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## SPECTACULARIZING CRIME: GHOSTWRITING THE LAW

**ABSTRACT.** Beginning with an examination of the process whereby punishment turns its point of application from body to subject, and its scene of application from public to private – as Foucault outlines in *Discipline and Punish* – this paper attempts to complicate Foucault’s thesis of a shift from corporeal visibility to invisibility as it appears in his account of the withdrawal of punishment from a public, spectacular domain into the no less public yet private sphere of the prison by attending to the transformations of spectacle itself which accompanied this process of disembodiment. The embodied spectacle of punishment – the state’s theatre of cruelty – gave way to a disembodied discursive explosion of images of crime and punishment, and this process can be traced through the texts of Bentham (*Panopticon Letters, Fragment on Ontology*) and Dickens (*Great Expectations*). Foucault’s dichotomy between the spectacle of public punishment and the disciplinary, non-spectacular prison overlooks the importance of images of crime and punishment which come to pervade public discourse and imagination as part of the installation of the disciplinary régime. Spectacularizing entails a move from the specific, embodied singularity of spectacle to the condition of a generalized, disembodied, and continual insistence: it is this that constitutes and characterizes the shift from spectacular sovereignty to disciplinary surveillance. This spectacularizing is akin to the spectre: “some ‘thing’ that remains difficult to name: neither soul nor body, and both one and the other” (Derrida). The spectre haunting the nineteenth century was the criminal, and that century’s rationalizing of crime and punishment was based upon a fear of the spectral itself.

**KEY WORDS:** Bentham (*Panopticon Letter, Fragment on Ontology*), crime, criminal, Derrida, Dickens (*Great Expectations*), Foucault, Discipline and Punish imagination, prison, punishment, spectacle

The spectacularising of crime, which begins in the later eighteenth century and continues today, is part of the process whereby punishment turns its point of application from body to subject, and its scene of application from public to private, as Foucault outlines in *Discipline and Punish*.<sup>1</sup> This process might even be described as a shift from spectacle to surveillance

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<sup>1</sup> M. Foucault, *Discipline and Punish: The Birth of the Prison*, trld. Alan Sheridan (New York: Vintage, 1979). References to the original text are to M. Foucault, *Surveiller et punir: naissance de la prison* (Paris: Gallimard, 1975).



except that spectacle is itself transformed by the changes to the social which accompany this process of disembodiment.

Foucault's thesis entails a notion of a shift from corporeal visibility to invisibility. Industrialisation, the concentration of populations in urban centres, new systems of hygiene involving commercialised abattoirs and the professionalising of an emerging funerary industry, not to mention the development of the medical profession, increasingly removed the body – its detritus and death – from human experience. Victorian *pudeur* is one manifestation of this removal. Yet, as Foucault was one of the first to point out, no era could have been more obsessed with making sex speak: disembodiment is accompanied and even effected by a discursive explosion. Similarly, violence, and its effects upon bodies, was increasingly removed from experience and spectacularised: a process which transforms the social and cultural nature of spectacle. The embodied spectacle of punishment – the state's theatre of cruelty – gives way to a disembodied yet theatrical and, increasingly, literary practice in which images of crime and punishment are both more pervasive and effective. Reformist demands for changes to the performance of executions – the programme of a more effectively monologic spectacle, staged at an awe-inspiring distance and deliberately removed from dialogic carnivalesque theatrics – along with the push toward imprisonment as the new, morally focused mode of punishment, both drew upon drama and literature and drew influence from literature. Even in the transitional moment of the simultaneous renovation of public executions and the introduction of the new prisons, the imagination is the chief faculty addressed. The nineteenth century came to speak of crime and its punishments to a degree which was inversely proportionate to the public appearances of these phenomena, particularly punishments. A consequence of a more strictly regulated age was, initially, a massive overproduction of criminality and an enormous proliferation of images and narratives of crime and punishment across a variety of media.

This is a spectacularising that has something about it of the spectre: “some ‘thing’ that remains difficult to name: neither soul nor body, and both one and the other.”<sup>2</sup> The spectre that haunted the nineteenth century was, notwithstanding Marx and Engel's claims, the criminal. A simple dichotomy between embodied, public spectacle and disembodied, private surveillance is neither able to account for the persistent structuring of surveillance by elements of spectacle, nor for the way in which the ration-

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<sup>2</sup> J. Derrida, *Specters of Marx: the State of the Debt, the Work of Mourning, and the New International*, trans. P. Kamuf (Routledge: New York & London, 1994), 6.

alising of crime and punishment was based upon a fear of the spectral itself.

Spectacularising is, as its grammar suggests, a move from the specific, embodied singularity of spectacle to the condition of a generalised, disembodied, and continual insistence: it is *this* that constitutes and characterises the shift from spectacular sovereignty to disciplinary surveillance. The occasional, even seasonal, display has become an insistent quotidian shadow. If there are not the conditions for spectacle as it once was, there are its effects: more intensive, more extensive.

Let us begin with three scenes: an execution and two childhood encounters, one autobiographical, the other fictional. Each scene is part of a text that will be named, metonymically, for its author: Foucault, Bentham, Dickens.

The first of these will probably be familiar enough from the opening of *Discipline and Punish*. In 1757, Robert-François Damiens the regicide, has this sentence executed upon his person:

on a scaffold . . . the flesh will be torn from his breasts, arms, thighs and calves with red-hot pincers, his right hand, holding the knife with which he committed the said parricide, burnt with sulphur, and, on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds.<sup>3</sup>

Foucault then cites contemporary accounts of the punishment whose horrific descriptive power tends to obscure the execution's ineptness as spectacle: the sulphur only burns the surface of his hand, the executioner is unable to tear much flesh from either torso or limbs, the horses are unable to draw him limb from limb – one even collapses – so that the executioner is forced to hack the limbs apart. Even the moment of death is uncertain. In a system in which the law's word is to be made flesh in the body of the condemned, the incalculable resistance of that flesh to its sentence writes its own critique of that law's sovereign majesty which was to have been spoken through spectacle. Structurally this is *Discipline and Punish's* primal scene, its image of "torture as public spectacle", and I shall discuss it in more detail later.

