

ONE

## **Police, Sovereignty, and Law**

### *Foucaultian Reflections*

MARIANA VALVERDE

#### *Introduction*

During the 1970s progressive activists and scholars were centrally concerned—one could almost say obsessed—with a set of questions revolving around a megaentity known as the state. The international debate about how progressives who were moving beyond orthodox Marxism ought to theorize the state—a debate involving such central figures as Louis Althusser, Nicos Poulantzas, Ernesto Laclau, and Ralph Miliband—was constitutive of a certain politic whose influence reached well beyond the academy, for a few years at least.

Michel Foucault, who died suddenly in 1984, lived and worked in a milieu in which theorizing the state was highly valued. But instead of participating in the existing debates, he built his own path. His research projects tackled the key questions of the philosophical debates of his day—the individual and the question of agency, the state and the question of power—but indirectly or at an angle, since he always began by putting in question concepts that others took as starting points. Thus, his work on sexuality addressed the question of subjectivity that had been central both to the existentialism of the 1960s and to the poststructuralism of the 1980s, but it did so by sidelining philosophical position-taking in favor of historical inquiries into the techniques that brought into being the subject of Western philosophy. Similarly, instead of attempting to theorize the state, he pursued historical inquiries into practices developed in a variety of sites (from monasteries to physicians' consulting rooms) that were later used and adapted by state as well as nonstate institutions.

Many of Foucault's readers, habituated to theoretical edifices built out of large-scale concepts (bureaucracy, social cohesion, forces of production), read Foucault's work as if the protagonists of his genealogies were modes of power-knowledge such as sovereignty and discipline, seen as succeeding each other

in the same manner that capitalism replaced feudalism. Thus, many if not most readers missed the radical methodological revolution brought about by focusing on practices of governance rather than on quasi-epochal generalizations.<sup>1</sup> The misreading was not solely the reader's fault, however: in some of his works Foucault, who like other empirically inclined scholars did not set out on research projects with a fully worked out theory, gave the impression that he was putting forward an alternative grand theory of modernity. *The Order of Things* contrasted the classical *episteme* to the modern *episteme*, and *Discipline and Punish* contrasted sovereignty to discipline: both of these works contain many warnings against taking these large-scale concepts as more real than the practices that constituted them; nevertheless, the epochalist misreading was not wholly without basis.

The methodological revolution involved in highlighting practices, techniques of governance, rather than epochs (or even generalized modes of power-knowledge) is more clearly apparent in the recently published Collège de France lectures than in some of the better known books. This justifies a close reading of these volumes, in my view.<sup>2</sup> But Foucault's method was always site specific, always closely linked to—and therefore varying with—the specific object of inquiry. Thus, Foucault's work does not contain a static method that can be explicated in the manner of American sociology, and I present here a reading of the recently published lectures (focusing mainly on the 1978 lectures, on security and governmentality) that highlights the methodological innovations but simultaneously explains how the substantive claims made about the history of modern practices of power-knowledge amount to an admittedly incomplete genealogy of the state. It will become clear that, contrary to the general view among scholars, Foucault did make a very important contribution to the question preoccupying progressive theorists in the 1970s—the question of the state—but he did so not by giving alternative answers to the same questions (What is the state? Is the state independent from capital?) but rather by completely changing the terms of the debate.

Sidelining or bracketing the basic concepts of philosophy and political theory—the subject, the state—was a move that had also been performed by sociologically inclined students of institutions (e.g., Erving Goffman) who demonstrated that social power relations do not leap ready-made from structural economic relations, but rather are made and remade every day in the encounters between individuals and groups that make up and are enabled by institutions. However, in contrast to the sociological and political science studies so popular in the late 1970s, Foucault's approach also bracketed institutions. Citing Robert Castel's book *L'ordre psychiatrique* as a methodological model, he critiqued the limitations of what he called “institutional-centrism.”<sup>3</sup>

For Foucault, institutions are secondary objects of analysis because they are only coagulations or densifications of certain assemblages of practices that are also found in other institutions. Behind and before the institution, he continues, lie practices that are rarely unique to particular institutions, practices that can be seen as enabling and making up a certain technology of power. While institutional analyses trace the origins of institutions, genealogy maps the ascent of cross-institutional technologies of power.<sup>4</sup>

