like his famous *Discipline and Punish* descriptions of the scaffold spectacle and the execution of Damians, the course summary gives more emphasis to actions involving the actual body: 'expose, mark, wound, amputate, make a scar, leave a sign on the face or the shoulder, impose an artificial and visible handicap, torture; in short, seize the body and inscribe on it the marks of power' (Foucault 2000: 23). The course summary of *The Punitive Society* may have left some room for metaphor in the idea of 'wounding' or 'hurting' (*blessing*), but in the full lecture course a broader concept of marking becomes more obvious as he emphasises both 'actual and virtual' marking (Foucault 2013a: 9). The mark, which is also 'something like a trace' (Foucault 2013a: 9), may be left on the body itself or on the status of the person. Thus it not only includes amputating the hand of the thief, for example, but also exposing the face at the pillory. Moreover, if power cannot seize the actual body, it may nevertheless mark its reputation, 'inflict a symbolic stain' on its name, on its character (Foucault 2013a: 9). Memory and recognition are important here: the mark amounts to a 'kind of monument' to 'shame and infamy' (Foucault 2013a: 9). Punitive action does not restore relations as in the compensation tactic, where it is possible to 'forget' the offence, but is a permanent scar that cannot escape memory. In a dual way, the mark reflects both the offence and an imprint of power, in this case, for Foucault, sovereign power.

Thus 'actual' marking refers to physical imprints on the body, while 'virtual' marking refers to a mark on the image, in the most general sense, of the individual. The exhibition of the body in the pillory, for example (leaving aside any action of the crowd on the actual body), is its presentation to the

visual gaze, which Foucault here calls 'virtual' because the 'mark' works at the level of reputation, status and memory alone. Through the gaze, marking attacks the figure of the person and then circulates in the social figuration of status. Departing from the Foucauldian example of the direct gaze, we can extend this concept of the virtual to speak of *iconic* marks on the body of the individual in the realm of *imagery*. Here a mediated gaze of spectators is fixed on an identifiable representation of the body, such as in the painted image, for instance, an example I will take up in the case below. The stain then becomes symbolic as it shifts from the register of the iconic to affect social status and become inscribed in memory.

By looking more closely at the punitive tactic of marking in its actual and virtual forms, we open up different perspectives on what Foucault regarded as the 'history of bodies' in *Discipline and Punish*, where, as well as considering the forces of modernity – particularly the body's 'constitution as labour power' – he speaks more generally about how, in the political field, various power relations may be invested in the body to 'mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs' (Foucault 1975/1981: 25–26). His observations on marking in *The Punitive Society* expand these possibilities, allowing the consideration of a punitive tactic that involves the body in a realm of *virtual* performance and signification.

Before moving onto an important case of virtual marking, we should note three key points. First, in his consideration of the marking tactic, Foucault provides us with a more explicit analysis than was available in *Discipline and Punish*. Second, as we will see later, the linkage between marking and sovereignty is not a necessary one, even if it is one that appeared to predominate in Foucault's description of the *ancien régime*. Finally, the concept of virtual marking is not exhausted by the indications given by Foucault. I will now turn to an instance of virtual marking: the *pittura infamanti* of the early renaissance.⁵

Virtual marking in the renaissance image

Public images exercise power, particularly when they depict the body. Spectators respond to and participate in this potency, whether it is conceived as divine, magical, erotic, political or, indeed, punitive (Freedberg 1989). Perhaps the most famous example of a use of the image in punishment is the *executio in effigie* where, in the late mediaeval and early modern periods, painted images or sculpted effigies were occasionally subject to punishment, whether through hanging, decapitation, burning, or other means. (Rebecchini 2013; Freedberg 1989: 246, 262). In some ways this was not unlike a practice of the ancient Romans, which we have come to call *damnatio memoriae*, an attempt after death to destroy the repute of persons (particularly Roman emperors, it seems)

through, among other actions, doing violence to their sculpted and painted images, a practice which, from time to time, would later occasionally be visited on particularly unpopular Popes (Rebecchini 2013), and is also familiar in our own time in the destruction of statues, for example after the fall of the Soviet regime or following the invasion of Iraq.