The second scene is nearly contemporary with the first: it is a scene from Jeremy Bentham's childhood, recounted some sixty or seventy years later, and concerns Bentham's fear of ghosts and spirits. It is cited in Ogden's prefatory biographical sketch in his presentation of Bentham's theory of fictions. The story involves the servants of the Bentham house-

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<sup>3</sup> Foucault, *supra* n. 1, at 3.

hold, to whom “it was a permanent source of amusement to ply me with horrible phantoms in all imaginable shapes”:<sup>4</sup>

So dextrous was the invention of those who worked upon my apprehensions, that they managed to transform a real into a fictitious being. His name was *Palethorp*; and Palethorp, in my vocabulary, was synonymous with hobgoblin. The origin of these horrors was this: . . . One morning, the coachman and the footman took a conjunct walk to a public house kept by a man of the name (Palethorp); they took me with them: it was before I was breeched. They called for a pot of beer; took each of them a sip, and handed the pot to me. On their requisition, I took another; and, when about to depart, the amount was called for. The two servants paid their quota, and I was called on for mine. *Nemo dat quod non habet* [no one can give what they do not have] this maxim, to my no small vexation, I was compelled to exemplify. Mr Palethorp, the landlord, had a visage harsh and ill-favoured, and he insisted on my discharging my debt. At this very early age, without having put in for my share of the gifts of fortune, I found myself in the state of an insolvent debtor. The demand harassed me so mercilessly, that I could hold out no longer: the door being open, I took to my heels; and, as the way was too plain to be missed, I ran home as fast as they could carry me. The scene of the terrors of Mr Palethorp’s name and visitation, in pursuit of me, was the country-house at Barking; but neither was the town-house free from them; for, in those terrors, the servants possessed an instrument by which it was in their power, at any time, to get rid of my presence. Level with the kitchen – level with the landing-place in which the staircase took its commencement – were the usual offices. When my company became troublesome, a sure and continually repeated means of exonerating themselves from it, was for the footman to repair to the adjoining subterranean apartments, invest his shoulders with some strange covering, and, concealing his countenance, stalk in, with a hollow, menacing, and inarticulate tone. Lest that not be sufficient, the servants had, stuck by the fireplace, the portraiture of a hobgoblin, to which they had given the name Palethorp. For some years, I was in the condition of poor Dr Priestley, on whose bodily frame, another name, too awful to be mentioned, used to produce a sensation more than mental.<sup>5</sup>

Here we have the young Bentham preyed upon by superstition and folk theatricals, led to commit the very confusion his later rationalising of ontology and law will be at such pains to avoid: the confusion of a real and a fictitious entity, produced by the effects of a simple spectacle upon a susceptible imagination.

The third scene unfolds in a graveyard: it is the terrific opening of Dickens’ *Great Expectations*, set in the 1820s. Magwitch, escaped from the Hulks where he was awaiting transportation to New South Wales, is charging Pip with the task of delivering food and a file to him:

“You do it, and you never dare to say a word or dare to make a sign concerning your having seen such a person as me, or any person sumever, and you shall be let to live. You fail, or you go from my words in any partickler, no matter how small it is, and your heart and your

<sup>4</sup> J. Bentham, *The Works of Jeremy Bentham*, ed. J. Bowring (New York : Russell and Russell, 1962), Volume 10: *Memoirs of Bentham*, 18.

<sup>5</sup> *Ibid.*

liver shall be tore out, roasted and ate. Now, I ain't alone, as you may think I am. There's a young man hid with me, in comparison with which young man I am a Angel. That young man hears the words I speak. That young man has a secret way pecooliar to himself, of getting at a boy, and at his heart, and at his liver. It is in wain for a boy to attempt to hide himself from that young man. A boy may lock his door, may be warm in bed, may tuck himself up, may draw the clothes over his head, may think himself comfortable and safe, but that young man will softly creep and creep his way to him and tear him open. I am a keeping that young man from harming of you at present moment, with great difficulty. I find it wery hard to hold that young man off of your inside. Now, what do you say?"<sup>6</sup>

This third scene may be set in a dramatically suggestive location, yet it makes little use of even the rudimentary theatrical means employed by the Bentham family servants to achieve effects that, not only set off a whole novelistic narrative but also, organise and mark the young Pip's subjectivity as surely as was Bentham's by his early experiences, never freeing himself- personally or philosophically – from his fear of ghosts.

It is this shift, from an apparently, if also ineptly, theatrical order of demonstration and punishment through to a more subjectivised, but no less spectacular, imagining of the law and its powers that I want to explore.

#### FOUCAULT: FROM SPECTACLE TO SURVEILLANCE

In demonstrating the end of one régime of spectacular corporeal punishment which was to be replaced with a discretely humane incarceration and, as the argument goes, a generalised disciplining of bodies in lieu of their scarification and dismemberment before the law, Foucault gives an account of a withdrawal of punishment from a public, spectacular domain into a no less public but private sphere of the prison.<sup>7</sup> It is also an account of the displacement of punishment's point of application from the body to a newly-formed subjectivity, interpellated by the disciplinary régime.

<sup>6</sup> C. Dickens, *Great Expectations* [1860–61], ed. A. Calder (Penguin: Harmondsworth, 1965), 38.

<sup>7</sup> The prison is clearly a public institution yet it is constituted as a private space. This tension becomes increasingly evident as purpose built prisons emerge, and the borders between prisons and the public are more strictly regulated. Externally, prison architecture refers to the pre-disciplinary corporeal régime – for example, New Newgate's mural embellishments of chains and irons, or the more general carceral gothicism of slit windows, towers, and battlements – while simultaneously functioning as the privative locus of the disciplinary régime, within whose walls the prisoner is to be visible as penal subject yet sequestered from society at large. For a more detailed discussion of the mixed codes of George Dance Jr.'s New Newgate design, see J. Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago & London: Chicago University Press, 1987), 240–252.

The descriptive force of this demonstrative evocation of the old régime draws upon a tradition of gallows literature that is to undergo its own transformation, while retaining many of its old functions. It is worth remarking, as Foucault does not, that this spectacular punishment comes to us as a narrative text: we are asked to *imagine* the spectacle of punishment, to rehearse this theatrical scene in our heads. The process described illustrates a displacement of law from body and into text. In the shift toward a penal régime, the law inscribes itself upon a remade social body: and so strengthens its effectivity.

This textualising was not altogether a rarefying operation: it did not simply answer to the demands of an episteme. There were other calls upon its time. As life became more standardised, and as the epic was well and truly dispatched from literature by the success of the novel, the success of the gothic and, eventually, mystery and detective stories answered a need for an engagement with the dimensions of experience that were being eradicated from everyday life. The most direct example of this is the transformation of gallows pamphlets into the novel itself at the same time as the gallows were replaced by prisons and penal colonies. Henry Fielding's *Tom Jones* is an early example, the novel by the dramatist, magistrate and author of *Jonathan Wild*, based upon the exploits of the thief turned thief-taker.<sup>8</sup> In the quotidian absence of certain experiences, those lost in the success of the searching episteme of modernity, the adventure of knowledge provided an entertainment and spectacle which, while being unable actually to take the place of what it had displaced, offered an acceptable, stabilising metaphoric alternative. The detective story, then, would answer to two distinct, related imperatives: the adventure of knowing reason, and the deincarnation of everyday life, especially as evidenced in the new penal régime. Yet, as John Bender has so eloquently argued, the novel was also a prime agent in the very process of disembodiment to which it offered compensation through a mediated version of those experiences which were ceasing to be part of everyday life.<sup>9</sup>

But what was happening to punishment?

