

CRIME AND JUSTICE IN FILM: A POSTSTRUCTURALIST READING

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Abstract

This article explores the concepts of crime, punishment and justice from a poststructuralist perspective in three films, namely *In Cold Blood* (Richard Brooks, 1967), *A Clockwork Orange* (Stanley Kubrick, 1971), and *The Trial* (Orson Welles, 1962), all of which feature protagonists who are punished by law for a crime they have – or, in the case of the last film, are thought to have – committed. The films will be analysed through the lens of poststructuralist discourses on power and justice, in particular the theories of Michel Foucault, who argues that punitive practices vary depending on the changing power relations in society, and of Jacques Derrida, who sets out to deconstruct the conventional, essentialist understanding of law and justice. This article will attempt to demonstrate that these three films, which question the legitimacy of the punishment inflicted on the protagonists, present a critique of dominant punitive practices and established definitions of justice in such a way as to reinforce the poststructuralist stance that precludes the possibility that punitive laws can be grounded upon a legitimate basis.

Keywords: Crime, punishment, justice, poststructuralism, Michel Foucault, Jacques Derrida.

Filmde Suç ve Adalet: Postyapısalcı Bir Okuma

Öz

Bu makale, Richard Brooks'un *In Cold Blood* (*Soğukkanlılıkla*, 1967), Stanley Kubrick'in *A Clockwork Orange* (*Otomatik Portakal*, 1971) ve Orson Welles'in *The Trial* (*Dava*, 1962) filmlerine yoğunlaşarak, işledikleri –ya da işledikleri düşünülen– bir suç yüzünden kanun tarafından cezalandırılan karakterlere odaklanan bu üç film üzerinden suç, ceza ve adalet kavramlarını postyapısalcı açıdan incelemeyi hedeflemektedir. Bu incelemede, ceza yöntemlerinin zaman içinde değişen güç ilişkilerine bağlı olarak değişikliğe uğradığını savunan Michel Foucault ve alışlageldik, özcü yasa ve adalet anlayışlarını yapısöküme uğratan Jacques Derrida'nın teorileri başta olmak üzere güç ve adalet hakkındaki postyapısalcı söylemler temel alınmıştır. Bu makalenin amacı, ele alınan filmlerin üçünün de, başkarakterlerin çarptırıldığı cezaların haklılığını sorgulamak suretiyle, toplumda baskın olan ceza yöntemlerini ve adalet tanımlarını eleştirerek, ceza yasalarının haklı bir zemine dayandırılmasının olanaksızlığını savunan postyapısalcı görüşü pekiştirdiğini göstermektir.

Anahtar Sözcükler: Suç, ceza, adalet, postyapısalcılık, Michel Foucault, Jacques Derrida.

Introduction

Poststructuralism, which is an anti-essentialist philosophical movement characterized by the rejection of objective truths, transcendent essences and universal absolutes, is generally regarded as inimical to such concepts as law, morality and justice. As a matter of fact, the poststructuralist line of questioning undermines the epistemological foundations of Western philosophical thought, highlighting the social and historical constructedness, hence arbitrariness, of concepts believed to be universal truths. The idea of objective truth has come under attack by such theorists as Michel Foucault, who has undertaken an inquiry into the relationship between power and knowledge with the aim of demonstrating that what passes itself off as objective knowledge is actually that which serves the interests of those in power (1995, 1978). In such books as *Discipline and Punish: The Birth of the Prison* and *History of Madness*, Foucault analyses how definitions of criminality and insanity vary over time depending on the social and historical context since they are determined by mechanisms of power. In the former book, Foucault puts forward the argument that Western punitive practices underwent a radical transformation in the eighteenth century, when the absolute power wielded by the sovereigns of pre-modern times, who possessed the right to kill their subjects at will, diminished and gradually gave way to an altogether different kind of power as the modern state assumed the function of regulating and fostering everyday life. One consequence of “the shift from the sovereign power to kill to the biopolitical interest in fostering life is that capital punishment came to be contested in the modern period and new forms of punishment were invented to replace it, most notably the prison” (Taylor, 2011, p. 49). It is worth noting that the idea that law and justice are inextricably linked to power is not peculiar to Foucault since it is also central to the Marxist notion of ideology, where the legal system is considered to be part of the superstructure whose function is to promote the interests of the ruling classes. Accordingly, Louis Althusser (2001) includes the legal system, along with religious, educational, political, communicational and cultural systems and institutions, in his list of Ideological State Apparatuses (ISA), which serve to perpetuate the capitalist mode of production. However, Foucault’s theories concerning the power/knowledge matrix radically differ from Marxist-oriented ideological critique in that the Foucauldian understanding of power as diffused throughout society and per-

meaning the most intimate aspects of everyday life has little in common with the Marxist understanding power as concentrated in the hands of the economic elite and imposed upon people from above (McHoul & Grace, 2002, p.7). What is more, instead of regarding economy as the controlling agency that determines all dominant discourses and practices in society, Foucault stresses the incommensurability and discontinuity between things, events and historical epochs (Poster, 1985).¹