More prevalent in the renaissance than these *executio* and *damnatio* practices were the *pittura infamanti*, defamatory portraits or portraits of the infamous, which arose as an officially approved practice within a legal framework. Drawing on Ortalli's (1979) study, Freedberg (1989) describes how these portraits, painted on the exterior of public buildings, appeared first in Parma in the mid-13th century and spread rapidly to at least 12 city states (or *commune*) in northern and central Italy by the end of the century, and eventually to some 27 cities in total. The use of defamatory images elsewhere in Europe has been little researched but there is evidence that they were used in Germany, Poland and Bohemia from the last two decades of the 14th century until the 16th century (Lentz 2000).^{6,7}

In the context of the early renaissance revival of ancient Roman law, Edgerton (1985) describes the use in Italy of the principles of *fama* and *infamia*. *Fama* represented the good name, the reliable reputation of a citizen, designating, for example, the validity of testimony in the courts or honour in entering a contract. *Infamia* designated one who possessed a bad name, a person whose word could not be trusted. Persons in possession of *infamia* were also liable to torture in judicial proceedings because their honour was not sufficient to guard against untrue testimony (Peters 1985: 18–44; Foucault 1979: 36–42). Thus, when subject to a sanction of this kind, the criminal would become *infamia*, deprived of *fama*, and it was on this principle that a punitive image – as lifelike as possible – could also be depicted in public places. Here, via the revival of Roman law, politics and art, we can also trace a genealogical descent from the ancient Roman practices of image violence, where the good reputation of a person was destroyed after death.

13th century Parma saw its earliest form, where the image of the criminal was painted on the wall of the town hall together with the name and the charge. Always applied to men and not women, and men of high status rather than low status, this kind of image punishment was directed at those who had been found guilty of political crimes in betrayal of the city, or those who had committed financial offences, such as fraudulent bankruptcy or embezzlement, though the offences varied from one city to the next (Ortalli 1979; Freedberg 1989). The punishment was most often applied to those who had escaped the city in contempt of court.

In the setting of the republican city state of this period, the public spectacle of bodily punishment took both actual and virtual forms. Just as the realistic naturalism of defaming images could draw upon the spectacle of marketplace punishments, so the religious iconography of punishment (such as found in Last Judgement depictions) was taken from a fund of actual marking punitive tactics, corporal and capital, practised at the time (Merback 1999). The links between punishment and its image could also be made by their spatial proximity. For example, in Florence, public hangings could take the form of suspension from the windows of the Palazzo del Podestà (the building of the magistrate, criminal courts, and cells for the condemned, later known as the Bargello) on whose walls would also be found defaming frescoes (Edgerton 1985: 50). Clearly the more realistic the images were, the better, not only to engage viewers with a greater sense of immediacy but also to remind them of actual ceremonies of corporal humiliation in other public punishments.

Sullyng an image of the coat of arms was not an uncommon feature of the *pitture infamanti*, as well as in the images at the heart of Lenz's (2000) study, which also found the use of defaming images among high-status persons. Contracts of all kinds were concluded in these thriving commercial communities and they required the honour of the parties, usually marked by a seal bearing the family coat of arms. Breaking contracts could result in image-punishment. Not uncommon, alongside the portrait of the defaulter, was a depiction of a coat of arms upside down or covered in excrement thus casting a further dishonouring mark on the defaulter, whose capacity to enter into future contracts – at least in the urban community where the pictorial punishment had taken place – was more or less permanently damaged. Among the most ignominious of pictorial punishments was a portrayal of the offending person hanging upside-down by the left foot, an image familiar from the Tarot deck and Last Judgement images (Edgerton 1985: 87–88) and first used as a *pittura infamante* in 1347 in Rome (which rarely saw such defaming pictures according to the study of Ortalli 1979, even if it was known for the *executio in effigie*). In northern Europe, defamatory depictions of the offending person broken on the wheel were also used (Lenz 2000: 155).

Figure 1.

Andrea del Sarto (1530), drawing of two men hanging upside down (Devonshire Collection, Chatsworth).