Even this very brief discussion of power, subjectivity, and institutions shows that Foucault borrowed insights and research tools from both philosophy and empirical social science; but he used them in such a way as to put in question the basic methodological assumptions of both, simultaneously. His focus was neither on the static concepts of philosophy nor on the institutions that captivated 1970s' critical social science, but rather on practices—practices of power-knowledge—with institutions as well as forms of subjectivity and agency being regarded mainly as effects of governing practices.<sup>5</sup> And in distancing himself both from philosophy and from the critical social science of his day, Foucault became closer to the enterprise of history. His earlier work had been more philosophical and somewhat structuralist, but in later years his prose became much more straightforward and descriptive. The protagonists of his later, more descriptive writings, however, were neither the individuals of traditional history nor the structures of Marxist history, but rather the shifting practices used to govern people, populations, and spaces. As Foucault's friend and influential colleague put it, "The Foucault-style genealogy-history thus completely fulfills the project of traditional history; it does not ignore society, the economy, and so on, but it structures this material differently—not by centuries, peoples, or civilizations, but by practices."<sup>6</sup>

Assemblages of governing practices are in turn treated in a radically anti-functional manner, that is, as ever-changing, contingent, site-specific, pragmatically put-together collections of governing techniques whose success or failure depends on their usefulness not to society but rather to contenders in particular battles or struggles. The focus on power struggles was borrowed in turn from Nietzsche, as the first lecture in the *Society Must Be Defended* collection makes perfectly clear; but Foucault was a much keener student of history than Nietzsche and on the whole eschewed the German philosopher's weakness for making statements about power in general. Despite some incautious remarks in interviews that some people took as a theory of power in general, in Foucault's published writings and in his lectures, power relations are always of a particular sort. The scholar's task is thus not to philosophize about power in general, since such a thing does not exist, but rather to map the historical fortunes and misfortunes of the different forms of power

(with their associated knowledges). A comment in one of the 1978 *College de France* governmentality-security lectures put the main conclusions of his research of the 1970s in deceptively simple form: governmentality is to the state what disciplinary techniques are to prisons and what biopolitics is to medical institutions.<sup>7</sup> And in each case, it is the practices that are regarded as primary objects of analysis, with the state, correctional institutions, and medical institutions being regarded as coagulations of practices.

The studies of sixteenth- and seventeenth-century political theory, eighteenth-century police science and police regulations, physiocratic economics, and early liberal economic policies that together gave rise to the idea of governmentality remained unpublished during Foucault's lifetime, being presented only in lectures—the 1979 Tanner lectures, given in the United States, as well as the *College de France* annual series of lectures—and in a few ephemeral publications. Foucault's contribution to understanding the mechanisms of modern state power and modern political thought thus remained largely unacknowledged, not only during his life but for more than a decade afterward. This has been noted for some time. In the influential 1991 introduction to a volume featuring the fourth of the 1978 *College de France* lectures (published in English under the simple title “Governmentality”), Colin Gordon, who was familiar with the unpublished lectures, stated,

We are only gradually becoming aware of, and are still far from having fully documented access to, the astounding range of Foucault's intellectual enterprises, especially in the later years from 1976 to 1984. The governmental theme has a focal place in Foucault's later philosophy; an effort needs to be made to locate this as accurately as possible.<sup>8</sup>

What Gordon did not say, however, is that *not* publishing much about the state, sovereignty, and law may well have contributed to Foucault's posthumous fame. This is because, shortly after Foucault's death, *civil society* began to overshadow *the state* as the key concept in critical political theory, with the demise of the cold war and the general optimism (shared not only by neoliberals but even by many post-Marxist leftists) about nonstate initiatives. If avoiding talk of the state helped marginalize Foucault's thinking about power in the 1970s, especially within political theory, by the 1990s his emphasis on extrastate flows of power (such as the expertise- and profession-based power of medicine) appeared very timely and helpful.

In other words, Foucault's work may have become tremendously influential in the late 1980s precisely because it gave critical thinkers tools for understanding “political power beyond the state,” as a very influential article by

two English Foucaultians put it,<sup>9</sup> at a time when the state had in any case lost its centrality even in political science. Books such as *Discipline and Punish*<sup>10</sup> and *The History of Sexuality*, volume 1,<sup>11</sup> were certainly concerned with power, and even with politics, but they deliberately decentered the state. Even the “Governmentality” lecture published in English in 1991,<sup>12</sup> which launched a thousand ships, mainly of a sociological character but with some resonance within political science,<sup>13</sup> was read and used to understand modern Western society more than as a way to return to the questions of sovereignty and the state.