Another critic of established certainties is Jacques Derrida², who is famous for developing a philosophical strategy known as deconstruction, which is aimed at unsettling conventional ideas of being, presence, truth, identity, meaning and text. Derrida's deconstructive logic undermines binary oppositions such as those between presence and absence, past and present, good and evil, right and wrong, etc., which underpin Western thought. Key to Derridean deconstruction is the concept of "undecidability", which precludes the possibility of any stable, fixed meaning or essence; in fact, "the main point of deconstructive force is precisely the expression of the radical oscillation, alteration and ambiguity of things, principles, positions and arguments" (Appelbaum, 2009, p. 12). Although deconstruction is characterized by the absence of any fixed criteria for constructing an ethical basis for justice, or any other moral principle for that matter, Derrida, nevertheless, does not rule out the idea of justice, but rather makes a point of distinguishing between law and justice, stressing that while the former is deconstructible, the latter is not (Derrida, 1992a). According to Derrida, the defining characteristic of law is its enforceability; in other words, "there is no such thing as law (*droit*) that doesn't imply *in itself, a priori, in the analytic structure of its concept*, the possibility of being 'enforced', applied by force" (1992a, p. 6). Although law purports to legitimize itself on the grounds that it partakes of justice, Derrida (1992a) maintains that this force of law cannot be legitimized on any account, for before a law is instituted, there is no way of judging whether it is just or unjust, legal or illegal since the question of legality only comes up after the institution of the law. Derrida's revealing the ungroundedness of law does not prevent him from professing philosophical commitment to the idea of justice,

¹ Despite the fundamental differences between Foucauldian theory and Marxism, some critics (Poster, 1985; Choat, 2010, Chapter 4) assert that Foucauldian theory can be used to enhance Marxist critique.

² Although Foucault and Derrida are both poststructuralist critics, this does not mean that their theories are compatible or that they endorsed each other's theories. Derrida, for instance, criticized Foucault on the grounds that "Foucault was unable to accomplish the poststructuralist project and therefore failed to go far enough in his efforts to break free from" essentialist thinking since he "still adhered to the assumption [...] that there was an objective body of knowledge or ultimate truth that could be discovered" (Drolet, 2004, p. 21).

saying: “I want to insist [...] on reserving the possibility of a justice, indeed of a law that not only exceeds or contradicts ‘law’ (*droit*) but also perhaps has no relation to law” (Derrida, 1992a, p. 5).

Works of fiction, be they filmic or literary ones, more often than not, have a destabilizing effect on established definitions of what constitutes crime, punishment and justice by giving voice to the experiences of those who are marginalized by law. From the ill fated King Oedipus, who unwittingly commits what Sigmund Freud (1916/2001a) calls “the two great human crimes” (p. 333), parricide and incest, by murdering his father and marrying his mother, to Shakespeare’s power-hungry villains like Macbeth and Richard the Third, who commit atrocities that eventually lead to their demise, a seemingly just punishment; from Raskolnikov in Fyodor Dostoevsky’s *Crime and Punishment* (1866), who commits murder after having rationally justified it to himself, though he cannot escape the feeling of guilt which gives him away in the end, to Clyde Griffiths in Theodore Dreiser’s *An American Tragedy* (1925), who deliberately lets his pregnant girlfriend drown in a boat accident by not saving her life, whereafter he is tried and executed for murder, criminals have figured prominently in works of fiction, which have always taken an interest in such subjects as the exploration of the criminal mind, the motivations behind crime, whether or not the punishment inflicted on the offender is justified, etc. In fact, it would not be far from the truth to claim that, as Dolin (2000) argues, “canonical fiction serves to probe law’s *nomos*³, offering adversarial narratives on behalf of those who are marginalized by the criminal or civilian law. Fiction becomes both a legal test site and an unofficial court of appeal” (as cited in Ruggiero, 2003, p. 3). The same thing can be said of the three films that will be analysed in the following pages, namely *In Cold Blood* (Richard Brooks, 1967), *A Clockwork Orange* (Stanley Kubrick, 1971) and *The Trial* (Orson Welles, 1962), all of which are adapted from canonical novels that feature protagonists marginalized by law. In fact, all three films, which, in one way or another, highlight the fact that the punishment inflicted on the protagonists is unjustified, serve as a suitable point of departure for reflecting upon the concepts of crime, punishment and justice. It will be asserted that while *In Cold Blood* and *A Clockwork Orange* lend themselves well to interpretation in terms of Foucault’s theories concerning Western punitive practices, *The Trial* presents illuminating insights into Derrida’s understanding of law and justice.

³ “Nomos” is an ancient Greek word that refers to law as defined by the sophists in the fifth and fourth centuries BC., who regarded law as a matter of convention (*nomos*) reached by consensus (Nomos, n. d.).

***In Cold Blood* and the Critique of the Death Penalty**

In Cold Blood is the film adaptation of American author Truman Capote's 1966 nonfiction novel of the same title, which is based on the real life murder of a family of four by two ex-convicts on parole, Perry Smith and Dick Hickock in a small town in Kansas in 1959. The film makes use of parallel editing to depict Perry and Dick's preparations for the murder, including their long drive to the house of their victims, the respectable, affluent Clutter family, and the mundane events on the last day in the life of the Clutters, followed by Perry and Dick's escape to Mexico after the murders, their life on the run, their subsequent capture by the police and eventual execution by hanging. Perry and Dick break into the Clutter house in the expectation of finding a safe full of money, but it turns out that the Clutters do not keep money in the house so that Dick and Perry end up with only forty dollars. While it was originally Dick's idea to rob the Clutter house and kill all the members of the family in order not to leave any witnesses behind; in effect, the murders are committed by Perry in a fit of murderous rage. The actual events that take place on the night of the murders are kept in the dark for the most part of the film and revealed towards the end when, following Dick's confession, Perry confesses to the murders and recounts to the police how they tied up Herb Clutter, his wife, their teenage daughter and son, and after an unsuccessful search for the nonexistent safe, Perry slit Herb Clutter's throat before shooting him and the rest of the family members in the head.