The politics of virtual marking

We should ask the genealogical question: in what social and political contexts did these defaming images *emerge*? Calling them 'frescoes of obloquy', the 19th century cultural historian, Jacob Burckhardt (2005: 157–60), observed that they were features of many newly-established Italian city

republics and, according to Edgerton (1985: 59), 'the commissioning of the *pittura infamanti* provided one of the earliest models for state patronage of the arts at the dawn of the renaissance'. Successfully resisting the power of the Holy Roman Empire and the church, and having tamed the feudal aristocracy, these city states were more or less autonomous, republican and governed by an early form of democracy in which a 'burgher' class played a prominent role in the political order known as the *commune* (Wieruszowski 1944). Accordingly, the art and architecture in these city states placed a significant emphasis on the use of public buildings and public space, together with realistic forms of pictorial depiction, a modelling of the body in three dimensions with a more naturalistic use of space, light, shade and colour (White 1987; Hills 1987). In the realm of the painted image, these processes would culminate in the well-known flowering of geometric, linear perspective at the beginning of the 15th century (Baxandall 1988), itself based on investigations of the astonishingly naturalistic effects of the *camera obscura*. The urban form and the nature of its life created large audiences for public ritual and art. In this republican setting, 'fame', if it was not bestowed by aristocratic lineage, was earned among peers in public institutions through its performance. The presentation of the figure seeking fame in such settings led to a new honorific art of naturalistic portraiture (Baxandall 1988; Rubin 2007). Such realistic and recognisable portraiture was influenced by the naturalism of ancient Roman sculpture, collected and studied by the humanists of the time; but the idea of renaissance, or a rebirth of Roman culture, also found its way into legal forms, as we have seen. Hence the art of portraiture and the concern with *fama* were fundamentally linked through the revival of Roman law and culture. Thus, in the art of *infamia*, we see the same concern for realism and recognition, and a cross-over of artists who had also painted honorific portraiture. Freedberg (1989) notes that, at certain times and in certain places, the shaming force of the defaming portrait might rub off onto the artist. But at other times, as in the case of Botticelli in Florence, there was no such concern (Edgerton 1985).

Given the republican-democratic political structures, the economy of commerce, industry and banking (all with considerable surpluses), and the central role of the image in social life, it is arguable that the northern and central Italian *commune* was one of the earliest 'bourgeois' societies of spectacle. In the context of this civic spectacle, Wieruszowski (1944) has argued that, even in religious pictures, the municipal *commune* commissioned a form of 'political art' bearing the iconography of well-known historical events important to the city, as well as recognisable portraits of notables. As expressions of municipal justice, defamatory pictures displayed in public space were a natural extension of this 'politico-didactic tendency' (Wieruszowski 1944: 21). They could also become instruments of pure political conflict (Wieruszowski 1944: 22) as Edgerton (1985) shows in the case of their late manifestation in 16th century Florence.

Though the art of the time also sought new ways of religious expression, Wieruszowski finds in its humanisation of themes and exploration of naturalism an effect that brought the image closer to the spectator, a trend for which she uses the term *verbürgerlichung*, thus implying a movement to what might be called a more 'bourgeois' culture of seeing (Wieruszowski 1944: 28). Though the presence of identifying words and symbols were useful in these portraits, physical resemblance was regarded as important. Portrayals of the defamed person would be so convincing that their image was given to spectators as 'a present and distinctive body' (Freedberg 1989: 254) depicted in a 'tactile and tangible' manner (Lentz 2000: 160). We know from the records of the paintings, as well as surviving, analogous depictions of Last Judgement punishments and the trauma of battles, that a cruel naturalism – keen on realistic, bodily details – was used in attaching the spectator to the forces of the *pittura infamante* (Wieruszowski 1944: 29). In this way we see both a visual and affective engagement of the spectator's body.

Edgerton (1985) argues that the decline of the *pittura infamanti* took place as a result of transformations of aesthetic taste and religious sensibility. In the art of Bronzino, for example, the mannerist painting of the 16th century focused on the beauty of surface effects more than it did on moral meaning. However, there is another way of looking at this decline in the light of Foucault's understanding of punitive tactics. Elsewhere in northern and central Italy, the use of the *pittura* rapidly declined in the 15th century some time before the rise of mannerism as an aesthetic movement. A more plausible explanation – and in the spirit of Foucault's genealogical analysis – is a change in an important component of the matrix of power relations when republican forms of rule were replaced by an aristocratic monarchy that would eventually lead to the emergence of absolutism in the 17th century. The practice persisted in Florence (the subject of Edgerton's study) in the context of violent, political battles between the advocates of republican and aristocratic rule (Edgerton 1985). Mannerism was a feature of the courtly form of painting that developed in Florence in the 16th century as republicanism declined, but it was the cultural *symptom* of a change in power relations rather the cause.

With this analysis of virtual marking and its political contexts in mind, I will now turn, in a genealogical spirit, to a consideration of how the case of virtual marking we have just considered permits another kind of visual criminological analysis of the spectacle of crime and punishment in our own day.