But the “Governmentality” lecture, as Gordon noted long ago, was not a one-off experiment with a neologism. It was, rather, the fourth in a tightly structured series of lectures devoted to understanding the processes giving rise to modern state knowledges and powers. This set of lectures continued the task Foucault had set for himself in the previous set of College de France lectures (given two years earlier, in 1976). The main aim of the 1976 lectures had been to understand law and sovereignty by closely examining not the traditional canon that begins with social contract theory but rather the now-forgotten texts of those aristocratic writers of heroic narratives of blood and honor who were defeated or marginalized by monarchical regimes fostering centralized legal systems. These noble chroniclers, whose writings did not count as theory then or now, are set off against the thinkers who, even when they sought to define the limits of the monarch’s power (as Locke did), still treated the monarch as the central figure. The 1976 lectures thus turned the theorizing of sovereignty on its head, simply by looking closely at minor writers who had been written out of intellectual history.<sup>14</sup>

The 1978 lectures continued the story of sovereignty into the nineteenth century. The lectures develop the novel notion that the pastoral techniques pioneered first by Jewish patriarchs and later by Christian church fathers, techniques designed to provide individualized guidance to sheep in danger of straying from the flock, are an important element in the makeup of modern states. While early modern states treated subjects largely as an undifferentiated mass subject to the sovereign’s top-down authority, nineteenth-century states (in part due to the influence of philanthropy) developed techniques to know and understand and guide citizens—young citizens in particular (through public education) but also adult citizens, particularly those at risk. Pastoralism, as Foucault calls the mode of governance that characterizes not only spiritual gurus but also social workers and therapists, can strengthen the state’s hold on people even as it helps them.

In the 1979 Tanner lectures given in Stanford,<sup>15</sup> Foucault had said (rather mysteriously) that modern states’ demonic power lies in the combination of

pastoral power—previously held mainly by spiritual leaders working quite outside state structures—and the sovereign authority of state institutions. But what was not stated in the Tanner lectures (although it had been an important part of the 1978 College de France lectures) is that sovereignty, as developed in practice and in theory by centralizing monarchs such as Louis XIV, would not have survived into the contemporary era in the absence of techniques for governing the people of the state, now construed as a set of populations, in a differentiated manner. Sovereign law unifies the subjects; but modern conditions and what we would now call modern risk factors require differentiated governance.

Urbanization and commerce, in particular, require governing mechanisms that facilitate certain activities (whereas sovereign law can only prohibit and coerce). Urbanization and commerce also require the differentiation of space and time. This is where the police power finds its field of action. And in the 1978 lectures, having developed the analysis of pastoralism in the first part of the course, Foucault moves on to *police* as he begins to describe the rise of modern state apparatuses. The lectures argue in great detail that police (police regulations, police powers, and police science) enabled the sovereign power of states to begin to govern differently, in the eighteenth century, than had been the case earlier. (Foucault does not mention that police regulations had existed in medieval cities, but he would likely say that it was only in the eighteenth century that police became central to the exercise of state power.)

What Foucault does not quite say but which follows from his analysis is that police enabled sovereignty to survive into the era of constitutional monarchies and republicanism. Instead of merely securing territories and maintaining the loyalty of subjects, modern sovereign power, concerned more about security than about the absence of treason, and therefore constantly worried about the future, sets out to govern risks—risks to the state itself and risks to what was coming to be conceived as a population, not merely an aggregate of souls or subjects. Foucault's account—which is mainly based on French history—ends before democracy or even republicanism, thus leaving the impression that liberal political economy came to replace police; but fortunately, a recent Foucaultian account of the transformation of police that took place during the French Revolution has filled in the picture and made it perfectly clear that, while police mechanisms were cleansed of some of their more absolutist features (e.g., through the elimination of direct state surveillance of organizations or the abolition of press censorship), police governance was by no means diminished by republican regimes.<sup>16</sup> Indeed, Foucault's analysis suggests (though this is not stated explicitly) that it would be quite wrong to

look at the field of police quantitatively, as if we could compare two regimes and decide which one had more or less police power; police mechanisms differ qualitatively and so cannot always be compared by asking which regime has more or less police—or more or less freedom.