The old partners of the spectacle of punishment [*le faste punitif*], the body and the blood, gave way. A new character came on the scene, masked. It was the end of a certain kind of tragedy; comedy began, with shadow play, faceless voices, impalpable entities. The apparatus of punitive justice must now bite into this bodiless reality.<sup>10</sup>

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<sup>8</sup> H. Fielding, *The History of Tom Jones* [1749], ed. R.P.C. Mutter (Harmondsworth: Penguin, 1966); H. Fielding, *Jonathan Wild* [1743], ed. D. Nokes (Harmondsworth: Penguin, 1983).

<sup>9</sup> *Supra* n. 7, *passim*.

<sup>10</sup> Foucault, *supra* n. 1, at 16–17.

There are powerful echoes here of the language of Marx's *Eighteenth Brumaire*,<sup>11</sup> however, we can still address some elements of this passage's imagery, particularly its announcement of a spectre's arrival upon the scene of punishment. Even as he describes this 'end to spectacle', Foucault's language quite deliberately deploys theatrical metaphors, even the image of the masked prisoner, a figure from Bentham's Panopticon project. What is less deliberate, or developed, is the relation between spectacle and body.

'Spectacle' has a very specific sense in Foucault's account: the two terms translated interchangeably as 'spectacle' in Alan Sheridan's translation are *spectacle* and *le faste punitif*. Both terms assume an element of corporeality, especially *le faste punitif*, the punitive pomp featuring the torture and execution of the condemned. The dichotomy between spectacle and surveillance is organised in terms of a corporeal continuum, ranging from bodily to bodiless, and it is on this basis that Foucault distinguishes between the theatricality of spectacular corporeal punishment and the imputed non-theatricality of penal confinement.

Our society is not one of spectacle, but of surveillance; under the surface of images, one invests bodies in depth; behind the great abstraction of exchange, there continues the meticulous, concrete training of useful forces; the circuits of communication are the supports of an accumulation and a centralising of knowledge; the play of signs defines the anchorages of power; it is not that the beautiful totality of the individual is amputated, repressed, altered by our social order, it is rather that the individual is carefully fabricated in it, according to a whole technique of forces and bodies. We are much less Greeks than we believe. We are neither in the amphitheatre, nor on the stage, but in the panoptic machine, invested by its effects of power, which we bring to ourselves since we are part of its mechanism.<sup>12</sup>

The contrast holds as a description of the final effects of subjectification, but not as a description of an absolute difference between two social forms. Yes, our current concept of the subject is fabricated by a social order based upon surveillance, but no, this does not take us off the stage. Further, this dichotomy takes no account of the changes to theatre itself which occur over this period – from an often rowdy, participatory mass engagement, performed in daylight or under artificial lighting which lit audiences as much as actors, to the sober, focused experience of a silent, darkened audience attending to a highlit stage – changes which are part of the reformist

<sup>11</sup> Foucault is clearly making a direct reference to Marx's famous formula for the repetition of history: "Hegel remarks somewhere that all the great events and characters of world history occur, so to speak, twice. He forgot to add: the first time as tragedy, the second as farce." See K. Marx, "The Eighteenth Brumaire of Louis Bonaparte" in *Surveys from Exile*, ed. D. Fernbach (Harmondsworth: Penguin, 1973), 46. See also Derrida's reading of spectral images throughout Marx's work in general and in "The Eighteenth Brumaire" in particular, *supra* n. 2, at 107–120.

<sup>12</sup> *Supra* n. 1, at 217.

discourses seeking a more controlled and effective theatre of punishment.<sup>13</sup> As an example of new theatrical practices – which tend towards spectacle, as a centrally controlled, unidirectional form – the panoptic machine itself shares the qualities of amphitheatre, stage and cinema, as implied in Foucault’s last remark that “we are part of its mechanism.” Taking Metz’s Lacanian concept of the cinematic apparatus, it can be shown that the panopticon is not simply the zone or mechanism of a ‘surveillance’ but, also of an imaginary projection and of a theatrical display manifesting, even as it is constrained by, such a projection.<sup>14</sup> Without going as far afield as Lacan and Metz, the point can be made by re-examining the specifics of the very mechanism Foucault’s argument invokes – the Panopticon – but first I want to explore the nature of the spectacle which the Panopticon was designed to replace.

For Foucault, the spectacle of punishment has the task of representing law and sovereignty: law represented through the appearance of its sentence, enacted upon the body of the criminal; sovereignty represented and reconstituted through the very spectacular exercise of its power. As Foucault puts it:

It was the task of the guilty man to bear openly his condemnation and the truth of the crime that he had committed. His body, displayed, exhibited in procession, tortured, served as the public support of a procedure that had hitherto remained in the shade; in him, on him, the sentence had to be legible for all.<sup>15</sup>

Such an account of punishment’s semiotic function presumes both a particular legal system, and a reduction of all the corporeal and social elements of spectacle to a coherent, legible event, whereas things were not so simple, even in Foucault’s account.

To take first the presumption of a particular legal system, the differences between English and European forms of legality have an enormous impact upon the general applicability of Foucault’s schema, one that seems to go unnoticed in many Anglo-American readings of *Discipline and Punish*.

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<sup>13</sup> This process of taming the theatre (and its audiences) did not reach its final stage until the end of the nineteenth century when Richard Wagner required that his audiences give their total attention to his *Gesamtkunstwerken* (Total Works of Art), yet the nineteenth century had gradually moved toward the conditions which we now accept as standard: a darkened auditorium, a well-lit stage, and politely attentive audiences. See I. Mackintosh, *Architecture, Actor and Audience* (London and New York: Routledge, 1993), 7–57. For a fictional description of early nineteenth century popular theatre and its less restrained audiences, see Dickens, *supra* n.6, at 272–278.

<sup>14</sup> C. Metz, *The Imaginary Signifier: Psychoanalysis and the Cinema*, trans. C. Britton, A. Williams, B. Brewster and A. Guzzetti (Bloomington: Indiana University Press, 1982), 3–16.

<sup>15</sup> *Supra* n. 1, at 43.