Virtual marking and modern spectacle

Reflecting on the deaths of Timothy McVeigh and Juan Raul Garza in the early years of this century, the first US federal executions since 1963, Conquergood (2002) found Foucault's evocations of the spectacle of the *ancien regime* scaffold more resonant than his sober descriptions of modern penitentiary punishment. There were certain continuities between the dramaturgy of execution in our own age and the spectacle of the scaffold described by Foucault. Seeing 'a theatre of retribution and revenge' (Conquergood 2002: 359), he observed that the hunger for punitive spectacle had been evident in a gubernatorial campaign of the time, when images of the San Quentin gas chamber were used in TV commercials. But the possibilities of punitive spectacle in the present day are not limited to execution, as Brown's (2009) study of the spectacular dimensions of imprisonment has shown. Whereas Conquergood saw this desire for punitive theatre as symptomatic of a major shift in social attitudes to punishment since the mid-1970s, others have noticed a longer duration in modern punitive spectacle. Notwithstanding important debates over whether there has been a broader punitive turn in the last four decades,⁸ it is quite possible to argue that crime and punishment was already caught up in a modern society of spectacle originating in the 19th century.

Arriving in 1839, photography's early years saw its use as a technology to record the faces of convicts (Finn 2009). In this context and in both Britain and France the punitive possibilities of the photograph were discussed (Carney 2010). Moreau-Christophe, the French Inspector-General of Prisons, argued in 1854 for the more general and systematic use of the photograph in criminal identification but also its possibilities in punitive spectacle. Writing in *La Lumière* (the first French periodical solely devoted to photography), he declared that the systems of criminal identification would be improved through 'inflicting this new mark' (Phéline 1985: 53). In France the branding iron for convicts had been abolished in 1832 and, by means of this telling comparison, M. Moreau-Christophe brought together, first, a mode of marking punishment and, second, a technology of identification. The comparison with the branding iron was also made in Britain where, as late as the 1860s, the letters B.C. were marked on the skin of army offenders of 'bad character' (Jay 1991: 110). In 1868 *The Photographic News* (16th October) argued that 'a photographic portrait would be more humane and marginally less degrading' while, in a less sanguine manner, *The Daily News* (3rd February, 1871) condemned the new 'torture by photography' (quoted by Jay 1991: 111). Such concerns were aired amid the rise of modern forms of actual and virtual spectatorship.

The form and content of late 19th century newspapers reflected a new attention to the spectacles of the city as well as to sensational events, including political scandal, war, disaster and, of course, crime and punishment. At the same time there was a brisk trade in crime photographs leaking out from the offices of police photographers, as Parry's (2000) study of Paris in the late 19th century has

shown. In this regard, the virtual spectacles in newspapers and in circulating photographs were continuous with the actual spectacles of the city both in the everyday and in the extraordinary (Schwartz 1998). Such a spectatorial stance was evident in popular fictional literature and factual accounts relaying stories of sensational crime (Leps 1992). Photography and the mass media ensured that punitive spectacle did not abate in the transition to modernity. Writing in the 1960s, Erikson observed that the historical transformations leading to the decline of public punishments in the late 18th and early 19th century ‘coincided almost exactly with the development of newspapers as a medium of mass information’. They continue to ‘offer much the same kind of entertainment as public hangings on a Sunday or a visit to the local gaol.’ (Erikson 1966: 11-12). Looking back on the rise of the 19th century mass media and linking it in the same way to the present, Canetti, whose work in 1960 also recalled the inter-war period of the 20th century, observed in his analysis of the ‘baiting crowd’ that ‘everybody takes part in public executions through the newspapers. [...] The baiting crowd is preserved in the newspaper reading public’. If this ‘crowd’ of virtual spectators is less forceful, it is also more irresponsible and much more stable since it neither needs to assemble for the event nor disperse afterwards. In the modern media spectacle, the crowd is in attendance *all the time* (Canetti 1992: 59–60). Whether it was in the context of a cultural shift in sensibilities or a reconfiguration of power relations or, more likely, a combination of both (Garland 2009), the new forms of virtual, spectacular mass media either supplemented or replaced the actual spectacles of punitive ritual from the previous age.