Having given an overview, let us go through the elements for a genealogy of contemporary state powers and knowledges that Foucault provided in his lectures.

### *The Shepherd-Flock Game*

Because Foucault refused to identify governing with the state, when looking back to the ancient world for elements of a genealogy of modern arts of government, he paid little attention to the Greek polis and its descendants, spending a great deal of time instead on a form of power unknown to political science: pastoral power. Sovereignty centrally involves controlling a territory, but pastoral power is unconcerned with space: it is wholly focused on the flock, wherever it may wander.<sup>17</sup> The good shepherd of the Old Testament, who according to Foucault also figures in Egyptian and Assyrian political cultures, is furthermore not merely concerned to preserve his power (as is the sovereign): his power lies precisely in the fact that he devotes himself to the care, and in particular the spiritual care, of every one of his sheep.

Plato's ideal polis has space for pastoral power, Foucault claims, but pastoral power is quite separate from making decisions about the polis. Magistrates and other functionaries may well exercise care and concern for individuals and guide them; but they are magistrates rather than lawmakers precisely because they deal with individuals, rather than making laws of general application. "If the state is the political form of a centralized and centralizing power, let us call pastorship the individualizing power."<sup>18</sup> With the spread of Christianity in the West, pastoral power flourishes, as Foucault shows through a long exegesis of texts by church fathers: but it grows and develops as a strictly spiritual project, with political power (the city-citizen game) developing its own sets of practices quite autonomously, even when the same person was exercising both political and pastoral power.<sup>19</sup>

In the Tanner lectures pastoral power is described very briefly; but in the much longer discussion in the College de France lectures, Foucault explains that pastoral power is necessarily individual and particular, and indeed constitutive of individuality as such. And the pastor's sacrifice generates a sense of debt and loyalty in the follower as well as a knowledge of the sheep's individual vices and virtues in the mind of the shepherd—thus achieving both obedience

and agency. Pastoral practices, Foucault states, pioneer both subjection and subjectification or agency: “assujettissement, subjectivation.”<sup>20</sup>

In the ancient world, and in the Europe of the Roman Empire and after, these largely spiritual practices of power remained separate from the city-citizen game. However, much later on (Foucault does not say when, but one thinks of the practices pioneered by philanthropic reformers in the nineteenth century and perfected by the “psy” professions—i.e., psychiatry, psychology, and psychoanalysis—in the twentieth), pastoralism undergoes a veritable renaissance. With the rise of governmental rather than merely sovereign projects, modern states acquire not only the interest in shaping the souls of citizens one at a time but also the capacity to do so. In that sense, he says, “pastoralism is the sketch or prelude of that which I have called governmentality.”<sup>21</sup>

The College de France 1978 lectures thus provide us with a much fuller sense of the meaning and the implications of the much-quoted sentence: “Our societies proved to be really demonic since they happened to combine those two games—the city-citizen game and the shepherd-flock game—in what we call the modern states.”<sup>22</sup>

### *Sovereignty*

The theories of sovereignty that circulate in treatises of the John Rawls and Ronald Dworkin type are for Foucault beside the point; what needs to be documented in a genealogy of state practices and state knowledges are not doctrines but rather practices of sovereignty.

A detailed Foucaultian analysis of practices of sovereignty remains to be carried out. In *Discipline and Punish*, where some practices of sovereignty are described, the emphasis is on the rise of discipline, and so practices of sovereignty are discussed only where the description is useful as a foil for explaining discipline’s innovations. Thus, certain sovereign practices of punishment are given pride of place, most famously the gory execution of the regicide that opens the book. As is well known, the details of the execution are shown to have worked to symbolize and perform the absolute power of the sovereign, a power thought to be in need of reiteration after the crime had been committed. But little or no attention is given to other arguably more important and more constantly acting practices of sovereignty, from tax collecting to the establishment of royal courts of justice. Comments scattered through *Discipline and Punish*, the Tanner lectures, and the 1976 race wars lectures (*Society Must Be Defended*) suggest that sovereign practices seek mainly to affirm control over a territory and secure the loyalty of subjects,

in a somewhat static manner, in contrast to the future-oriented, resource-maximization logic of modern disciplinary and biopolitical practices. These scattered comments also suggest that sovereign power works mainly through binary prohibitions rather than through normalization, prescription, and risk management. These comments do not amount to a genealogy or even a full description, however. One might have thought that the 1978 lectures would provide us with a fuller picture of sovereign power, but that is unfortunately not the case.