While the arguments about spectacle's role in representing the processes of law and criminal procedure are well-founded in the French and European context, things were very different in the case of English punishment which functioned within a more public legal system wherein the publicity of punishment could not be contrasted with the secrecy of process. Already part of an increasingly public and theatrical court process, when English punishment chose to alter its point of application it did so by a shift in the spectacular strategies applied to punishment, rather than by any return to secrecy. By contrast, Foucault describes the French situation in terms of a movement from the old régime's secret process – which only becomes public through the spectacle of punishment – to the new secrecy of an invisible punishment. In the English instance, it is through theatrical strategies (involving an economy of force) that punishment becomes disciplinary.<sup>16</sup>

The role of punishment in representing sovereignty additionally presumes a semiotic coherence and controllability about execution that seems questionable. Whatever it may have been designed to represent, it is not clear that it was able to be effective which, as Foucault notes, was one of the major motives for reform:

It was evident that the great spectacle of punishment [*le grand spectacle des peines*] ran the risk of being rejected by the very people to whom it was addressed. In fact, the terror of the public execution created centres of illegality . . . . The reformers of the eighteenth and nineteenth centuries were not to forget that, in the last resort, the executions did not, in fact, frighten the people. One of their first cries was to demand their abolition.<sup>17</sup>

Writing of the English experience, Thomas Laquer makes the point more directly:

The hangings and beheadings of seventeenth-, eighteenth- and nineteenth-century England were unpromising vehicles for the ceremonial display of power, if by this is meant the sovereign power of the state. They were more risible than solemn as they lurched chaotically between death and laughter. As often as not, executions were, and were known to be, utter disasters as 'imposing demonstrations' of authority, religious or secular. They were held in unprepossessing locations, with little attention to dramatic detail and many opportunities for generic slippage. Executions were the most aleatory of occasions and those responsible did very little to make them otherwise, to insure the triumph of a prescribed interpretation. The state seemed to show a perverse lack of interest in the solemnity of

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<sup>16</sup> On the history of criminal court procedure, see J.M. Beattie, *Crime and the Courts in England, 1660–1800* (Princeton, N.J.: Princeton University Press, 1986) and J.H. Langbein, "The Criminal Trial before the Lawyers", *University of Chicago Law Review* 45.2 (Winter 1978), 263–316.

<sup>17</sup> *Supra* n. 1, at 63.

hangings and in making its presence decently manifest. On the contrary, it perpetrated the shabbiest of rituals with the minimum of authorial control.<sup>18</sup>

This is the situation addressed by the various reformist voices which mix humanising motives with desires for the kind of state spectacle that public executions only promised, or which seemed to be achieved elsewhere. And this raises an issue of method that marks Foucault's analysis as much as the perspectives of these reformers: everyone seems to ignore the fact that their access to spectacular punishment is mediated by texts, and that their relation to these events is imaginary. When Bentham draws inspiration from the theatrics of the *auto-da-fé* he has not had the privilege of attending its deliberations. The reformers Laquer discusses – Henry Fielding, William Paley, Edmund Burke – were advocates of the improved staging of executions, for a more affective theatricality in executions so as to achieve the desired exemplary effect. These demands and recommendations are answered by the novelistic focus upon the condemned, as opposed to the almost exclusive focus upon the crowd in contemporary pictorial representations which – Laquer argues – was indicative of the actual social experience of English executions, thus giving greater imaginary force to the criminal figure. The broadsheet literature which had presented the criminal in romantic, heroic terms is transformed into the new novelic representation of the criminal as a moral example. The hanged person is now the admonitory figure they failed to be in the period's lived reality, as is clear in the 1820's and 1830's setting of *Great Expectations*.

Foucault offers a brief account of these reform programmes in his consideration of punishment, even opening his account with the claim that

<sup>18</sup> Thomas W. Laquer, "Crowds, Carnival and the State in English Executions, 1604–1868", in A.L. Beier, D. Cannadine and J.M. Rosenheim, eds. *The First Modern Society: Essays in English History in Honour of Lawrence Stone* (Cambridge: Cambridge University Press, 1989), 309. For a different account of execution crowds, see V.A.C. Gattrell, *The Hanging Tree: Execution and the English People 1770–1868* (Oxford: Oxford University Press, 1994), 90–99. Gattrell's critique of Laquer's thesis on the inadequacy of executions as displays of sovereign power merely observes that all such displays were inept right through the nineteenth century: inept, yet effective. Gattrell goes on to suggest that "the mayhem at executions can be read as indicating the state's olympian indifference to the effects achieved, its confidence in itself" (95–96). While he adduces documentary support for this contention, he also shows that the state was less indifferent to the potential for riots in certain instances – such as the executions of Colonel Despard and his co-accused (1803), Bellingham (1812) and Wilson (1820) – and so presents evidence for the case that the state had anxieties about its control of such spectacles. The arguments against Laquer's reading of crowd images are less well-founded: he makes no comment on the interchangeability of execution scenes in these images, and resorts to citing W.H. Auden on the compositional ironies of Breughel as an argument for the greater importance of the pictorially marginal execution scene over the centrally depicted crowd.

“The art of punishing . . . must rest on a whole technology of representation.”<sup>19</sup> The theatrical aspects of the reforms are described at length, but this summary will do as an indication of Foucault’s sense of their strategies:

This, then, is how one must imagine the punitive city. At the crossroads, in the gardens, at the side of roads being repaired or bridges built, in workshops open to all, in the depths of mines that may be visited, will be hundreds of tiny theatres of punishment. It will be a visible punishment, a punishment that tells all, that explains, justifies itself, convicts: placards, different-coloured caps bearing inscriptions, posters, symbols, texts read or printed, tirelessly repeat the code. Scenery, perspectives, optical effects, *trompe-l’oeil* sometimes magnify the scene, making it more fearful than it is, but also clearer.<sup>20</sup>

Yet, for Foucault, this is a sketch of the failed Enlightenment programme that so unexpectedly delivers up the modernised gothicism of the prison. The story, then, tells of a superseded scaffold, a failed theatre and a successful prison: “The scaffold, where the body of the tortured criminal had been exposed to the ritually manifested force of the sovereign, the punitive theatre in which the representation of punishment was permanently available to the social body, was replaced by a great enclosed, complex and hierarchised structure that was integrated into the very body of the state apparatus.”<sup>21</sup> The projected role for imagination in punishment is recognised as Foucault refers to “The theatre of punishment of which the eighteenth-century dreamed and which would have acted essentially in the minds of the general public [*sur l’esprit des justiciables*]”<sup>22</sup> – but the emphasis upon the failure of the Enlightenment programmes, their unexpected transformation into a generalised disciplinary structure – which is presented, rather unnecessarily and inaccurately, as the negation of that programme of theatrical visibility – leads to him to conclude that all of the reformist programme disappears, rather than allowing for its even more complex transformation and ghostly survival in the apparatus that was established.

