

*Supposons que la discipline et la sécurité n'existent pas ~*

Rereading Foucault's *Collège de France* Lectures (with Paul Veyne)

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26 May 2008

Paper prepared for *Le Carcéral, Sécurité, and Beyond:*  
Rethinking Michel Foucault's 1978-1979 Collège de France Lectures

Bilingual and interdisciplinary colloquium at the  
University of Chicago Paris Center  
Friday June 6 2008

University of Chicago Paris Center  
6 rue Thomas Mann  
75013 Paris

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We know them well, *discipline* and *sécurité*.<sup>1</sup> We know well the different ways they operate. *Discipline* is centripetal, it focuses on minor disorder and seeks to eradicate; *sécurité* in contrast is centrifugal, it is tolerant of minor deviations and seeks to optimize, to minimize or maximize rather than to eliminate.<sup>2</sup> We know well how to manipulate them. Order-maintenance policing is *discipline*,<sup>3</sup> and so are rehabilitative prison programs, juvenile reform school, and parole release.<sup>4</sup> Mass incarceration, on the other hand, is *sécurité*, as are managerial approaches to prisons and policing, actuarial instruments, and preventative detention.<sup>5</sup> We know how to differentiate them from the *juridical*, which divides in a binary way between the permissible and the prohibited and then penalizes the latter.<sup>6</sup> Naturally, we also know how to ambiguate them. The actuarial, it turns out, is not necessarily *sécurité*,<sup>7</sup> and neither necessarily are predictions of future dangerousness.<sup>8</sup>

What we know less well, I contend, is how to critique them—*discipline* and *sécurité*, that is—the way that Foucault did *folie*, *délinquance*, or *sexualité*. We are not always willing to reexamine critically our own preferred analytic constructs. Perhaps we do not dare—the endeavor, I have found, is dizzying. But if we do not, it is at a deep cost to our own projects, intellectual and political. In this essay, I would like to push further my meditations on punishment, and subject *discipline* and *sécurité* to the same brutal method that Foucault used in his writings on *folie*, *délinquance*, and *sexualité*. I would like to suppose that they—yes, *discipline* and *sécurité*—do not exist.

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<sup>1</sup> I will use *sécurité* to refer to the term Foucault originally coined and later renamed *gouvernementalité*, and will reserve the term “governmentality” to refer to later work in “governmentality studies.”

<sup>2</sup> Foucault 2004a STP :46; 2004aSTP :7.

<sup>3</sup> Harcourt 2001; Foucault 2004a STP:47 (« La discipline ne laisse rien échapper. Non seulement elle ne laisse pas faire, mais son principe, c'est que même les choses les plus petites ne doivent pas être abandonnées à elles-mêmes. La plus petite infraction à la discipline doit être relevée avec d'autant plus de soin qu'elle est petite »).

<sup>4</sup> Simon 1993.

<sup>5</sup> Feeley and Simon 1992

<sup>6</sup> Foucault 2004a STP:7.

<sup>7</sup> Harcourt 2007a; Harcourt 2008.

<sup>8</sup> Bigo 2007 (the “worst case scenario” metaphor works better); Zedner 2008 (the precautionary principle works better); Claude Olivier Doron (writing a dissertation thesis analyzing predictions of future dangerousness through the lens of the precautionary principle).

## I.

The point of departure, naturally, is the opening passage of Foucault's 1979 lectures, *Naissance de la biopolitique*. It concerns the methodological discussion that Paul Veyne has once again drawn our attention to, this time in his new book *Foucault: Sa pensée, sa personne* (2008).<sup>9</sup> Veyne in part had helped catalyze this methodological discussion with the publication of his earlier essay, "Foucault révolutionne l'histoire," written in April 1978—an essay that picked up on a short passage from Foucault's 1978 lectures<sup>10</sup> and in part stimulated Foucault's clarification in that first lecture on January 10, 1979<sup>11</sup>—and an essay that drew much criticism from, among others, Marcel Gauchet.<sup>12</sup> I will come back to the controversy between Veyne and Gauchet later, but will focus first on Foucault's own words, which are somewhat more enlightening than the ensuing controversy.

In that opening lecture, Foucault steps back to explain and reframe his larger intellectual project and to place his writings within their proper methodological framework. A year earlier, in his lecture of February 8, 1978, Foucault had said that « On peut dire sans doute que la folie 'n'existe pas,' mais ça ne veut pas dire qu'elle ne soit rien. »<sup>13</sup> This was indeed a provocative statement, rich in meaning, but it had not conveyed the full sense of Foucault's approach, and so, a year later, Foucault would return to this theme to explain more fully what he meant. His method in all his work, Foucault explains, had always been to start by *doing away* with the central, universal explanatory concept, as a way to reexamine the work that the concept accomplished. Foucault lectured:

Je pars de la décision, à la fois théorique et méthodologique, qui consiste à dire: supposons que les universaux n'existent pas, et je pose à ce moment-là la question à l'histoire et aux historiens: comment pouvez-vous écrire l'histoire si vous n'admettez pas a priori que quelque chose comme l'État, la société, le

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<sup>9</sup> Veyne 2008:28.

<sup>10</sup> Foucault 2004a STP:122.