Similar kinds of observation have been made in the case of the video screen. Mathiesen (1997: 215–234) echoes Canetti’s argument by speaking of ‘the executions (real or metaphoric) on the screens of modern television’. Against Foucault, he finds that punishment, far from being the most hidden part of the penal process, becomes conspicuous in what he calls the ‘synopticon’. Indeed, he feels that the 1757 execution of the would-be regicide, Damiens, with which Foucault (1975/1981) famously opens *Discipline and Punish*, is but little compared to what we see today in the synopticon. He argues that the isomorphism of certain panoptic and synoptic technologies is evidence for similarity in modes of power. Foucault (1975/1981:203) had already noted the architectural correspondence between Bentham’s panopticon and the earlier menagerie of Le Vaux at Versailles with a central, octagonal observatory from which the king could see the surrounding cages, or the contemporary panorama of Barker (again a central tower opening onto a painted simulation of a land, sea or cityscape, with or without an historical event such as a battle) in which the paying spectators occupied ‘the place of the sovereign gaze’ (*ibid.* p. 317). Bentham anticipated admitting the public to the observation tower of the panopticon thus representing the whole of society observing its deviants, acting to survey and supervise. Hence the very structure of the panopticon

also permitted spectatorship, and in our own age camera and screen are turned to both surveillance and spectacle (Mathiesen 1997), mediated by the greater intensity and extent of photographic force in our mass media (Carney 2010).

Canetti's understanding of the modern 'crowd' as the audience of a mass-media spectacle looked back on a period when it was also possible for ordinary soldiers in Nazi death squads to capture trophy images and circulate them informally (Morrison 2004). In a different setting, where modes of punitive spectacle were still directed at the actual body in the public torture lynchings of the southern United States (Toinay and Beck 1992; Garland 2005) forms of virtual marking coexisted. A form of modern spectatorship commemorated these lynchings in postcards and other kinds of circulating photograph (Allen et al 2000). Such practices were found again in the Abu Ghraib images of torture in which performances for the camera and a wider audience were anticipated (Hamm 2007; Carrabine 2011). For Sontag (1979), the practice of photography always had the potential for a violent, predatory practice. It is possible to trace the emergence of new examples of photographic predation in the phenomenon of the paparazzi and in certain cultural forms at the turn of the 1950s to the 1960s as post WW2 consumer culture expanded (Carney 2012). In his conceptualisation of 'decivilising' punishment in recent times, Pratt (2000) described spectacular aspects, among which, for example, we can find practices from 'naming and shaming' to the use of 'jail cam', opening up the inside of an Arizona prison to the public gaze (Lynch 2004). Most recently the photographic medium has revived an almost Lombrosian use of the photographic image, creating stigmatised categories of the underclass in a punitive spectacle of 'meth' (methamphetamine) users (Linneman and Wall 2013). Hence there is an argument that a line of continuity – of genealogical 'descent' – links the rise of the modern mass media in the first half of the 19th century, through the 'yellow press' of the late 19th century to our own present, and along this line, with an older source, the punitive tactic of visual marking has been an ever-present force.

Addressing this longer duration of photographic power, ethical dilemmas about the spectatorial position and its potential in different contexts to construct empathy, fear, horror, fascination and indifference (Carrabine 2012), betoken the intensity of forces in circulating images and the problems they present to criminological analysis. Hence the question of the power to punish or torture through the photograph raises issues about the ethical stance of the spectator. Quoting Levi-Strauss (2003: 8), Carrabine (2012) sees the key ethical question as: 'what right have I to represent you?' To pose such a question in ethical terms is also to raise the problem of the complex power relations between the subject of the photograph, the agent that takes and displays the photograph, and the spectating audience. We have here an interaction between bodies, affects and forces: the bodies

and affects of spectators and spectated; the forces of the circulating photograph. Thus in ethical and political terms, we engage with these images not just at a cognitive level but also at the affective level (Young 2014), and, in addition to attaching spectators to the 'scene of the crime' (Young 2010), they attach them to the bodies of criminals in a virtual spectacle of visual, punitive marking.

Conclusions: The punitive tactic of marking as a history of the present

There are three stages in the argument of this article. First, based on his 1973 course, *The Punitive Society*, I have given an explication and analysis of Foucault's presentation of the 'marking' punitive tactic in order to highlight the 'virtual' aspect of marking. Second, a form of virtual marking hitherto unexamined in criminology, the case of the *pitture infamanti* – the defaming, public portraits in visual regimes of the early renaissance period – has been analysed. Finally, in a genealogical spirit, I propose that the tactic of virtual marking should be considered in our own spectacle of the mass media. Foucault's perspectives on punishment and genealogy have formed the theoretical frame. Drawing on Nietzsche's work, Foucault's method is genealogical in its understanding of punitive practices in terms of power relations and analysing them as a multiplicity rather than as a unity. Genealogical method also considers the *use* to which the traces of historical phenomena may be put in order to elaborate an understanding of our own time, or, in Foucault's terms, a 'history of the present'. It is a method that has informed this article, in the approach both to analysing Foucault's own texts and to examining the case of the *pitture infamanti*.