We can now look at the specifics of the Panopticon as a response to the shortcomings of public punishment. That Foucault’s distinction between the amphitheatre, stage, and panoptic machine does not hold up on its own terms is relatively obvious, but what is less obvious is the nature of the continuity between these structures and their transformation during modernity. This is a transformation which shares the bodily continuum

<sup>19</sup> *Supra* n. 1, at 104.

<sup>20</sup> *Ibid.* n. 1, at 113.

<sup>21</sup> *Ibid.* n. 1, at 115–116.

<sup>22</sup> *Ibid.* n. 1, at 116.

organising the distinction between spectacle and surveillance, for it is the social nature of the body – which is being abstracted into a property and an alienable productive labour resource – that is at stake here. The body’s material resistance to the abstract precision of sentences, its affective dimensions magnified in the crowd: these aspects of corporeality are being stage-managed into a more plastic, less immediate, condition as everyday life is drawn away from natural rhythms and impulses by the structures of bourgeois society. Concretely irregular seasonal time and relatively loosely structured working days are replaced by the abstract regularity of invariant schedules.<sup>23</sup>

Bentham’s Panopticon design is thoroughly and avowedly theatrical. Writing of the establishment of a “family” of inspectors in the central observation lodge, Bentham even likens the activity and scene of inspection to that of an “entertainment”:

It will supply in their instance the place of the great and constant fund of entertainment to the sedentary and vacant in towns – the looking out of the window. The scene, though a confined, would be a very various, and therefore, perhaps, not altogether an unamusing one.<sup>24</sup>

The theatricality of Bentham’s design is not an unusual element in the discourses agitating for reform of punishment: it seems to be one of the strongest currents. On Thomas Laquer’s reading of English executions, it is a sense of their theatrical ineptness that directs calls for reform. And here we might think again of the Damians execution as a non-exemplary example.

The “Postscript” to *The Panopticon Letters* contains Bentham’s most explicitly theatrical observations and ideas – from public audiences to the wearing of masks – and contains a clue to one of the revolutionary theatrical principles that structures the Panopticon itself: the difference between a criminal as a single actor before a large audience (as in a criminal trial and execution) and a single inspector of an individuated, separated mass of criminals. Where the individual is inured to disapproval and able to play up to notoriety, the larger – divided – group become subjected to their condition of visibility (much like modern audiences). This distinction – between public, spectacular visibility and the more private visibility of surveillance – marks the difference between the old and new régimes. The constant “consciousness of being seen”, that is the designed condition of the Panopticon, differs from that of the public space because of its privative character: the lack of any resultant “insensibility” lies in the nature of

<sup>23</sup> For a detailed consideration of the transformations of time in modernity, see B. Adam, *Timewatch: The Social Analysis of Time* (Cambridge: Polity Press, 1995).

<sup>24</sup> J. Bentham, *The Panopticon Writings*, ed. Miran Bozovic (London: Verso, 1995), 45.

what is displayed – body versus subjectivity – yet it is a bodily visibility which forms and acts upon an unseen interiority. Further to the usual conditions of surveilled confinement, Bentham proposed public viewings of allegorically masked prisoners in a chapel:

The scene of devotion will be decorated by – why mince the word? – by a masquerade: a masquerade, indeed, but of what kind? not a gay and dangerous, but a serious, affecting, and instructive one. A Spanish auto-da-fe has still more in it of the theatre: – and what is the objection there? That the spectacle is light or ludicrous? No: but rather that it is too serious and too horrible.<sup>25</sup>

Even without the chapel, the Panopticon's theatricality involves a shift in modes of embodiment and subjectivity that form part of the transformations of spectacle.<sup>26</sup> Bentham objected to any situation in which criminals could stage themselves to an audience – such as in trials or executions – and thus draw strength and boldness from the crowd. His proposed use of masks: in its emblematic qualities, and in its explicit attempt to render individual criminals anonymous (thus protecting them from the supposedly inuring effects of scrutiny and departing from the pillory model of public exposure where the criminal was subject to visibility rather than, as here, the spectator) involves a disembodiment of the criminal actors which is not only reminiscent of the emblematic qualities of actors in classical drama, but also seeks to prevent the criminal from playing up their notoriety. To this extent, by denying criminals the comforts of theatre through a differently applied theatrical device and displacing street theatre in favour of classical tragedy, those in the Panopticon *are* Greeks, much more than Foucault believes.

<sup>25</sup> Ibid. n. 24, at 100 note.

<sup>26</sup> John Bender notes the Panopticon's theatrical elements and the way in which theatrical principles are deployed as part of a novelisation of punishment and – most importantly – its subjects:

Residues of prison as theatre remained even in Bentham's *Panopticon*, the postscript to which describes visitors assisting in the act of inspection by witnessing a charade of masked prisoners staged in a theatrically disposed chapel. . . . In this chapel, the prisoners become histrionic objects arranged to create a moral impact on a public audience. But fundamentally the penitentiary is a means of representation that removes prisoners into the mental realm of conscience. . . . as realised during the last two hundred years, the penitentiary has isolated prisoners from the public gaze, transforming them into subjects, characters, objects of imaginative projection. (*Supra* n. 7, at 202)

While Bender's concern is with the novelisation of penitentiary subjects, as well as with broader processes of subject formation upon the model of the prisoner, my concern here is the transformation of theatrical strategies into what I am terming spectacularisation: the difference being an emphasis upon the ghostly afterlife of corporeal theatrical practices rather than upon the generalisation of novelic forms of representation.

At the conclusion of Bentham's footnote comes an extraordinary injunction from the jurisprudential and philosophical campaigner against fictions:

*Nihil ex scenâ* [nothing comes of lying], says Lord Bacon, speaking of procedure in the civil branch of the law: *Multum ex scenâ* [much comes of lying], I will venture to say, speaking of the penal. The disagreement is but verbal: *Scena*, in the language of the noble philosopher, means *lying* in mine, *scena* is but scenery. To say, *Multum ex scenâ*, is to say, lose no occasion of speaking to the eye. In a well-composed committee of penal law, I know not of a more essential personage than the manager of a theatre.<sup>27</sup>

We will now turn to the implications of this contradictory rationalising of criminal law and penal institutions.