<sup>11</sup> Paul Veyne had shown Foucault his 1978 essay in draft form and Foucault had reportedly responded, according to Veyne, in terms that relate directly and likely would have prompted Foucault to want to clarify his response. According to Veyne, Foucault had told him, more or less, that "Je n'ai personnellement jamais écrit *la folie n'existe pas*, mais cela peut s'écrire ; car, pour la phénoménologie, la folie existe, mais elle n'est pas une chose, alors qu'il faut dire au contraire que la folie n'existe pas, mais qu'elle n'est pas rien pour autant" (Veyne 1978:229). Foucault essentially corrects and clarifies this response in his first lecture on January 10, 1979.

<sup>12</sup> Gauchet 1980; Gauchet 1986.

<sup>13</sup> Foucault 2004a STP:122.

souverain, les sujets existe ? C'était la même question que je posais, lorsque je disais, non pas : la folie existe-t-elle ? Je vais examiner si l'histoire me donne, me renvoie quelque chose comme la folie. Non, elle ne me renvoie pas quelque chose comme la folie, donc la folie n'existe pas. Ce n'était pas ça le raisonnement, ce n'était pas ça la méthode de fait. La méthode consistait à dire : supposons que la folie n'existe pas.<sup>14</sup>

This passage is extremely precise and helps make sense of Foucault's writings not only on madness and the mental asylum, but also on delinquency and the prison, and on sexuality. The idea in all of these projects is not to demonstrate that the universal concept—*folie*, *délinquance*, or a particular conception of *sexualité*—did not exist. Of course, it existed. The idea is to explore how the concept was shaped and what work it performed—and his method was to start by *supposing* that the thing itself never existed. Very simple indeed. Returning to this point several years later, in January 1984, Foucault emphasized in an interview: « on m'a fait dire que la folie n'existait pas, alors que le problème était absolument inverse: il s'agissait de savoir comment la folie, sous les différentes définitions qu'on a pu lui donner, à un moment donné, a pu être intégrée dans un champ institutionnel qui la constituait comme maladie mentale ayant une certaine place à côté des autres maladies. »<sup>15</sup>

As Paul Veyne suggests, these passages reflect Foucault's nominalism. « Foucault est nominaliste comme Max Weber et comme tout bon historien. Heuristiquement il vaut mieux partir du détail des pratiques, de ce qui se faisait et se disait, et faire l'effort intellectuel d'en expliciter le discours. »<sup>16</sup> Foucault's method was to critically examine the very conceptions that we construct—that we construct in order to help us understand the individual practices and institutions, phenomena that resist our interpretations—in order to learn something about ourselves. Foucault's nominalism was fed, in part, by a large dose of skepticism—especially, of skepticism of the constructs of others, of those many universals. It is in this sense that Veyne correctly characterizes Foucault as a skeptic<sup>17</sup>—although, as I will suggest later, it is important to keep Foucault's nominalism separate from his skepticism.

<sup>14</sup> Foucault NB 2004b :5.

<sup>15</sup> Foucault *Dits et Ecrits IV*: 726.

<sup>16</sup> Veyne 2008:19.

<sup>17</sup> Of his skepticism, Veyne recalls : « Un soir où nous parlions du mythe, il me disait que la grande question, pour Heidegger, était de savoir quel était le fond de la vérité ; pour Wittgenstein, c'était de savoir ce qu'on disait lorsqu'on disait vrai ; ' mais à mon avis, la question est : d'où vient que la vérité soit si peu vraie ? ' ; la vérité ou du moins les grandes vérités de chaque époque. » (Veyne 2008:63).

All of this raises for me, though, one crucial question: if Foucault deploys the same methodological optic to *le souverain* and *les sujets* as he does to *la folie*, then should he not also interrogate *discipline* and *sécurité* in a similar fashion? What if we were to suppose that *discipline* and *sécurité* do not exist—and, for that matter, that neither does the *juridical*. How then do we write the history of our penal practices and discourses—of order-maintenance policing, mass incarceration, preventative detention, actuarial prediction instruments, felon disenfranchisement, sex offender registries, habitual offender enhancements?

## II.

One immediate reaction—though I will argue it is too simple—is that *discipline* and *sécurité* are simply a different type of concept than *folie* or *délinquance*, and play a different role in the writings of Foucault. The latter are *internal* to the system—they represent the discourses that justify the treatment of the insane, the criminal, the sexually deviant. They make possible, they facilitate, they legitimate and render natural the penal practices that we study. The former, in contrast, are *external* to those discourses, they are part of the critical rereading of the discourses, the practices, and the institutions. *Discipline* and *sécurité* serve as a *better way* of understanding these practices and institutions. They do not promote or legitimate them. From this point of view, *discipline* and *sécurité* are a different type of universal than *folie* or *délinquance*. They are part of Foucault's discourse—of the discourse of the critical theorist, of the outsider looking in. In contrast, *folie* or *délinquance* are part of the discourses that build the institutions and create the practices. They are precisely what need to be swept aside in order to see *discipline* or to feel *sécurité*.

