Juridical power, jurisdiction, norms and legality, legal institutions—these are, paradoxically, both everywhere and nowhere in the work of Michel Foucault. Many scholars have gone so far as to say that Foucault had no theory of law and legal institutions. Yet legal practices and institutions appear pervasively throughout practically all of the different facets of his work. Another paradox: Traditionally, commentators who have studied juridical power in Foucault’s work have explored the topic predominantly through the lens of power, or more exactly, relations of power. But it is becoming increasingly clear—especially with the most recent publication of his earliest lectures at the Collège de France—that law and jurisdiction should also be studied in relationship to the larger questions of truth and veridiction.

This seminar will explore both puzzles and the consequences of this change in perspective from power/knowledge to veridiction—or toward the integrated notion of veridiction and jurisdiction at the heart, for instance, of a book such as Foucault’s Wrong-Doing, Truth-Telling: The Function of Avowal in Justice. The seminar will proceed by examining a number of different facets of Foucault’s writings as they relate to the question of norms, juridical power, judicial institutions, and jurisdiction. The purpose of this intensive week-long seminar will be to rethink the question of juridical power, normalization, truth, and law with and after Foucault.
NOTICE

This special seminar is open to all faculty colleagues.

The seminar is also open to graduate students in the arts, sciences, and law at Columbia University at the consent of the instructors and will be capped at 12 students. The seminar will meet five times during the week of November 3rd through November 7th, 2014. For students, the seminar cannot be taken for credit, only for intellectual growth. If you would like to attend, you will be expected to attend all five meetings of the seminar. If you would like to participate, please send a paragraph to Claire Merrill at cm3325@columbia.edu. Please explain your interest, your background, and whether you will be able to attend all five seminars.

We will do our best to have all the readings in English. The readings will be ordered by their importance to the discussion at the seminars.

By way of background, it may be helpful to read Foucault’s two main juridical works: his Louvain lectures from 1981, Wrong-Doing, Truth-Telling: The Function of Avowal in Justice; and his 1973 Rio lectures, “Truth and Juridical Form,” in Power: Collected Works, Volume III. In addition, throughout, we will also be referencing secondary materials, primarily found in Alan Hunt and Gary Wickham’s Foucault and Law: Towards a Sociology of Law as Governance (Pluto 1994) and the collection of essays by Ben Golder and Peter Fitzpatrick titled Foucault and Law (Ashgate, 2010).

In preparation for the first seminar and by way of “core texts,” here is a list of the central readings that will animate the seminar during the week:


TENTATIVE SCHEDULE

I. INTERVENTIONS: THE VALUES AND MOTIVES

The first seminar will explore the range of interventions that Foucault made—most often, or predominantly, in political and legal disputes within the penal context. Why did Foucault get interested in militancy regarding prisons, asylums, political detainees, and juridical power? On the basis of what values, interests or motives?

READINGS:


M. Foucault, « An aesthetic of existence » in *Politics, Philosophy, Culture: Interviews and Other Writings*, 1977-1984, ed. Lawrence D. Kritzman, 1988, Chap 3) [D&E, 184, 192, 281, 357]

**Further Optional Readings:**

3. *Le Désordre des familles (Lafarge & Foucault)*
4. Le droit des gouvernés, D&E no. 355
5. Le droit de savoir, l’enquête, D&E, 86, 91,93
7. Libérer la sexualité, D&E, 200, 230
8. L’asile illimité, D&E, 202
9. Totalitarisme vs sécurité, D&E, 213
10. Le Goulag, DE, 218 (cf. also translation : « Powers and strategies » in *Power/Knowledge*)
11. Se débarrasser du marxisme, D&E, 235
12. Sexualité et politique, des droits sexuels, D&E, 138, 152,
13. Exigence de lucidité, D&E, 256
14. Sexualité et vérité, répression, D&E, 190
15. Law and Order, D&E, 152
16. Rendre visible les mécanismes, D&E,160
17. Aller à Madrid, D&E, 158
18. La grande colère des faits, D&E, 204
19. Illégalisme et art de punir, D&E, 175
20. Une mort inacceptable, D&E, 166
21. Effet anesthésiant, D&E, 278, 281
22. L’expérience à fond, D&E, 281
23. La curiosité, D&E, 108
24. Tout repenser,  D&E, 298, 300, 301, 303
25. Loi vs culture, D&E, 318
26. Pologne, D&E, 319, 320, 321, 334
27. Autorégulation (mirage), D&E, 325
28. Le travail, D&E, 328, 324
30. Audrey Kiéfer, *Michel Foucault : Le GIP, l’histoire et l’action* (dissertation)
II. JUSTICE, JUDICIAL INSTITUTIONS, AND JURIDICAL POWER