### BENTHAM: EXORCISING FICTIONS

This subject of ghosts has been among the torments of my life. Even now, when sixty or seventy years have passed over my head since my boyhood received the impression which my grandmother gave it, though my judgement is wholly free, my imagination is not wholly so.<sup>28</sup>

Let us now go back to Bentham's Palethorp anecdote: the young Bentham, victim of superstition, servants' pranks and the new laws of debt was led into ontological error, mistaking a real for a fictitious being. The subsequent details of haunted outhouses merely add to a depiction of which the pub is the primal scene. Bentham's literary executor John Bowring places the anecdote between accounts of reminiscences of his grandmother and his early, highly imaginative and literal-minded encounters with literary fiction, and Ogden quotes this passage (in his Introduction to *Bentham's Theory of Fictions*) as an example of his contention that: "Ghosts, no less than his horror of Legal Fictions, can be shown to have played their part in determining the intensity and pertinacity of his researches."<sup>29</sup> It is indicative of the lack of humour (at the least) of Bentham scholarship that neither Bowring nor Ogden admit the consideration that there is no meaningful distinction between Bentham's feelings about ghosts and his feelings for legal fictions, that ghosts and legal fictions occupy the same place in his thought.<sup>30</sup>

<sup>27</sup> *Supra* n. 24, at 101 note.

<sup>28</sup> Bentham, *supra* n. 4, Vol. 10, at 18.

<sup>29</sup> C.K. Ogden, *Jeremy Bentham's Theory of Fictions* (London: Kegan Paul, 1932), ix-x.

<sup>30</sup> Miran Bozovic, in his "Introduction: 'An utterly dark spot'" (*supra* n. 24, at 1-27), analyses the common conceptual foundations of both the Panopticon and the theory of fictions preliminary to a discussion of their common theological dimensions. While he

Confronted by ghosts, rationalism is not without resources: Bentham distinguishes between their hold upon his imagination as opposed to his judgment which, he said, was free of such apprehensions. Unfortunately for Bentham, reason had its sleep:

In no man's judgment can a stronger persuasion of the non-existence of these sources of terror ["ghosts and other fabulous maleficent beings"] have place than in mine; yet no sooner do I lay myself down to sleep in a dark room than, *if no other person is in the room*, and my eyes keep open, these instruments of terror obtrude themselves . . .<sup>31</sup>

It is not too surprising, then, that these are the words of the man who sees solitary confinement as the ideal form of punishment.

But the Panopticon did not come about simply because of Bentham's fear of ghosts: it is part of a project of the relentless, rationalist exercise of judgment, the search for solid, calculable foundations for law, language and the society structured by these systems. It is designed as a peculiarly anti-gothic structure, and so opposes itself – along with much else in Bentham – to the gothic house of established law. For Bentham, the problem of jurisprudence was exemplified by Blackstone's *Commentaries* which, he argued, constructed law as a dark, gothic castle. Picking up on Blackstone's image of the "Law as a Castle" he remarked, in the *Fragment on Government* [1776], that:

Our author had better, perhaps, on this occasion, have kept clear of allegories: he should have considered whether they might not be retorted upon him with severe retaliation. He should have considered, that it is not easier to *him* to turn the Law into a Castle, than it is to the imaginations of impoverished suitors to people it with harpies. He should have thought of the den of Cacus, to whose enfeebled optics, to whose habits of dark and secret rapine, nothing was so hateful, nothing so dangerous, as the light of day.<sup>32</sup>

Bringing the "light of day" to punishment, the Panopticon is as much the archetype of rationalist jurisprudence as it is of the régime of surveillance. Obscurity and darkness are the attributes of the old, haunted house of law. Now, the law's expository qualities are to guarantee its purportedly universal utility, and these qualities require transparency and visibility:

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discusses Bentham's fear of ghosts "as an example of the real effects of imaginary non-entities" (21), he does not develop a critique of the purported rationality of Bentham's philosophy from this foundation of the theory of fictions. John Bender also remarks upon the paradox in Bentham's theory of fictions "since he both opposed fictitious entities and devised a method of exposition (paraphrasis) for giving them real meaning" (*supra* n. 7, at 203) without considering that this contradiction is constitutive of the theory itself.

<sup>31</sup> *Supra* n. 4, Vol. 9: *The Constitutional Code*, pp. 83–84; emphasis added.

<sup>32</sup> *Supra* n. 4, Vol. 1, at 234–235 note; Bentham's emphasis.

law, as much as punishment, is to become spectacularly rational.<sup>33</sup> Yet this is a visibility which operates as much at the virtual as at the actual level: it is an imagined, potential, visibility that will achieve the greatest, most economical effects as in the well-known panoptical principle:

It is obvious that . . . the more constantly the persons to be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose of the establishment have been attained. Ideal perfection . . . would require that each person should actually be in that predicament, during every instant of time. This being impossible, the next thing to be wished for is, that, at every instant, seeing reason to believe as much, and not being able to satisfy himself to the contrary, he should *conceive* himself to be so.<sup>34</sup>

This amounts to a permanent subjection to the conditions of being onstage, albeit with none of the sense of an approving audience. Thus the Panopticon authors a fiction of inspection in its architecture: a fiction in plain sight, a multitude of effects coming from a lie enacted by the scenery of punishment. In contrast to Bentham's own imaginative conceptions, which exceed the limits of rational judgement, the prisoner should be led by his reason to imagine his surveillance: this peculiar nexus of the rational and irrational displays a founding paradox of utilitarian rationality. The lessons of "The Fragment on Ontology" are clearly applicable here, even if it is Bentham who is exploiting the "pestilential breath of Fiction" for his own ends. There he wrote that:

By the priest and lawyer, in whatsoever shape fiction has been employed, it has had for its object or effect, or both, to deceive, and, by deception, to govern, and, by governing, to promote the interest, real or supposed, of the party addressing, at the expense of the party addressed.<sup>35</sup>

Here, the party addressing its gaze has its interests promoted at the expense of those addressed. As Bentham knew from his childhood, ghosts – fictions – exert a powerful, unanswerable address. Here they are, dragged up in the cloak of reason.

Despite its rationalist architecture, the Panopticon was never built (even if it inspired a variety of prison designs and other structures): it lost out

<sup>33</sup> Bentham envisages a Palladian house of law, as described by William MacNeil:

John Austin's *The Province of Jurisprudence Determined*, as much as Bentham's much earlier *The Province of Jurisprudence Defined*, reimagines the law, along virtually architectural lines, as a formal and balanced system of signs, almost Palladian in its proportions, and rid of symbolic fictions, purged of imaginary lures and closed off to real gaps, aporias and absences. Their joint jurisprudential project was . . . "expository". . . . (W. MacNeil, "John Austin or Jane Austen? *The Province of Jurisprudence Determined* in *Pride and Prejudice*", *Law/Text/Culture* (forthcoming))

<sup>34</sup> Bentham, *supra* n. 24, at 34; emphasis in original.