If this is right, then supposing that *discipline* or *sécurité* do not exist simply means that we would need to find *other* tools or devices, other concepts *like them* to make sense of our penal history. We would simply need to find other ways to organize our understanding of these phenomena. In other words, the methodological move would simply require us to deploy different concepts to make sense of the same practices. We would only need to find *substitutes* for *discipline* and *sécurité* that did as much if not better work helping us understand the history and modalities of these penal practices.<sup>18</sup>

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<sup>18</sup> There are some passages in Foucault's clarification that lend some support to this view, for instance, when he states, right after declaring « La méthode consistait à dire : supposons que la folie n'existe pas », that: « Dès lors, quelle est donc l'histoire que l'on peut faire de ces différents événements, de ces différentes pratiques qui, apparemment, s'ordonnent à ce quelque chose supposé qui est la folie ? »

I intimated earlier that this would be too simple because the universals that Foucault questioned in his own writings—*folie* or *délinquance*—were themselves the product of a critical intellectual gaze, just like *discipline* and *sécurité*. They were the analytic constructs of sociologists, historians, and political theorists trying to understand the penal practices. In his opening lecture, Foucault explains this in a preceding passage—which we now need to reread in light of his statement that *folie* plays the same role as *le souverain, les sujets, l'État, or la société*, in other words in light of his comment “*supposons que la folie n'existe pas.*” Foucault reportedly said in his lecture:

... en choisissant de parler ou de partir de la pratique gouvernementale, c'est, bien sûr, une manière tout à fait explicite de laisser de côté comme objet premier, primitif, tout donné, un certain nombre de ces notions comme, par exemple, le souverain, la souveraineté, le peuple, les sujets, l'État, la société civile : tous ces universaux que l'analyse sociologique, aussi bien que l'analyse historique et l'analyse de la philosophie politique, utilise pour rendre compte effectivement de la pratique gouvernementale. (Foucault NB 2004b : 4).

*Le souverain, les sujets, l'État, la société* : these are the terms used by *academic commentators*—sociologists, historians, political philosophers—to understand practices and institutions. Foucault's method and his project, he explains, was to critically explore and rethink the concepts and categories that *other thinkers* had used to make sense of our practices. It was not just to critically explore the discourse of the institution builders and the practice leaders, but to focus on the interpretive models of the intellectuals. Foucault emphasizes this in another passage—which, again, we can reread in light of his statement that we should think of *folie* the same way we think of other universals:

au lieu de partir des universaux pour en déduire des phénomènes concrets, ou plutôt que de partir des universaux comme grille d'intelligibilité obligatoire pour un certain nombre de pratiques concrètes, je voudrais partir de ces pratiques concrètes et passer en quelque sorte les universaux à la grille de ces pratiques. (Foucault NB 2004b :4-5).

Foucault's project—to interrogate universals, to pass them under the microscope of practices—is to understand how those universals came to be accepted as true: how they have been shaped by the different communities of sociologists, historians, political philosophers to be useful interpretive tools to understand modern practices. His project focuses on re-interrogating not the practices themselves, but the terms used to

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(Foucault NB 2004b:5). This sounds almost as if the task, after doing away with the universal concept, is simply to rewrite the history of the practices and institutions using some other analytic concept.

understand the practices. To explore the concepts using as his tool—his *grille*—the practices themselves.

His starting point—“supposons que la folie n'existe pas”—is not intended to throw us back onto the practices as a way to develop better tools to understand them, so much as it is intended to make us focus on how the universal itself was constructed. Foucault explained this best, I believe, in an interview in the spring of 1983, where he stated that his principal line of inquiry had been the following: « comment se fait-il que le sujet humain se donne à lui-même comme un objet de savoir possible, à travers quelles formes de rationalité, à travers quelles conditions historiques et finalement à quel prix ? Ma question, c'est celle-ci : à quel prix le sujet peut-il dire la vérité sur lui-même ? »<sup>19</sup> In the specific context of *la folie*, Foucault would both restate this exact question—« à quel prix est-ce que le sujet peut dire la vérité sur lui-même en tant que fou ? »<sup>20</sup>—and answer it as follows: « Au prix de constituer le fou comme l'autre absolu, et en payant non seulement ce prix théorique, mais encore un prix institutionnel et même un prix économique tel que l'organisation de la psychiatrie permet de le déterminer. »<sup>21</sup>

It is in this sense that Foucault specifies:

Moi, je voudrais faire précisément l'inverse, c'est-à-dire partir de cette pratique telle qu'elle se donne, mais telle en même temps qu'elle se réfléchit et se rationalise pour voir, à partir de là, comment peuvent effectivement se constituer un certain nombre de choses, sur le statut desquelles il faudra bien sûr s'interroger, et qui sont l'État et la société, le souverain et les sujets, etc.<sup>22</sup>

« *Comment peuvent effectivement se constituer un certain nombre de choses* » : Foucault's project is to explore and interrogate how the universals came to be constituted. Not to *replace* them with better universals, but to understand and interrogate how it is that these universals—*le souverain*, *la société*, but also *la folie*—have been produced, how we have come to believe them, and at what price. Foucault had stated this a year earlier, in his February 8, 1978 lecture: « Il s'agissait au contraire de saisir le mouvement par lequel se constituait, au travers de ces technologies mouvantes, un champ de vérité avec des objets de savoir. »<sup>23</sup>

<sup>19</sup> Foucault 1994 *DE IV*:442.