Despite the particularly violent nature of their crime, neither Perry nor Dick are portrayed as detestable characters, but endowed with characteristics that render them psychologically complex individuals with desires, fears and dreams of their own. As social misfits from the lower rungs of the social ladder, they have virtually no chance of improving their socioeconomic status and accomplishing their dream of coming into enough money to start a new life. The main focus and emotional center of the film is Perry, whose violent behaviour and pathological urge to kill is traced back to a poor, hard, traumatic childhood glimpsed through several flashbacks. One of the four children of divorced parents, Perry was neglected both by his alcoholic mother and mentally unstable father who once attempted to kill him with a shotgun, which, to Perry's luck, wouldn't go off. Indeed, it is the memory of this traumatic event that haunts Perry at the time of the murders, sending him into a fit of rage so that Perry appears to avenge himself upon the Clutters for the wrongs committed against himself. Perry, whom Dick once calls "a natural born killer", is at the same time a Korean War veteran with a medal of honour, which, no doubt, he was awarded thanks to his uncontrollable urge to kill, which must have rendered him an ideal soldier during the war instead of the menace to society that he is now.

In Cold Blood presents a critique of the American criminal justice system in general and the death penalty in particular, criticizing the former not only for its failure to take into account the complex psychopathologies of the offenders but also for its discriminatory treatment against the poor and the underprivileged, which finds expression in Dick's remark that he has "never seen a rich man fry in the electric chair." It takes the jury only forty minutes to reach the verdict which, it seems, was actually decided long before the trial, and, considering the public outrage surrounding the murders, perhaps even before the offenders were caught. In fact, it seems as if rather than the crime itself, it is the symbolic impact of the crime, which signifies the destruction of a wealthy, respectable, all-American family by a violent, unpredictable force, that is regarded as outrageous and deserving of the most severe punishment.

In Cold Blood highlights the fact that the state-authorized killing of Perry and Dick purportedly in the name of justice, which is carried out in cold blood, is no less barbaric or ruthless than the murders for which they are being punished. The execution is staged in grim detail, including the cold-blooded preparations of the hangman, the blindfolds placed over the condemned man's eyes prior to the hanging, and Perry's worry over the mess the loss of bowel control may cause at the moment of death, all of which serve to highlight the inhuman nature of the death penalty and its violation of the respect for human life. The execution scenes are intended to arouse sympathy in the viewer by portraying Perry and Dick as victims of a cruel criminal justice system that aims at revenge rather than justice. A similar condemnation of the death penalty can be found in Krzysztof Kieslowski's *A Short Film about Killing* (1988), which tells the story of the murder of a taxi driver by a young man who is in turn executed for his crime despite the efforts of an enthusiastic lawyer to save his life. By juxtaposing the two deaths, i.e. the murder and the execution, which are portrayed as equally brutal and gruesome acts, Kieslowski's film calls into question the legitimacy of the death penalty, stressing the idea that killing someone in retaliation for murder is an unjustifiable form of punishment.

Although *A Short Film about Killing* and *In Cold Blood* both advance an anti-death penalty argument, they differ in that the former is a religiously inflected film inspired by the Commandment "thou shalt not kill"⁴, whereas the latter has a liberal, progressive agenda. *In Cold Blood* resonates with the liberal view that denounces the death penalty as uncivilized and inconsistent with modern values on the grounds that it is based on the principle of retribu-

⁴ As a matter of fact, *A Short Film about Killing* is the extended version of a shorter film shot by Kieslowski as part of his *Decalogue* (1989), a collection of ten television drama films each inspired by one of the Ten Commandments.

utive justice epitomized by the maxim “eye for an eye and tooth for a tooth” dating from pre-modern times, endorsing, instead, the modern “enlightened” view of punishment based on rehabilitation and correction rather than retribution. Both Perry and Dick are characterized as psychologically disturbed individuals in need of rehabilitation; in fact, Perry himself gives voice to this idea when he confides to the priest who visits him in his cell while he is on death row that it was unwise of the authorities to release him on parole, they ought to have noticed that he was a bomb about to explode and should not have let him out.