In what way may we use the *pitture infamanti* as a history of the present, as a contribution to the genealogical analysis of the modern spectacle of punishment? If we understand them as a punitive tactic of virtual, visual marking, we learn from studies of the early Italian renaissance (with indications of the same phenomenon in contemporary Germany, Bohemia and Poland) that they were used among a ruling class of burghers or what we may call an early 'bourgeoisie'. Undoubtedly, such marking could also be used as an expression of sovereign power, but in these cases the power was the more 'communal' expression of a new class of merchants in alliance with an old class of aristocrats who 'bought into' (literally as well as metaphorically) the political and economic milieu of a commercial and financial urban regime. As a spectacle, such virtual marking-punishment depended on engaging the populace as spectators in front of a realistic image of the body. The bodies of viewers were thus immediately pulled into the image in a tangible, affective manner. In this way, the naturalistic aesthetics of light, space and three-dimensional modelling of the body that we associate with the so-called 'high art' of the renaissance were also turned to spectacular punitive practices. At one and the same time they (i) directly defamed a person, (ii) represented a process of defamation and (iii) represented their defamed status. In this respect the images were *both performative and*

representational, and depicted the body in order to facilitate memory and recognition. Such imagery was also inserted into a cultural circuit of the actual and the virtual in spectacular performance, a circuit of forces travelling through three relays: actual public punishments, the Last Judgement punishments found in church frescoes and panel paintings, and the *pittura infamanti*. Thus we see a lineage linking one society of spectacle to another, the 'bourgeois' societies of the early renaissance, representing historical vacuoles that temporarily held sovereign power at arm's length, and our own society of spectacle in a commercial and financial society, in which the circulating photograph recruits mass audiences, acting as a vector of performances and representations of a punitive power that 'marks' the body and serves as a vehicle for memory and recognition. Sekula's study of 19th century archive photographs (Sekula 1986; see also Carrabine 2014), demonstrated 'honorific' and 'repressive' representational forms: those depicting the elevated status of the sitter (such as in studio portraiture) and those representing the repressed status of the subject (such as found in the institutional photography of criminals and the mentally ill). There is a clear echo of the renaissance case considered here, where portraits of infamy circulated in an economy of the image in contrast to pictures of fame. Sekula sees these images in cognitive terms as constructing the self-image of middle-class portraiture opposing itself to the exemplary, othering images of the repressed classes. But the case of the *pittura infamanti* allows us to discern another dynamic involving the performative force of the image, which not only serves to depict a cognitive contrast but is also part of social processes that *enact* the spectacular production of honour and repression. The renaissance example shows how this process may also be an intra-class phenomenon; indeed it is a punitive image that can be used to bring down the most elevated of persons. It is in this way that Sekula's account of the honorific and repressive functions of portraiture should be supplemented with an account of how the photographic image may have an explicitly *punitive* power in our own age. With this perspective we return to Foucault's genealogical method where the body plays a central role as 'the inscribed surface of events' (Foucault 1971/1984: 83). Circulating in spectacle, the punitive photograph is thus a scene and means of bodily inscription, a tactic of *virtual* marking.

Work on the theory of punishment in our own age has in fact suggested a mixture of punitive tactics. Thus, for example, exclusionary punishments have been inserted into the practices of sovereign violence (Krasmann 2007), while forms of compensation, particularly the fine, are as important as confinement and betoken non-disciplinary or post-disciplinary modes of power (O'Malley 2009). In short, Foucault's apparent lock-step correlation of a particular society with a specific form of punishment should only be regarded as an initial analytic gesture. His theoretical purpose is to outline the relation of forms of punishment to particular, 'typical' societies, and therefore link them to different kinds of power relation. In reality there will be both multiplicity and hybridity of power

relations and punitive forms in any one society. This reconfiguration of Foucault's approach reinforces the views of those who have argued that it may be less important to speculate on punishment as a whole in any one society and, instead, analyse how punishment breaks down into heterogeneous practices (O'Malley 1999; Matthews 2005) as well as, in a genealogical spirit, carefully differentiate between intentions, attitudes and practices (Matthews 2014: 117--37). Following Foucault's four-fold analysis of punitive tactics, it is suggested, therefore, that work on degrees and kinds of punishment in our own time should seek to analyse them in terms of different punitive tactics and their linkages to the operation of power. The argument of this paper is also intended to encourage that kind of perspective.