<sup>20</sup> Foucault 1994 *DE IV*:442.

<sup>21</sup> Foucault 1994 *DE IV*:442.

<sup>22</sup> Foucault 2004b NB:4.

<sup>23</sup> Foucault 2004a STP:122.

## III.

What if we extended the list to include *la discipline* and *la sécurité*? *Supposons que la discipline et la sécurité n'existe pas* ~ or more explicitly: how did we come to believe that something like *discipline*—or something like *sécurité*—exists and at what price? How did we constitute the notions of *discipline* and *sécurité*, and what work do they perform?

To answer the question properly, I fear, would require writing other lengthy genealogies on the birth, first, of the idea of *discipline* and the emergence, second, of the notion of *sécurité*. It might entail tracing the emergence of the anti-psychiatry movement—focusing not only on Foucault's writings, but also, naturally, on those of Thomas Szasz, David Rothman, and others. It may require exploring the relationship between Foucault's own experiences with suicide, psychiatry, drugs, madness, and institutions, on the one hand, and his writings on *discipline* on the other. It may involve thinking about the rise of social movements for equality and civil rights, or the emergence of anti-colonialist thought. As for the emergence of *sécurité* and the shift from *discipline* to governmentality studies, that genealogy may have something to do with the striking transformation of the institutionalized population from mental hospital and asylums to prisons, a trend that is visually represented in that shocking graph of United States asylum and prison populations.<sup>24</sup>

I said that I fear these genealogies because I am concerned that they would simply throw us under the spell of other universals—other universals which we would then need to interrogate. They would propel us in the direction of another cycle of genealogies and universals, with no foreseeable end, no place to stop tracing the lineage. Rather than proceed down that endless path, let me propose instead, or rather let me sketch in this essay a different type of answer to the question—perhaps actually more a set of questions than an answer proper.

Is it possible that we embraced the notion of *discipline* in order to mobilize against the complacency that attends the ubiquitous progress narrative—the idea that we have become so much more civilized in our punishments? Emile Durkheim had famously observed that the intensity of punishment seems to diminish in more evolved societies. This was, Durkheim claimed, one of the « deux lois qui nous paraissent dominer l'évolution du système répressif. »<sup>25</sup> Could it be that the notion of *discipline* was especially attractive because so many of us had fallen under the spell of this

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<sup>24</sup> See Harcourt 2007c.

<sup>25</sup> Durkheim 1901:65.

discourse—or alternatively because that narrative was so successful at demobilizing large portions of the citizenry?

Foucault's intervention in *Discipline and Punish*—to show that modern disciplinary penal practices are no more nor less barbaric than eighteenth century corporal punishments and *supplices*, but simply more effective at rendering docile the body—was the defibrillator, the shock treatment that served to jumpstart a failing—and flailing—critique of punishment. So many of us had become complacent. So many of us had come to believe in a certain “adoucissement de la peine.” So many had become comfortable with the idea—this may sound overly simplistic, for which I apologize—that modern rehabilitative practices were less problematic and far preferable to being drawn-and-quartered; that, at least in the majority of cases, brutal corporal punishments seemed worse than ordinary forms of discipline, such as treatment programs, psychotherapy, or imprisonment. Eliminating the stake, the whip, the branding iron, and other such practices seemed, to many, to reflect a “civilizing process.”<sup>26</sup>

If this is correct—and again, my apologies for the reductionism—then the fact is that we really did need *something* to keep us going in our critique of punishment practices. We really needed a new way to describe and understand modern penal practices that could maintain our critical discourse. And that's precisely what *discipline* achieved. We needed *discipline* to remind us that these new forms of punishment—treatment and rehabilitation protocols—were *still* punishments. Similarly, today we need the concept of *sécurité* to remind us that “managing populations” is another form of punishment. *Discipline* and *sécurité* are ways for us to continue, to perpetuate the *critique of punishment* even in periods when the modalities of punishment are changing and appear more civilized.

This is, perhaps, not a radical claim. There are passages in Foucault's interviews which suggest that Foucault recognized and acknowledged this. Naturally, the historical record is not unambiguous;<sup>27</sup> but there are passages which suggest that Foucault understood this well—this idea that his own constructs would serve or perhaps were

<sup>26</sup> I am borrowing Elias' term here, though not necessarily all his analytic framework.

<sup>27</sup> There are passages and interviews that give reason to believe that Foucault considered *discipline* somewhat more robust than *folie*. Veyne seems to suggest that Foucault somehow believed more in his own enterprise. “Et Foucault lui-même, grand sceptique, doutait-il de la véracité et de l'avenir de sa propre entreprise ? » Veyne asks. « Je crois bien que non... » (Veyne 2008 :117). As Veyne writes, “À ses yeux, la critique généalogique telle qu'il la pratiquait avait, comme la physique galiléenne, la scientificité d'une entreprise empirique bien fondée ; il lui était arrivé de se tromper, il signalait des erreurs théoriques qu'il avait commises dans *Histoire de la folie* et dans *Naissance de la clinique*, mais enfin son entreprise était « dans le vrai ». Le ton de voix résolu, celui d'une profession de foi, avec lequel il me disait un jour que l'herméneutique nietzschéenne avait opéré une coupure décisive dans l'histoire de la connaissance, montrait bien qu'il y croyait, qu'il espérait. » Veyne 2008:126.