Although it seems perfectly natural today, as Foucault (1995) points out, the idea of detaining and reforming prisoners is actually a modern invention that dates back to the second half of the eighteenth century, when European punitive practices underwent a dramatic transformation as corporal punishment, torture and death were supplanted by modern forms of punishment, such as “confinement, forced labour, penal servitude, prohibition from entering certain areas, deportation”, based on imprisonment and discipline (p. 11). Public executions and torture, which made a spectacle out of the “tortured, dismembered, amputated body”, disappeared with the great institutional reforms in the late 1700s as punishment became less physical and gained an “essentially corrective character” (Foucault, 1995, p. 8). According to Foucault (1995), the rise of modernity brought along with it the development of “a new theory of law and crime, a new moral or political justification of the right to punish” (p.7), which resulted in the redefinition of the concepts of crime and punishment. In the pre-modern times,

[...] crime was conceived as a personal attack on the sovereign rather than on the individual victims of the crime or on the security of the population as a whole. Punishment was the sovereign’s counter attack, his reaffirmation of power. In contrast, the current view of punishment is a “paying of one’s debt to society”, while executions, where they are permitted at all, are justified in the name of security (Taylor, 2011, p. 49).

Foucault’s *Discipline and Punish* begins with the description of a particularly violent public torture inflicted on a man found guilty of attempted regicide in 1757 followed by the description of a timetable for prisoners dating from 1837, which are juxtaposed in such a way as to highlight the radical shift in punitive practices that took place in a matter of eighty years. Foucault stresses the fact that this shift in punitive practices did not come about as a result of a concern for justice or humanitarian ideals, but due to a change in the nature of power brought about by the decline of monarchical rule and the rise of modern statecraft: “At the heart of this change was a displacement in

the theory and practice of statecraft away from the sovereignty of the monarch and toward a concern for ‘government’”, where the word government “refers not only to the person governing but also to a wide variety of efforts in both the ‘public’ and ‘private’ spheres to shape the human material at one’s disposal” (Ransom, 1997, p. 28). In the pre-modern times, power was concentrated in the figure of the sovereign who wielded absolute power over life and death in the sense that he could take or spare the lives of his subjects as he liked. However, at the end of the seventeenth century, as the modern state assumed the function of sustaining and governing everyday life, sovereign power was superseded by modern forms of power that transcended the political and legal realm to which sovereign power was confined and invaded all areas of everyday life, establishing control over the body, sexuality and private life in such a way as to optimize the functioning of the capitalist system of production. And,

[...] as soon as power gave itself the function of administering life, its reason for being and the logic of its exercise – and not the awakening of humanitarian feelings – made it more and more difficult to apply the death penalty. How could power exercise its highest prerogatives by putting people to death, when its main role was to ensure, sustain and multiply life, to put this life in order? [...] Power would no longer be dealing simply with legal subjects over whom the ultimate dominion was death, but with living beings, and the mastery it would be able to exercise over them would have to be applied at the level of life itself: it was the taking charge of life, more than the threat of death, that gave power its access even to the body (Foucault, 1978, p. 138-143).

Thus, Foucault traces the roots of the modern, enlightened view that informs *In Cold Blood*'s condemnation of the death penalty to the emergence of modern forms of power, which are power over life in the sense that they are targeted at the control and discipline of the individual body and bodily conduct. The modern forms of power, which Foucault terms as “disciplinary power” and “biopower”⁵, establish the basis of a carefully regulated and controlled “disciplinary society”. Foucault (1978) maintains that the origins of disciplinary power can be traced back to the development of the human sciences, such as medicine, psychology, psychiatry, sociology, demography, etc. and the institutions associated with them, such as medical, penal, administrative and welfare institutions. According to Foucault, the prison serves as

⁵ Disciplinary power and biopower are overlapping terms in that Foucault defines the former as a form of the latter, claiming that disciplinary power is the power targeted at the control and discipline of the individual body, whereas biopower also concerns the regulation of the social body, i.e. issues related to the health and welfare of the whole population, such as birth and mortality rates, life expectancy, etc. (Foucault, 1978, Part Five).

a model for other institutions such as the hospital, the school, the university, the workplace, the factory, the army, etc., which also exercise disciplinary power by fulfilling the function of transforming individuals into obedient, docile, productive and useful subjects by making the body “more obedient as it becomes more useful and conversely” (Foucault, 1995, p. 138). To put it another way, “discipline increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience)” (Foucault, 1995, p.138). Hence, disciplinary power has paved the way for a utilitarian understanding of justice that is aimed at reforming criminals by increasing their docility and utility rather than merely making them suffer for their crime, which does not serve any utilitarian purpose. However, Foucault’s theory underlines the fact that discipline and reform is not necessarily a more just or humanitarian form of punishment than the death penalty and can mask a more insidious form of regulation and control as the upcoming discussion of *A Clockwork Orange* will attempt to illustrate.

***A Clockwork Orange* and the Critique of the Modern Disciplinary Society**

Stanley Kubrick’s *A Clockwork Orange*, which is adapted from English author Anthony Burgess’s 1962 novel of the same title, is a highly controversial film that met with hostile reactions upon its release due to its explicit depiction of violence and sexuality despite the distancing effect created by Kubrick’s stylized aesthetic, particularly his choreographing the violent scenes almost like a dance “using music and/or slow motion photography” (McDougal, 2003, p. 6)⁶. Set in a dystopian, futuristic England, *A Clockwork Orange* centers on Alex, the charismatic, classical music-loving leader of a youth gang given to committing violent crimes including rape, battery, and robbery. One day, Alex is caught during a burglary gone wrong when the police suddenly arrive, and Alex’s friends, who have begun to challenge his authority as a leader, betray him by knocking him on the head and leaving him to be caught by the police before making a fast getaway. Having beaten the proprietor of the house he intended to rob to death, Alex is charged with murder and sentenced to fourteen years in prison. Alex seizes upon the opportunity to get out of prison by volunteering to undergo an experimental treatment called Ludovico’s technique which is part of a government project to curb violence and lower crime rate by deterring criminals like Alex from committing violent