<sup>35</sup> *Ibid.*, at 128.

to plans to transport convicts to New South Wales in a defeat Bentham inveighed against at inordinate length (his two pamphlets to Lord Pelham entitled *Panopticon versus New South Wales* [1802] run to 75 double column pages, approximately 40,000 words).<sup>36</sup> The New South Wales penal colony was the antipodean antithesis of the panopticon, dispensing with inspection and any other form of visibility. Quoting extensively from the contemporary history of the recently returned Judge Advocate, Captain Collins, Bentham cites numerous examples of the colony's lawlessness and corruption, of its total failure in penal reform, while recognising that its distance from England made it a perfect solution:

*Things not apparent, and things not existing, belong to the same account; the depredation and all other kinds of mischief and vice not making their appearance – that is, not here in Britain – it is the same thing as if there were none.*<sup>37</sup>

Except that accounts such as Collins' – as well as Bentham's own pamphlets – produced a highly apparent image of New South Wales as a criminal, antipodean underworld, a gothic extension of Old England.

However, New South Wales was not without its panoptical characteristics, as Dickens showed in *Great Expectations*. The convict Magwitch is both the product of New South Wales and the personification of the exemplary aspects of the penitentiary project: indeed, he is its demonstration in the senses of demon and monster. The novel explicitly figures Magwitch as a monster, with references to Mary Shelley's *Frankenstein* [1818], in a manner that recalls the word's etymological root in the latin *monstrare*, to show.<sup>38</sup> Further, Magwitch embodies principles of surveillance – through his claim to the services of the omnipresent young man and in his actual recourse to his legal and extra-legal agents who keep him informed of Pip's

<sup>36</sup> *Supra* n. 4, Vol. 4, at 173–248.

<sup>37</sup> *Supra* n. 4, Vol. 4, at 183; emphasis in original.

<sup>38</sup> Given that Pip is Magwitch's creation and not vice-versa, the casting of Magwitch in the position of the monster is an interesting transference, as Pip's narration implies:

The imaginary student pursued by the misshapen creature he had impiously made, was not more wretched than I, pursued by the creature who had made me, and recoiling from him with stronger repulsion, the more he admired me and the fonder he was of me. (*supra* n. 6, at 354)

In another of the novel's references to *Frankenstein*, Magwitch is preceded by this account of Pip's servant, The Avenger:

For, after I had made the monster (out of the refuse of my washerwoman's family) and had clothed him with a blue coat, canary waistcoat, white cravat, creamy breeches, and the boots already mentioned, I had to find him a little to do and a great deal to eat and with both of those horrible requirements he haunted my existence. (*supra* n. 6, at 240)

career – as well as the workings of a penal order under transformation. While Magwitch embodies the principles of surveillance, Pip is the subject of surveillance, moulded by both the spectacularising discourse of crime and his imaginary anticipations and expectations.

If Bentham's never realised Panopticon project serves Foucault as the archetype of the transformation which comes after its design, this is because the Panopticon succeeds through its failure and, because it is an architecture designed to produce its effects through fiction, it did not really have to be built to succeed in its design. Its force and effect can be seen in the way it marked and influenced even those – such as Dickens – who appear most opposed to Benthamism. Bentham's childhood experience had taught him more than a fear of ghosts and spectres: it had taught him the means to haunt the social imagination.

#### DICKENS: "DISCIPLINE MUST BE MAINTAINED"

The new element present by the mid-eighteenth century, the factor unaccounted for by Hobbes, was the progressive emergence of authority from its traditional embodiment in personified representations (epitomised by the sovereign) and its projection through a grid of cultural and social systems. The authority of the modern bureaucratic state – lodged in detectives, bureaus of records, and circulars like the *Police Gazette*; in newspapers, court reporters, and traffic-controller judges; in the reign of rules and regulations, including the rules of evidence; in the metropolitan order, the conventions of transparent, "factual" narration; and, perhaps most accessibly, in the penitentiary idea with its principle of omniscient inspection – can be fully humanised only through *illusionism*.<sup>39</sup>

In their graveyard encounter, Magwitch enforces his hold over Pip through both an alleged omniscience and a wholly imaginary, omnipresent accomplice who is said to exercise Magwitch's omniscience through omnipresence.

"There's a young man hid with me, in comparison with which young man I am a Angel. That young man hears the words I speak. That young man has a secret way pecooliar to himself, of getting at a boy, and at his heart, and at his liver".<sup>40</sup>

Avid readers of Dickens may suspect that such a young man could have been the historical forerunner of *Bleak House*'s Inspector Bucket, if not an unemployed Panopticon inspector.<sup>41</sup> Although this young man appears ironically embodied in Compeyson – Magwitch's former criminal partner – he is essentially an imaginary creature of conscience, of that interiority

<sup>39</sup> Bender, *supra* n. 7, at 197–198; emphases added.

<sup>40</sup> Bender, *supra* n. 6, at 38.

<sup>41</sup> C. Dickens, *Bleak House* [1853], ed. N. Page (Harmondsworth: Penguin, 1971).

required by the disciplinary régime, yet he establishes himself in the terms of corporeal punishment: “That young man has a secret way peccoliar to himself, of getting at a boy, and at his heart, and at his liver.” The further irony of this encounter is that it is the criminal Magwitch who employs an imaginative ruse of conscience upon Pip, a child already awed by an apprehension of his own innate criminality, an apprehension closely associated with a gibbet. Here, the real and the imaginary run together, defying the distinctions proper to rational judgement. Pip’s fear of Magwitch combines imaginary terrors with those marks of physical violence borne by the convict’s body – “A man who had been soaked in water, and smothered in mud, and lamed by stones, and cut by flints, and stung by nettles, and torn by briars; who limped, and shivered, and glared and growled” – and with his metonymic relation to an order of corporeal punishment, as Pip associates Magwitch with one of the marshes’ few landmarks,

a gibbet, with some chains hanging onto it which had once held a pirate. The man was limping on towards this latter, as if he were the pirate come to life, and come down, and going back to hook himself up again.<sup>42</sup>

Real and fictitious entities merge, the scene works its effects, the consciousness of law and criminality becomes all-pervasive.