intended to mobilize a critique—in relation both to *Surveiller et punir* and to *L'histoire de la folie*. In an interview given in May 1981, Foucault explained the first project in these terms:

Et j'ai dès lors essayé d'interroger les raisons pour lesquelles la prison était ainsi devenue une sorte d'évidence dans notre système pénal. Il s'agit donc de rendre les choses plus fragiles par cette analyse historique; plutôt, de montrer à la fois pourquoi et comment les choses ont pu se constituer ainsi et montrer en même temps qu'elles se sont constituées à travers l'historique précis.<sup>28</sup>

Similarly, Foucault explained the second project in the following terms:

Notre rapport à la folie c'est un rapport qui est historiquement constitué et du moment qu'il est historiquement constitué, il peut être politiquement détruit. Je dis politiquement en donnant au terme politique un sens très large, c'est-à-dire qu'il y a des possibilités d'action puisque c'est à travers un certain nombre d'actions, de réactions, etc... à travers un certain nombre de luttes, de conflits pour répondre à un certain nombre de problèmes que l'on a choisi ces solutions-là.<sup>29</sup>

« Politiquement détruit » : there is no doubt that Foucault's "tool boxes" were just that. When Foucault defines philosophy as "la politique de la vérité," as he does in *Sécurité, territoire, population*,<sup>30</sup> he inescapably brings together the construction of knowledge and its strategic deployment.

#### IV.

At the same time, *discipline* and *sécurité* may have served as a way to perform a theoretically sophisticated critique of modern punishment practices without sounding vulgar. The terms *discipline* and *sécurité* allow us to carry out a veiled critique—veiled in the sense that we remain non-normative, non-moralistic, non-judgmental. Foucault nowhere says that *discipline* is more troubling, or for that matter less troubling, than the *juridical* approach. That would be too simple. He may intimate that *discipline* is more effective at rendering the body docile—a statement which contains an implicit value judgment since we all, naturally, prefer not to be rendered docile. (No one likes *being*

<sup>28</sup> Foucault 1981:9-10. This is from an interview with André Berten during Foucault's visit to the Université Catholique de Louvain from May 1981. I am relying on a transcript generously provided by Fabienne Brion. Special thanks to Fabienne for sharing the transcript of the interview with me.

<sup>29</sup> Foucault 1981:10.

<sup>30</sup> Foucault 2004a STP:5.

*made* docile. If we are in fact docile, it's far better that it be by choice). But the implicit judgment here is subtle. It operates below the surface. No one has had to engage those puerile questions "Do you prefer *discipline* or brutal forms of corporal punishment?" "Are you saying you want to go back to *supplices*?" We can perform the disciplinary critique without debasing ourselves to that level. We can gesture to *discipline* and, because of all of the connotations of the word "discipline" itself, we can leave it at that.

*Discipline* and *sécurité* allow us to position ourselves as critics, but to maintain a certain kind of purity, some intellectual integrity. We do not need to state our normative position on punishment. We have not exposed our moral compass. We have, instead, deployed critical words—*discipline*, the panopticon, governmentality, biopower—without having to marshal pompous, moralistic principles. We have taken the higher road of theoretical critique and avoided sounding vulgar or overly simplistic.

This may in fact be why Foucault substituted the word "gouvernementalité" for *sécurité*?<sup>31</sup> *Sécurité*, after all, does not carry the same negative connotations as being "governed." Is it possible that "gouvernementalité" works precisely because of its connotations—by, for instance, casting measures such as the new French law on *rétenion de sûreté* in a darker light? Does it serve to make these measures sound more authoritarian, nefarious, controlling? And might it achieve these ends without our having to adopt a theory of values, a moral principle, even a political position?

## V.

Marcel Gauchet goes further. Gauchet offers a more cynical take in his responses to Paul Veyne. If my reflections here so far have been somewhat resistant, perhaps a gentle form of *contre-conduite*—with all the ethical implications that *contre-conduite* entail, so admirably discussed by Arnold Davidson in his forthcoming foreword<sup>32</sup>—Gauchet's reactions are more violent. Let's return then to the Veyne-Gauchet controversy alluded to earlier.

Paul Veyne, himself an early skeptic,<sup>33</sup> embraced Foucault's nominalism in his 1978 essay, "Foucault révolutionne l'histoire," reading Foucault's method primarily—at least at the time—through the lens of positivism. « Il est le premier historien

<sup>31</sup> Foucault 2004a STP:111 (substituting the history of governmentality for the term *sécurité*).

<sup>32</sup> Davidson forthcoming.