⁶ Upon its release in 1971, *A Clockwork Orange* was attacked on the grounds that it celebrated violence and encouraged young viewers to engage in violent acts. In England, a number of crimes were committed that were seemingly based on the film. As a result, the film was withdrawn from British distribution and was unavailable there for a long time (Kolker, 2003, p. 19).

deeds. Ludovico's technique consists in the administration of a drug causing extreme nausea to the subject who is then forced to watch video recordings of violent and sexually explicit scenes so that he will be conditioned to associate sex and violence with the feeling of nausea. Alex is strapped to a chair in front of a screen with his eyelids held open by a metal apparatus and bombarded with images of sex and violence, all the while feeling violently ill due to the nausea-inducing drug. The authorities then test the success of the treatment by placing Alex in situations where he would have previously displayed violent behaviour, and observe that every time Alex attempts to engage in a violent act, even if it is in self defence, he can't help being overcome with an unbearable feeling of nausea that leaves him writhing on the floor. After being "rehabilitated" in this way, Alex is released from prison only to find himself homeless, penniless and friendless. Turned down by his parents who have rented his room to a lodger, he wanders aimlessly in the streets, where he is assaulted by his former victims and former friends alike. One of his former victims, a liberal intellectual named F. Alexander, who was left crippled after being beaten by Alex and his gang, who also violently raped his wife, thus leading to her death, extracts a cruel revenge by deliberately manipulating the effects of the Ludovico treatment to drive Alex to suicide. After a failed suicide attempt, Alex awakens in the hospital, where he is restored to his previous condition and cured of all the effects of Ludovico's technique by the Minister of the Interior, who aims to exploit the publicity surrounding Alex for his own political goals.

A Clockwork Orange is a futuristic crime and punishment story that can be read as a critique of the strictly regulated and monitored modern disciplinary society where individual behaviour is directly controlled and modified through disciplinary technologies informed by human sciences such as psychology, psychiatry, criminology, etc. Thus, the film presents valuable insights into the workings of disciplinary power, particularly into the nature of modern punishment by demonstrating how, under disciplinary power, "[...] in order to predict and control the individual's chance of recidivating, the criminal needs to be subjected to psychological examinations, surveillance and rehabilitative practices unknown under sovereign power" (Taylor, 2011, p. 44). The fictional Ludovico technique, which is a kind of aversion therapy based on psychological conditioning, epitomizes the modern form of punishment which is based on rehabilitative practices that seek to control criminals' conduct and thus prevent them from committing further crimes rather than make criminals suffer for their crimes. In effect, the punishment inflicted on Alex bears witness to how disciplinary power marks,

[...] a switch from brutal but unfocused physical punishment to less painful but more intrusive psychological control. Premodern punishment violently assaults the criminal body, but is satisfied with retribution through pain; modern punishment demands an inner transformation, a conversion of the heart to a new way of life. But this modern control of the soul is itself a means to a more subtle and pervasive control of the body, since the point of changing psychological attitudes and tendencies is to control bodily behaviour (Gutting, 2005, p. 81).

A Clockwork Orange highlights the fact that “this modern control of the soul”, which is accomplished by means of medico-legal practices of normalisation that aim to control the body and bodily conduct, is no less barbaric than corporal punishment, if not even more so. Alex is not put to death as Perry and Dick were; instead, he is subjected to a disciplinary technique which rids him of his criminal tendencies and transforms him into a docile, law abiding citizen. So, *A Clockwork Orange* demonstrates the subjection of Alex to what Foucault (1995) terms as “a political anatomy” of the body that aims to produce “docile bodies” (p. 138), as a result of which Alex is turned into an automaton robbed of his free will and hence his ability to determine his own actions. Indeed, controversial as it may be, the film’s “apparent thesis that unfettered free will, expressed as violent disruption of other people’s lives, is better than repression and a loss of freedom seems undeniable” (Kolker, 2003, p. 27). This idea is explicitly articulated by the prison priest who, upon witnessing Alex’s transformation into “a cowering, brainwashed dupe” (Kolker, 2003, p. 34), protests against the totalitarian control of individual behaviour by the state, which leaves no room for moral choice on the part of the individual.

By posing the question whether it is just to rob individuals of their free will for the good of society, *A Clockwork Orange* probes into the concept of justice in such a way as to problematize the legitimacy of the power of the state over the individual. Thus, *A Clockwork Orange* can be regarded as the reworking of an age-old theme that has preoccupied philosophers, social and political thinkers alike ever since antiquity, ranging from Plato, whose vision of the just society outlined in *The Republic* (circa 380 BC) appears much too totalitarian to modern eyes, to such Enlightenment thinkers as Thomas Hobbes and Jean Jacques Rousseau, whose conceptualizations of the social contract theory⁷, according to which individuals agree to abdicate part of their freedom in return for the protection of the rest of their liberties and rights, furnish the basis of the modern liberal democratic state. At the heart of the writings of