When we come to Dickens we have moved from the ideas of a philosopher who required that those ideas take on an imaginary force for their effectivity – through their spectacularising – to one of the mid-nineteenth century’s most prominent spectacularisers of crime and law. A onetime court reporter, Dickens is fully part of a profession that has an expository task, bound up with its duty to entertain. His literary success occurs within the sphere of an increasingly literate public for whom the rapidly circulated printed word constitutes the warp of an expanded social fabric. Literature, the world of letters, is the topos of social and political discussion, the new marketplace or town square. The development of widespread literacy and literary readership coincides with and facilitates – if not makes possible – the institutional orderings characteristic of a disciplinary, surveilling society.

We have already considered the theatrical impulse of eighteenth century penal reform in the calls for a more exemplary staging of punishment: *Great Expectations* (published serially during 1860–61) is at once a moment in the transformation of the scene of law into a new imaginary order upon the terrain of criminality and a means by which that transformation occurs.

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<sup>42</sup> Dickens, *supra* n. 6, at 39.

The young Pip's imaginative susceptibility – first to Magwitch and then to his criminal consciousness of having stolen, aided and abetted – is not represented as an isolated personal eccentricity. Apart from the graphic descriptions of the scenes of law – the Hulks, the Old Bailey, Newgate, Jagger's offices, the Inns of Court – Dickens represents an everyday culture in which criminal histories are on a par with Shakespeare through the character of the would-be thespian, Mr Wopsle.

There was a group assembled around the fire at the Three Jolly Bargemen, attentive to Mr Wopsle as he read the newspaper aloud. Of that group, I was one.

A highly popular murder had been committed, and Mr Wopsle was imbrued in blood to the eyebrows. He gloated over every abhorrent adjective in the description, and identified himself with every witness at the Inquest. He faintly moaned, 'I am done for,' as the victim, and he barbarously bellowed, 'I'll serve you out,' as the murderer. He gave medical testimony, in pointed imitation of our local practitioner; and he piped and shook, as the aged turnpike-keeper who had heard blows, to an extent so very paralytic as to suggest a doubt regarding the mental competency of the witness. The coroner, in Mr Wopsle's hands, became Timon of Athens; the beadle, Coriolanus. He enjoyed himself thoroughly, and we all enjoyed ourselves, and were delightfully comfortable. In this cozy state of mind we came to the verdict Wilful Murder.<sup>43</sup>

The popularity of murder was something Dickens well understood, not simply in sensational terms (not forgetting that his own death was possibly brought on by the extreme exertions of his performance of Sikes' murder of Nancy from *Oliver Twist*) but as an element of social structure.<sup>44</sup> In *Bleak House* Dickens used murder, as much as the Court of Chancery, as a means of depicting society's interconnected nature: indeed that novel suggests that sensational deaths – Krook's spontaneous combustion – and murder had a greater hold on the public imagination than the arcane workings of a gothic system of law. Recalling Bentham's distinction between civil and penal law, Dickens represents the civil law as arid, anachronistic and static, as compared with the exciting, progressive dynamism of criminal law, embodied in the mobile omniscience of Inspector Bucket.<sup>45</sup> Criminal

<sup>43</sup> *Supra* n. 6, at 160.

<sup>44</sup> See P. Collins, *Dickens and Crime* (London: Macmillan, 1962), 265–272.

<sup>45</sup> Cf. D.A. Miller, *The Novel and the Police* (Berkeley: University of California Press, 1990), 74–75:

one might even argue, on the basis of Dickens's notorious willingness to serve as a propagandist for the New Police, that the excruciating *longeurs* of Chancery existed mainly to create the market for Mr. Bucket's expeditious *coups*. Along these lines, one might even want to read, in the police activity that develops over the dead body of the law ("or Mr. Tulkinghom, one of its trustier representatives" [305]), Dickens's exhilarated announcement of the agencies and practices of social discipline that, claiming to be merely supplementing the law, will come in large part to supplant it.

law, as the most visible branch of law, becomes the figure of law itself, and the house of law changes from sovereign castle to panoptical prison. As crime and its punishment is increasingly conceived in terms of subjectivity, murder becomes the archetypal crime because its story – full of personal histories and intentions – is the story of the subject, the very stuff of the novel. After a tour of Newgate – itself an example of Bentham’s notion of the theatrical prison – Pip wonders about the connection between himself and crime:

I consumed the whole time in thinking how strange it was that I should be encompassed by all this taint of prison and crime; that, in my childhood out on our lonely marshes on a winter evening I should have first encountered it; that, it should have reappeared on two occasions, starting out like a stain that was faded but not gone; that it should in this new way pervade my fortune and advancement.<sup>46</sup>

To develop a sense of interiority is also to develop a sense of criminality, and it is the awareness of this uncanny twinning of subject and criminal that pervades Dickens’ representations of subjectivity in *Great Expectations*. Its characters are haunted by their spectral doubles: Pip-Magwitch, Magwitch-Compeyson, Pip-Orlick, Miss Havisham-Magwitch, Miss Havisham-Estella, Estella-Pip and so on, all doublings engendered by crime.

Commenting on the aestheticising of crime, Foucault argues that:

from the adventure story to de Quincey, or from the *Castle of Otranto* to Baudelaire, there is a whole aesthetic rewriting of crime, which is also the appropriation of criminality in acceptable forms. In appearance, it is the discovery of the beauty and greatness of crime; in fact, it is the affirmation that greatness too has a right to crime and that it even becomes the exclusive privilege of those who are really great.<sup>47</sup>

This is to describe a very specific literary tradition: the gothic hero-come-great criminal. However, this is not the really interesting development in literature concerning crime, not least because this figure is a reaction against the very forces of rationalism, reform and bourgeois democracy and so emerges from the order being transformed. The more interesting development runs from Henry Fielding to Dickens, Wilkie Collins and on to Conan Doyle and represents the banality and pervasiveness of crime and policing. The important literary development is not just that crime traverses class, but that it is everywhere, and that, consequently, the world is both stage and crime scene. So when Foucault claims that “The literature of crime transposes to another social class the spectacle [*éclat*] that had

<sup>46</sup> Dickens, *supra* n. 6, at 284.

<sup>47</sup> *Supra* n. 1, at 68–69.

surrounded the criminal,” that “éclat” might be transposed, but the very process Foucault describes is that of the new mode of spectacularising – even to the examples of newspaper reports – which constitutes the new régime.

“Discipline must be maintained” is the catch phrase of one of Dickens’ designedly undemonstrative characters (the military Matthew Bagnet in *Bleak House*, who plays an elaborate, transparent game of not complimenting his wife in the interests of familial order): it is now to be maintained through the very constancy and extensiveness of demonstration. This is the spectacularisation that installs surveillance, that places crime in the imaginary, that ghostwrites the law.

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