<sup>33</sup> As Veyne wrote in 1983, « Si l'on y réfléchit un instant, l'idée que la vérité n'existe pas n'est pas plus paradoxale ou paralysante que celle d'une vérité scientifique qui est perpétuellement provisoire et sera falsifiée demain » (Veyne 1983 :125)

complètement positiviste, » Veyne wrote of Foucault in that essay.<sup>34</sup> Veyne's embrace of nominalism triggered a sharp response from Gauchet, at first deeply sarcastic,<sup>35</sup> later more deliberate but just as caustic.<sup>36</sup>

Gauchet was extremely critical of Veyne's Foucauldian turn.<sup>37</sup> It was not just that Veyne, in his opinion, was a naïve autodidact who did not know well his philosophical sources—though there is much of that in Gauchet's 1986 essay.<sup>38</sup> On the merits, Gauchet was extremely critical of the type of historical skepticism that he attributed to Veyne. Gauchet discerned a symbiotic and unhealthy relationship between historical dogmatism and skepticism. He viewed skepticism as the absurd rejection of an equally absurd dogmatism: « le retournement du dogmatisme scientiste en scepticisme : puisqu'il n'y a pas de choses en soi, il n'y a que des mots. Il faut croire que nous sommes condamnés à voir indéfiniment s'échanger par alternance des positions se nourrissant l'une après l'autre de leur absurdité mutuelle. »<sup>39</sup>

Gauchet characterized Veyne's position as pure illusion—a simple slight-of-hand. He referred to it as a « tour de passe-passe verbal, »<sup>40</sup> « un lapin verbal sorti d'un chapeau rhétorique, »<sup>41</sup> « l'invocation d'un fantôme, »<sup>42</sup> and simple « *illusionnisme*. »<sup>43</sup> What bothered him most, though, was that this type of skeptical discourse was so successful. The reason, he suggested, was political: « ce succès est politique, » he asserted. « Sa réussite est liée au fait qu'il offre un débouché commun au relativisme ultra-démocratique et au désir des élites de rendre leur position imprenable. »<sup>44</sup> It affords or ensures a convergence of the extreme right and the extreme left.<sup>45</sup> Gauchet writes in his 1986 essay:

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<sup>34</sup> Veyne 1978 :204.

<sup>35</sup> Gauchet 1980.

<sup>36</sup> Gauchet 1986.

<sup>37</sup> Gauchet is careful to emphasize, in his 1986 text, that he is not addressing Foucault, but only Veyne. See Gauchet 1986 :403 (« Le texte de Paul Veyne se donne pour une reconstruction de l'épistémologie de Foucault. Je laisserai complètement de côté la question de savoir dans quelle mesure cette reconstruction est légitime ou non. Je traiterai le texte comme un texte de Veyne sans me demander si les critiques qu'on est fondé à lui adresser s'appliquent ou pas à Foucault, et si oui, comment. »)

<sup>38</sup> Gauchet suggests, for instance, that Veyne constructs his nominalist theory of history « dans l'ignorance de bonne foi des antécédents philosophiques où il s'insère » (Gauchet 1986 :402). Gauchet certainly does not pull his punches in his 1986 essay, referring to Veyne's argument as an « étrange raisonnement » and elsewhere as an « absurdité » (Gauchet 1986 :404 and 405).

<sup>39</sup> Gauchet 1986:405.

<sup>40</sup> Gauchet 1986:415.

<sup>41</sup> Gauchet 1986:416.

<sup>42</sup> Gauchet 1986:417.

<sup>43</sup> Gauchet 1986:417.

<sup>44</sup> Gauchet 1986:417.

<sup>45</sup> Gauchet 1986:417.

S'il n'y a pas de faits, mais seulement des interprétations, il y a place, en effet, pour *toutes* les interprétations—« on peut imaginer toutes les interprétations que l'on veut ». On ne saurait être plus chaleureusement tolérant. L'élimination des contraintes de la vérité crée les conditions d'un authentique *pluralisme*, mot volontiers revendiqué par Veyne et qui ne peut que flatter le souci démocratique d'assurer la coexistence pacifique de la totalité des points de vue.<sup>46</sup>

Gauchet thus identifies, hidden behind this pluralism, a far darker side. There is, he suggests, a will to power behind the tolerance, behind the relativism. If it is true that all voices are just interpretations, then the only way to differentiate, Gauchet suggests, the only way to know whose interpretation to believe depends on the *social status* of the interpreter. This recalls, ironically, Foucault's discussion in "La vérité et les formes juridiques" of the way in which juridical testimony was weighed in the medieval period: the court would compare the social status of the witnesses and accord truth to the person with witnesses of higher status.<sup>47</sup> The same is bound to happen, Gauchet suggests, as a result of relativism—and perhaps, not just bound to happen, but intended. Gauchet writes:

Une interprétation autrement dit, pour traduire en termes triviaux mais commodes, a plus de poids si elle est soutenue par un professeur au Collège de France<sup>48</sup> que si elle est défendue par un adjoint d'enseignement au Lycée de Thionville.<sup>49</sup> Elle n'a même à strictement parler que le poids qui lui prête par sa position l'individu qui l'adopte. Le bénéfice est maigre pour l'obscur et le sans-grade : il lui reste la satisfaction toute privée d'avoir son interprétation à lui, qui ne gêne personne, mais n'intéresse non plus personne... Il y a un solide principe de pouvoir au cœur de ce discours de libération.<sup>50</sup>

In other words, skepticism is merely will to power.

There is, however, an *aporia* here. At times, Gauchet seems to suggest that the skeptical historian—Paul Veyne—is not truly skeptical *all the way down*. Gauchet writes, for instance, that « Cette vision généalogique généralisée n'exclut qu'une généalogie : la *sienne propre*. »<sup>51</sup> In other words, the skeptical historian often *does*

<sup>46</sup> Gauchet 1986:417.