This second seminar will explore the notion of « illégalismes » and how juridical power becomes the means to negotiate and manage these “illegalisms.” This presents the problem of judging, of how difficult it is to judge, and the need for expertise and other third parties to resolve the tensions of judging. This seminar will focus on the texts where Foucault explores penal law—or what we tend to call criminal law and sentencing in the United States.

READINGS:


M. Foucault. 1978-79, Birth of Biopolitics, Lesson of March 21, 1979


ADDITIONAL OPTIONAL READINGS:

1. Pouvoir, partage, exclusion, D&E, 197
2. Interdit/internement (loi de 1838), Le Pouvoir psy, 96 sq
3. Monstruosité/anomalie, Les Anormaux, p.52
4. L’économie du pouvoir de punition, Les Anormaux, p.76
6. Le grand enfermement, D&E, 105

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III. FROM THE REGIME OF LAW TO THE REGIME OF NORMS  

In this seminar, we will explore the shift from law to norms. We will analyze the notion of normalization. We will focus in detail on Foucault’s writings and thinking on the topic of public law, constitutional law, and the relationship between common law and civil law traditions of the Continent.

READINGS:


M. Foucault, *Discipline and Punish*, pp. 177-184; *Surveiller et punir*, pp 180-186 (La sanction normalisatrice).

ADDITIONAL OPTIONAL READINGS:

1. La famille, articulation souveraineté/discipline, *Le Pouvoir psy*, 81-88
2. Médecins, juges et sorciers, D&E, 62
5. Droit et éthique, D&E, 350 ("The Concern for Truth," interview conducted by François Ewald, in Foucault Live, p. 293-308)

IV. VERIDICTIO & JURISDICTIO: TRUTH AND JURIDICAL FORMS    THURSDAY NOV. 6, 2014

In this seminar, we will explore the relationship between truth telling and saying justice, and the alethurgical method that Foucault develops throughout his lectures at the Collège de France.

READINGS:

M. Foucault. 1970-71. Lessons on the Will to Know, Lesson of March 10, 1971


M. Foucault, Mal faire, dire vrai, excerpts


ADDITIONAL OPTIONAL READINGS:

2. « Une petite histoire de la vérité », Le Pouvoir psy, p. 235 sq
3. L’institution de la psychiatrie, Les Anormaux, p.129
4. Table ronde sur l’expertise psy, D&E, 142
5. La criminologie, D&E, 146

V. THE LAW AS DISCOURSE    FRIDAY NOV. 7, 2014

In this seminar, we will explore the question of whether and how law figures as a form of discourse: In The Order of Discourse, law appears as a type of discourse, but
in *The Archaeology of Knowledge*, law is practically absent. Why is that? Could we use an archaeology of knowledge to study law, juridical power, legal discourse?

**READINGS:**


M. Foucault, « Réponse à une question », *D&E* no. 58; and “Sur l’archéologie des sciences”, *D&E* no. 59

**ADDITIONAL OPTIONAL READINGS:**

2. Les effets de partage de la loi, D&E, 281

**CONCLUSION: LEGAL AND POLITICAL THEORY AFTER FOUCAULT**

**Friday Nov. 7, 2014**

Note: there will be a special session with Seyla Benhabib and George Kateb from 3 to 5pm at the Maison Française. Please join us.