⁷ See Hobbes’s *Leviathan* (1651) and Rousseau’s *The Social Contract* (1762) for their respective theorizations of the social contract theory.

these thinkers, who are concerned with the possibility of establishing a just society without doing injustice to the individual, lies the effort to reconcile the conflict between the freedom of the individual and the requirements of society, the very same theme explored by Sigmund Freud in *Civilization and Its Discontents*, where he puts forward the argument that civilization establishes a set of oppressive rules and taboos that are aimed at curbing the sexual and aggressive impulses of individuals. According to Freud (1930/2001b), the pleasure principle, which demands the unrestrained satisfaction of every instinctual impulse, is thwarted by society, thereby paving the way for psychological disorders like neurosis. Thus, Freud maintains that the repression of instinctive impulses is a prerequisite for the existence of societal order. Alex, who gives free reign to his sexual and aggressive impulses and derives pleasure from engaging in acts of violence, seems to be driven by what Freud calls “id”, the primitive, chaotic part of the psyche which “is subject to the observance of the pleasure principle” and “produces a striving to bring about the satisfaction of instinctual needs” (Rycroft, 1995, p. 75). In this regard, Alex resembles a character out of a novel by the notorious eighteenth-century French author Marquis de Sade, from whose name the term sadism is derived. Perhaps the most radical intervention into the philosophical debates on the conflict between the individual and society was undertaken by Sade, who, almost a century before Freud, criticized contemporary society for establishing a set of oppressive rules and taboos that restrict the freedom of the individual. In his book *Philosophy in the Bedroom*, Sade presents a staunch defense of the free enjoyment of all sexual and aggressive impulses, asserting that “if there be a crime it is rather to resist the desires that nature has inspired in us” (1962, p.132). Sade (1962) also outlines his own conception of an ideal society, a sexual utopia founded on the unrestrained practice of sexual and destructive impulses, where there would be only very few, mild and unoppressive laws, particularly none against sexual crimes like rape or paedophilia. In this sexual utopia, where Alex would definitely feel at home, the free enjoyment of every sexual pleasure is under the protection of the law. Because Sade so fervently urges his readers to transgress all sexual, social and moral norms, the Surrealists view Sade as a liberator, and, in Apollinaire’s words, as “the freest spirit who ever lived” (as cited in Phillips, 2001, p. 4).

Sade, who stresses that the moral standards that society sets up are artificial, culturally relative and worthy of appreciation only by fools, can be regarded as a precursor of Nietzsche, who “deem[s] ethical beliefs the instinct of the herd” (Childs, 2000, p. 60). Proclaiming the death of God, Nietzsche (2003) voices the need for the transvaluation of values, that is the necessity of the new individual, or the “*übermensch*” as he calls it, to rise above the hyp-

ocritical public morality, or herd instinct, and to create new moral standards and new criteria of judgement. It is no wonder that Nietzsche is the philosopher that Foucault most lavishly draws upon⁸ in his critique of the modern disciplinary society, which defines certain sexual and moral standards as “normal” while condemning others as perversions. Foucault describes disciplinary power as normalising power in the sense that the aim of discipline is normalisation. The norm can be defined as “a standard of behaviour that allows for the measurement of forms of behaviour as ‘normal’ or ‘abnormal’. [...] The norm thus establishes the figure of the ‘normal’ as a ‘principle of coercion’ for the figure of the ‘abnormal’” (Hoffman, 2011, p. 32). According to Foucault (1995), disciplinary society is one in which the norm has become more important than the law, by which he means that the subordination of subjects to the ruling system is ensured primarily by their compliance to what is presented as socially normal behaviour rather than to the law. As Foucault puts it, “the power of normalization imposes homogeneity [...] The norm introduces, as a useful imperative and as a result of measurement, all the shading of individual differences” (1995, p. 184). Those like Alex who deviate from normal modes of behaviour are branded as abnormal and fall into a category that Foucault (2003) terms as “the individual to be corrected” (as cited in Sharpe, 2010, p. 46), where correction involves conformity to established standards of normality. Hence, the punishment inflicted on Alex in *A Clockwork Orange* typifies the modern form of punishment which, according to Foucault, serves as the basis for the regulation of the modern disciplinary society as a whole.

The Trial and the Critique of the Law

Orson Welles’s *The Trial*, which is adapted from Franz Kafka’s novel of the same title⁹, is an unconventional crime and punishment story where the protagonist Joseph K., an ambitious bank clerk who leads an ordinary, uneventful life, is all of a sudden charged with, convicted of and eventually executed for an unspecified crime. One day K. is awakened from sleep by two policemen who tell him that he is under arrest for a crime, the exact nature of which, despite K.’s insistent questioning, they refuse to reveal. Surprisingly, K. is told that his arrest presents no obstacle to his going to work as usual and

⁸ Foucault draws upon Nietzsche by adopting the genealogical method originally developed by Nietzsche in his book *On the Genealogy of Morals* (1887). Genealogy, which is an unconventional form of historical analysis, is the main methodology Foucault uses in his explorations into the knowledge/power matrix especially in his later works like *Discipline and Punish* and the three-volume *The History of Sexuality*.