<sup>47</sup> Foucault 1973.

<sup>48</sup> BEH note: Paul Veyne was at the Collège de France at the time.

<sup>49</sup> BEH note: Marcel Gauchet was an « assistant de recherches » at the Institut Raymond Aron, Ecole des Hautes Etudes en Sciences Sociales, at the time.

<sup>50</sup> Gauchet 1986:418.

<sup>51</sup> Gauchet 1986:407.

*believe* in the truth value of his own constructs—it is only the constructs of others that he questions and rejects. If that is true, though, then the skeptical historian is acting in bad faith, particularly with regard to his nominalism. He is not truly nominalist, he is just deploying a skeptical stance in order to exploit his higher social status to prevail in the argument. He is instrumentally nominalist to promote his will to power. The nominalist historian acting in good faith, in contrast, questions all universals, including his own, because he is nominalist *all the way down*—and not for instrumental purposes. His nominalism may have this further attribute—of distributing by social status—but it is not willed. It can neither be willed, nor undone. It is simply a circumstance that attaches necessarily to good faith nominalism.

In other words, Gauchet's critique only applies to the nominalist historian if he is truly nominalist all the way down, but in that case, the critique misfires somewhat: the will to power is an inevitable accoutrement that is not really willed. In relation to Foucault's writings on *discipline* and *sécurité*, the critique only works *if* Gauchet believes that Veyne<sup>52</sup> was prepared to suppose that these concepts—*discipline* and *sécurité*—did not really exist. It only applies if Veyne believes that there is no greater truth value to these concepts than to any other universal. Gauchet's critique depends, in some sense, on a good faith belief in nominalism—or nominalism all the way down. But that is precisely where the critique is less strong.

The problem in all of this discussion is that Gauchet tends to conflate nominalism with skepticism, whereas the two need to be carefully distinguished. It is true that the nominalist historian generally has a skeptical disposition. But the nominalist is not skeptical *all the way down*—just skeptical of universals. He does believe in the truth-value of individual facts. And he does believe in the truth of his nominalism. There is no internal contradiction there. It is possible, therefore, to be a good faith nominalist—which presents problems for the critique. I think that Paul Veyne does a better job of separating the two strands of nominalism and skepticism. This is reflected in his opening paragraph, where he locates Foucault as « un penseur *sceptique*, qui ne croyait qu'à la vérité des faits, des innombrables faits historiques qui remplissent toutes les pages de ses livres, et jamais à celle des idées générales. Car il n'admettait aucune transcendance fondatrice. »<sup>53</sup>

<sup>52</sup> Recall that Gauchet is only addressing Veyne, not Foucault. See Gauchet 1986 :403.

<sup>53</sup> Veyne 2008:9. There are, however, passages where Veyne pushes Foucault's skeptical disposition a bit too far, I believe. See, e.g., Veyne 2008:63 (« de son propre aveu, il était sceptique. J'en viens à une citation décisive. Vingt-cinq jours avant sa mort, Foucault a résumé sa pensée en un seul mot. Un interviewer pénétrant lui demandait : 'Dans la mesure où vous n'affirmez aucune vérité universelle, êtes-vous un sceptique ? — Absolument', répondit-il. Voilà le fin mot : Foucault doute de toute vérité trop générale et de toutes nos grandes vérités intemporelles, rien de plus, rien de moins. »)

None of this should detract, though, from Gauchet's substantive point—just from his cynicism. The nominalist historian may be nominalist and highly skeptical out of good faith conviction in his beliefs, and yet many may ultimately judge the veracity of his discourse based only on his social status. But that's not any different in the case of the realist historian—it simply never hurts to be at the Collège de France.

## VI.

Returning then to the earlier discussion, could it be that the real cost of constructing these concepts—*discipline* and *sécurité*, that is—has been to avoid asking larger questions of punishment? Is it possible that we have been hiding behind these sophisticated analytic constructs to protect ourselves from asking—and having to answer in what can only be a vulgar or naïve way—whether we are “opposed” to punishment? Is that the question we never ask ourselves *because* we can argue, instead, *against* disciplinary forms of punishment or *against* governing through crime? Is that the *price* we pay for believing in *discipline* and *sécurité*?

What's *wrong* with punishment, after all? Foucault was asked that question on at least one occasion that I am aware of—I am thinking here of his December 1983 interview translated as “What Calls for Punishment?” in *Foucault Live*—and he responded in the following manner:

I believe that indeed the penal law is part of the social fabric in a society like ours, and that there's no reason to mask it. That means that individuals who are part of this society have to recognize each other as subjects of the law who as such are susceptible of being punished and chastised if they infringe upon some rule. There is nothing scandalous about that, I don't think.<sup>54</sup>

At another point in the interview, Foucault was asked more directly what he thought of the idea of abolishing punishment (via a discussion of Louk Hulsman's writings). He essentially dodged the question, responded that he found Hulsman's thesis “enormously interesting,” and “very stimulating and important,” but then began posing questions of his own.<sup>55</sup>

Though not scandalized by the very idea of punishment, Foucault nevertheless described the contemporary penal system as “archaic, arbitrary, and inadequate to the real problems that are posed to a society,” and offered the following guidance:

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<sup>54</sup> Foucault 1989:430.