We could say Foucault may have been prone at times to confusion, error, indecision, self-contradiction and rhetorical excess, and no doubt many other faults, but it is better to make constructive *use* of his prodigious thinking by looking at both the published output and the *Collège de France* courses as ideas in development and tools of analysis. Basically, he allows for – even if he never fully elaborates – the possibility of *both* a multiplicity of power relations *and* a multiplicity of punishments in any one era. This is compatible with a Nietzschean genealogical perspective. What Foucault does, in this genealogical way, is to allow for multiplicity; but also, analytically, he identifies the four, great, punitive tactics understood in the context of a specific array of power relations. Using Foucault, what this article does is to show the following. If Foucault envisaged the marking tactic in a privileged relationship to the power relations of sovereignty, then he was mistaken. We have seen that the marking tactic was used in what might be called a more 'bourgeois' kind of society, with a number of features not dissimilar to our own, in which sovereign power was kept at bay. The forms of punishment in general, such as the scaffold, the pillory and so forth, were familiar and were implemented by, and expressions of, sovereign power in many other parts of Europe. But in these Italian city states of this period they could be operated by another configuration of power, the power of a kind of 'bourgeois' elite in a society of spectacle using a particular cultural economy of *fama* and *infamia* both at the level of law and at the level of aesthetic production. One form of marking, the form of virtual marking we have examined here, *the pitture infamanti*, rose and fell with these forms of republican *commune*. But, if this punitive tactic disappeared, it is arguable that it would arise in another form, with different aesthetics and different power dynamics, in our own kind of society of spectacle. Hence, we can also assert that Foucault was mistaken on a second issue when he ignored the rise of a new form of *virtual* punitive marking in modernity even as the old forms of *actual* punitive marking rapidly declined. But it is also arguable, in both his publications and his courses, that he gave us the tools, the genealogical perspective, the analysis of power and the classification of punitive tactics that enable us, now, to make this critical judgement.

Notes

1. *La Société Punitiv*e has not yet been translated into English: all translations from this text are my own. References to other Foucault texts will be to the English translations. It is interesting that the last texts of the *Collège de France* course to be transcribed and published in French are those that deal with crime and punishment. The last remaining unpublished course is 'Penal Theories and Institutions' from 1972.

2. The phrase 'society of spectacle' was first used in 1967 in the Situationist analysis of Debord (1994). The terms 'spectacle' and 'society of spectacle' are used here in a broader, descriptive sense as found in Carney (2010) without any necessary connection to the Debordian theoretical framework.

3. Foucault (1971/1984) extracts and shapes the concepts 'descent' (*Herkunft*) and 'emergence' (*Entstehung*) from a review of a number of Nietzsche's works.

4. Indeed the editor of this volume, Bernard Harcourt, remarks on the links between Foucault's description of ancient Greek punishment and Agamben's theorisation of the *homo sacer* (Foucault 2013a: 12, 21; Agamben 1998). In the previous year's lectures, 'Lectures on the Will to Know', his first course at the Collège de France in 1970–71, Foucault touched on the social context of exclusionary punishments in ancient Greece (Foucault 2011/2013b: 179–81).

5. Here the term 'renaissance' will follow Edgerton's (1985) usage.

6. Lentz's (2000) study focuses on defamatory letters and images in Germany in the 14th and 15th centuries, which bear many similarities to the *pitture infamanti*. Though I will focus mainly on the *pitture*, I will refer to Lentz's study when relevant. It is arguable that certain features of the Italian city states were also present in the political communities examined in Lentz's research.

7. Painted on the exterior of public buildings and therefore subject to the degradations of weather and political change, no *pitture infamanti* have survived. Our knowledge of them comes from detailed written record in the archives, though 16th century preparatory sketches by Andrea del Sarto are available (see Fig. 1). Other forms of defaming portraiture have endured in a small number panel paintings and frescoes in churches, and in the few images of Lentz's (2000) research.

8. See, for example, Pratt *et al.* (2005) and Matthews (2005; 2014: 117–37).

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