⁹ Although it was written in 1915, *The Trial* was published posthumously in 1925, one year after Kafka’s death.

following his daily routine except that once in a while he is expected to present himself in court, where the frustrated K. does not refrain from expressing contempt for the entire trial before hostile judges, who tell him that he is harming his case by adopting such uncooperative behaviour. K.'s trial is unlike any regular trial in that it has an unrealistic, nightmarish quality permeating everything associated with it, including the court, the judges, the magistrates, the clerks, all of whom seem to be the instruments of an invisible, malignant power. The courtrooms are located in an airless, rundown building in a shabby neighbourhood, and K. has to travel through dark, labyrinthine corridors lined with other accused men and women in order to get there. Welles's film, which manages to capture the gloomy, Kafkaesque atmosphere of the novel, recounts K.'s unsuccessful attempts to get to the bottom of this mysterious case and gain access to the power that has put him on trial. In the process, K. seeks the assistance of an advocate and a court painter who is known to be on friendly terms with some of the judges of lowest rank, but to no avail. During an encounter with a priest in a cathedral, K. learns that he has been condemned to death, whereafter K. is approached by two executioners who lead him away to an excavation pit into which they throw some dynamite which K. readily picks up and holds in his hand until they explode¹⁰.

The Trial is a perplexing story that is unlike both *In Cold Blood* and *A Clockwork Orange* in that the protagonist, Joseph K., is not portrayed as a criminal as such; to our knowledge at least, he has not broken the law in any way, nor is he guilty of any crime as we know it. Indeed, the crux of the story lies in the fact that K. is punished for no reason at all; consequently, his execution seems completely unjustified, which renders him the victim of an inscrutable, nefarious power. Considering that it was written by a German-speaking Jewish author living in Prague in the 1910s, *The Trial* is generally interpreted as a prophetic tale about the atrocities of the fascist Nazi regime¹¹. However, there is definitely more to *The Trial* than that, for rather than a straightforward critique of fascism or political oppression, *The Trial* strikes one as an allegorical tale that undertakes a philosophical inquiry into the concepts of law and justice. The gist of *The Trial* is epitomized by a parable that is recounted

¹⁰ Although Welles's film is, on the whole, a faithful adaptation of the novel, the film's ending is slightly different from that of the novel, where K. is executed by being stabbed to death with a knife.

¹¹ Although Kafka himself did not live to see the atrocities of Nazi Germany, having died in 1924 at the age of forty one, his two sisters perished in concentration camps. Patrick Reilly (2010) asserts that although "it [is] tempting to read *The Trial* as the work of a Jewish writer prophesying the advent of the evil regime", this reading "is both simplistic and wrong" (p. 184).

twice in the course of the film¹², which concerns a man from the country who keeps on waiting before the gate of the law all his life in the hope that he will gain admittance one day. Although the doorkeeper who denies him entry discourages him by saying that even if he were to pass through this particular door, he would be confronted with other doors before which stand other doorkeepers much stronger than himself, the man keeps on waiting until he grows old. Just before the man dies of old age, he inquires of the doorkeeper why nobody else came to seek admittance to the law all this time and gets the reply that this particular door was actually intended just for him, and now that he is dying, the doorkeeper is going to shut it. Kafka's parable, which is entitled "Before the Law", depicts the inaccessibility of the law, where the word "law" does not merely refer to the legal or judicial system, but to the idea of justice which also encapsulates the promise of a kind of salvation. As Martel (2011) puts it, "although Kafka does not mention justice here, it seems to underlie the concept of law described here", for "justice is what is promised by law" (Waiting Before the Law section, para. 3). The man from the country lives in expectation of justice, which never arrives just like Joseph K., who hopelessly tries to discover the source of the mysterious, elusive, indecipherable power that accuses him of an unidentified crime. Joseph K.

[...] assumes that if he is on trial, there must be a law according to which he is either guilty or innocent; there must also be judges to decide his case. The most important thing in his life is to confront them but like the man in the story, K. never gains access to anything. He will never find out what his trial is about (Thorlby, 2010, p. 26).

From a poststructuralist perspective, it can be argued that *The Trial* presents illuminating insights into Jacques Derrida's understanding of law and justice and the difference between the two by demonstrating "what happens when the central organising narrative – of law, of justice, and of the sovereign authority that such concepts delineate – is disrupted or decentered" (Martel, 2011, Waiting Before the Law section, para. 5). In *The Trial*, the law is depicted as an enigmatic force whose workings are beyond human understanding, which nevertheless does not prevent its smooth functioning, i.e. its exertion of control over the lives of individuals. Both Joseph K. and the man from the country are subject to the law, which regulates their life – and their death – despite the fact that it remains totally incomprehensible and unjustified to

¹² The parable is recounted twice in the course of the film, first at the very beginning, then towards the end, during K.'s encounter with the priest in the cathedral, whereas it is recounted only once in the novel during the scene with the priest in the cathedral. The parable was also published separately under the title "Before the Law" during Kafka's lifetime whereas *The Trial* was published posthumously.