<sup>55</sup> Foucault 1989:429.

... it is necessary to rethink the penal system itself. I don't mean: let's return to the severity of the 1810 penal code; I mean let's return to the serious idea of a penal law that would clearly define what in a society like ours can be considered as necessary to punish, and what not; let's return to the very thought of a system defining the rules of social activity.<sup>56</sup>

Foucault was not opposed to punishment *tout court*. But then how did he choose which penal practices to challenge? How did he know where to stop? How do we know when to mobilize?

In several interviews, Foucault's answer seemed to turn on notions of aesthetic choice. In one interview in 1984, for instance, « Une esthétique de l'existence », Foucault states: « Et si je me suis intéressé à l'Antiquité, c'est que, pour toute une série de raisons, l'idée d'une morale comme obéissance à un code de règles est en train, maintenant, de disparaître, a déjà disparu. Et à cette absence de morale répond, doit répondre une recherche qui est celle d'une esthétique de l'existence. »<sup>57</sup> Arnold Davidson captured this well in a quick intervention at a recent colloquium. "Chez Foucault," Davidson emphasized, "il n'y a pas de théorie de valeur, mais toujours un jugement de valeur ; il explicitement rejetait l'idée de principes généraux. »<sup>58</sup>

The discourse of good and evil, Foucault said in *Sécurité, territoire, population*, « me paraît ne pas être autre chose, actuellement en tout cas, qu'un discours esthétique et qui ne peut trouver son fondement que dans des choix d'ordre esthétique. »<sup>59</sup> Paul Veyne picks up on this aesthetic strand in his recent book. Speaking in a voice that begins to meld his own with Foucault's, Veyne asks « Comment préférer ceci à cela ? » His answer: « Par idiosyncrasie, par goût personnel, dont on ne peut pas plus discuter que des couleurs. Il n'ignorait pas que ses opinions politiques n'étaient pas toujours les miennes, et il ne me prêchait ni ne me blâmait. »<sup>60</sup> Veyne adds: « Foucault se bornait à dire que ses opinions, prises de positions et interventions étaient un choix personnel de sa part, qu'il ne justifiait ni n'imposait, car aucune ratiocination ne pouvait prouver leur justesse. ' Je ne me mets pas en avant comme le combattant universel [...]. Si je lutte à

<sup>56</sup> Foucault 1989:431.

<sup>57</sup> Foucault 1994:732.

<sup>58</sup> Conference at the Ecole Normale Supérieure de Lyon, February 8 and 9, 2008, *Gouverner Les Vivants : A Partir de Michel Foucault*, 1<sup>er</sup> Colloque International de l'AFIC (Association Franco-Italienne pour la recherche sur la Philosophie Française Contemporaine).

<sup>59</sup> Foucault 2004a STP:5.

<sup>60</sup> Veyne 2008:184.

tel égard ou à tel autre, je le fais parce qu'en fait cette lutte est importante pour moi dans ma subjectivité.'»<sup>61</sup>

## VII.

There is something that seems right here, though it is somewhat troubling and a bit unsatisfying. We make choices. We do. We challenge some penal practices. We are silent as to others. Perhaps it is just a lack of time and resources. If we had more time, maybe we would challenge more practices. But our silence is, after all, telling. I myself have spent many years representing inmates on death row challenging their capital sentences. That was a choice, and it precluded challenging other penal practices. It had ethical and political implications. I spent my time challenging death sentences, rather than challenging conditions of confinement more generally. I made choices—and continue to make those choices today. In my scholarship too. I have challenged the use of actuarial prediction. I have contested order-maintenance practices. But I have not investigated or challenged the use of electronic bracelets or CCTV.<sup>62</sup> I have not written about felony disenfranchisement.<sup>63</sup> Why have I made these choices and not others? Why have I struggled in some areas and not others? How do we form these judgments of value? And why is it that they are so often—at least in my case—directed *against* our modern punishment practices? Why this resistance when it comes to punishment? If we suppose that *discipline* and *sécurité* do not exist, are we now forced to ask ourselves these other questions?

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<sup>61</sup> Veyne 2008:179-180. *See also* Veyne 2008:182 (« le fait est là : n'étant pas des intellects cartésiens, ils se décident sans bonne raison, tout en s'en inventant généralement une, et ceux qui ne veulent rien changer n'ont pas de raison non plus. Il y a chez Foucault un volontarisme *faute de mieux* ; il ne décide pas qu'il *faut* vouloir ce qu'on veut, il pense *constater* que c'est ainsi que les hommes se comportent. Ce qui lui était personnellement odieux était qu'on voulût faire penser sa vérité à tous les hommes, qu'on veuille le bien d'autrui, comme il aimait à dire. »)

<sup>62</sup> Perhaps because Ben Goold has written such a wonderful book, *CCTV and Policing: Public Area Surveillance and Police Practices in Britain* (Oxford: Oxford University Press, 2004).

<sup>63</sup> Perhaps because Andrew Dilts is writing the definitive treatment for his dissertation at the University of Chicago.

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