them. What is more, in *The Trial*, the law is depicted as a thoroughly corrupt power since its representatives, the judges and magistrates, are depicted as lecherous men who abuse their authority in order to gain sexual favours from the wives of lesser officials. By highlighting the idea that law is an unjustified, arbitrary power that controls individuals' lives while thwarting their attempts to gain access to it, "Kafka's text demonstrates how the law's authority literally comes from nowhere" in a way that is indicative of the Derridean view that law cannot be grounded upon a legitimate basis (Martel, 2011, Revisiting "Before the Law" section, para. 2). According to Derrida, "law cannot found itself lawfully, since the very question of legality obviously cannot be put until law has established itself" (Wortham, 2010, p. 80). Derrida claims that the founding moment of any law always involves a violence that can be categorized neither as just or unjust, legitimate or illegitimate, or to put it in Derrida's words, "law is always an authorized force, a force that justifies itself or is justified in applying itself even if this justification may be judged from elsewhere to be unjust or unjustifiable" (1992a, p. 5). In his article "Force of Law: The Mystical Foundation of Authority", Derrida quotes Pascal's idea that laws are not obeyed because they are just, but rather because they have authority, or, as Pascal puts it "nothing is just in itself, everything crumbles with time, custom is the sole basis for the mystical foundation of authority, whoever traces it to its source annihilates it" (as cited in Derrida, 1992a, p. 12). The unsuccessful attempts of Joseph K. and the man from the country to trace the source of the mystical authority of the law serve to reveal the law's ungroundedness, the emptiness at its core; in other words, the reason why they fail in their attempts to discover the secret at the heart of the law is because there is actually no secret to be discovered. In his reading of Kafka's "Before the Law", Derrida stresses that this, indeed, is the secret that must not be revealed on any account lest it shakes people's confidence in the law, or in Derrida's (1992b) words, the law "is always cryptic; that is it is a secret [...]. The secret is nothing – and this is the secret that has to be kept well, nothing either present or presentable, but this nothing must be kept well" (p. 205).

Derrida (1992a) differentiates between the concepts of law and justice by claiming that whereas the former is constructed and hence deconstructible, the latter is neither constructed nor deconstructible. In accordance with his deconstructive project, which is aimed at undermining transcendent essences, full presences and intrinsic meanings, Derrida asserts that justice does not have an intrinsic meaning or an essence to be discovered since it can never be reduced to a code of rules to be followed. According to Derrida's anti-essentialist philosophy, justice can never be fully present, for if justice were to be materialized into law, this would necessarily result in the betrayal of justice.

Consequently, for Derrida, justice exists only as a possibility, or what he terms as “justice-to-come”, which is to say that “justice is possible as an experience of the impossible [...] even if it does not exist (or does not yet exist, or never does exist) there is justice” (1992a, p. 15). The Derridean understanding of justice as “justice-to-come” always has a destabilizing effect on law in that it has the potential to decenter and disrupt decisions, verdicts, acts which are purported to be just. Thus, for Derrida, “justice must remain as a ‘perhaps’ to haunt and decenter the authority of just decisions, to remind us that they are not justice and that justice itself remains ‘to-come’” (Martel, 2011, Derrida’s Justice section, para. 7). By deconstructing the mystical authority of the law and revealing the emptiness at its core, *The Trial* disrupts the conventional definitions of law in such a way as to open up the possibility for a new way of thinking about justice similar to that of Derrida.

Conclusion

The critical endeavours of poststructuralist thinkers like Foucault and Derrida, which are geared towards questioning prevailing modes of thought and existence, serve to reveal the constructedness, hence ungroundedness, of established definitions of such concepts as crime, punishment, law, and justice. It is only natural, therefore, that the theories of Foucault and Derrida are generally regarded as aligned with marginalized and subjugated groups like women, homosexuals, ethnic minorities, the subaltern, the insane, criminals, etc. who, in one way or another, do not comply with mainstream society’s values and norms.

Works of fiction with a critical edge, such as *In Cold Blood*, *A Clockwork Orange* and *The Trial*, which focus on the experiences of individuals marginalized by law, lend themselves well to being read in tandem with the theories of Foucault and Derrida. The protagonists in all three films are subjected to a law that convicts them of crimes they have committed and imposes upon them a punishment which is presented as far from justified. The first two films, taken together, present illuminating insights into Foucault’s theories concerning the shift in Western punitive practices that took place in the wake of the rise of modernity, when forms of punishment based on retribution came to be replaced with disciplinary techniques aimed at correction. *In Cold Blood*’s condemnation of the death penalty on the grounds that it is backward and unjustified is informed by the modern, enlightened discourses on punishment, whose origins are traced by Foucault back to the development of modern disciplinary power, which becomes the target of attack in *A Clockwork Orange*. Kubrick’s film, which lends itself particularly well to interpretation in terms of Foucauldian theory, demonstrates that modern disciplinary tech-

niques are not necessarily more just or humanitarian compared to corporal punishment since they serve as an even more insidious means of control and manipulation. *The Trial* differs from both *In Cold Blood* and *A Clockwork Orange* in that it is a more philosophically oriented film that sets one thinking about the concept of justice instead of presenting a social critique of existing punitive practices. Hence, it would not be wrong to claim that *The Trial* offers a more radical critique that involves the total deconstruction of the law and the problematization of conventional ideas about justice in a way that resonates with Derridean theory.

In conclusion, reading *In Cold Blood*, *A Clockwork Orange* and *The Trial* in the light of Foucault's and Derrida's theories serves to reinforce the poststructuralist view that law is socially constructed and philosophically ungrounded, which; however, does not invalidate the idea of justice, but instead broadens our conception of it.

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