The 1978 course begins with three lectures setting up a three-way contrast differentiating sovereignty from discipline from governmentality (which is first called security and only becomes governmentality in the fourth lecture, the one published in *The Foucault Effect*). Sovereign techniques for governing the problem of bread prices, for instance, include rigid controls on what crops can be grown and what prices can be charged; more governmental, liberal techniques developed in the early nineteenth century did not prohibit anything but rather incentivized certain economic activities.<sup>23</sup> Similarly, sovereign city planning emphasizes clear sight lines and monumental state architecture, techniques that together incite loyalty to a sovereign,<sup>24</sup> whereas what Foucault calls cities of security are more concerned with managing public health and other risks. But as Foucault hits his stride, at about the fifth lecture, sovereignty is left very much in the background, making a cameo appearance only as a foil that brings governmentality into sharper focus. For example, when discussing the birth of what Foucault calls properly political discourses—that is, post-Machiavellian writing on the workings of the state and the art of governing—he makes statements such as “by contrast to the juridico-theological problem of the foundations of sovereignty, political thinkers are those who attempt to think the form and the rationality of government for itself.”<sup>25</sup> Political thinkers are here associated more with policy than with the polis,<sup>26</sup> through a move that emphasizes the practical work of public administrators and politicians and marginalizes the justificatory work of theorists.

The relative dearth of content provided for *sovereignty* in the various texts canvassed points to a much larger theoretical issue. *Sovereignty* has very little content other than as a name for a family resemblance linking a variety of theological, monarchical, and juridical projects of rule. But this does not mean that *sovereignty* is a highly abstract and indeterminate concept. Sovereign practices and sovereign rationalities are everywhere, and they are just as concrete and multifarious as any other kind of governing practice. These practices can be described and understood, however, only if one carefully situates them in the particular struggle or war within which they developed.

There is no Foucaultian theory of sovereignty, in other words (just as there is no general theory of discipline). There are only accounts of particular moves within which sovereign practices emerge as weapons in a battle that is shaped, as all battles are, by the position-taking that goes on in the face of a particular antagonist. The Renaissance-era sovereignty that defeated feudal narratives of heroism and blood (as told in the 1976 race wars lectures) is not the same as the sovereignty that Louis XVIII sought unsuccessfully to defend against the Jacobins, which is in turn not the same as the constitutionalized sovereignty that faced the challenge of the suffrage movement in nineteenth-century Britain. And these examples do not even begin to consider how European fascism and Stalinism revisioned and revised old practices of sovereignty, in struggles that were waged not against feudalism or republicanism but against liberalism.<sup>27</sup>

*Sovereignty*, then, is not a concept to be theorized. It is rather a name that loosely gathers, for the sake of making large-scale contrasts and generalizations that are inherently unjust to reality, an indefinite set of practices whose concreteness can be understood only relationally, or more accurately, agonistically.

### *Police*

After several lectures on security and several devoted mainly to pastoral power, Foucault moved on to the topic of police in the lecture of March 29, 1978. The lecture was somewhat delayed because Foucault, as he breathlessly explains, was stuck in a traffic jam. This *contretemps* could not be more apt, since the regulation of all manner of traffic in the service of the smooth circulation of people, goods, and wealth was one of the key objects, if not the key object, of the new arts of governance pioneered by physiocrats in France and by *Polizeiwissenschaft* experts in Germany, as this lecture (and the next, and last, one) tells us.

By the eighteenth century, *police* had acquired a fairly settled meaning as one of the key dimensions of state power. The diplomatic-military dimension was routinely distinguished from the revenue function of the state, and both of those were in turn distinguished from police—the regulatory and preventive governance of the internal order of the kingdom. Urban space was the site par excellence of police regulations, as legal historians have shown.<sup>28</sup> Commenting on various treatises that attempted to collate the multifarious, highly detailed regulations that made up the field of police in the eighteenth century, Foucault concludes that “to police and to urbanize are one and the

same thing”; even more strongly, “police is the condition for the existence of the urban.”<sup>29</sup> Transportation was also a crucial arena for the development of what in the United States came later to be called the police power of the state, with harbors, rivers, markets, and roads all being important sites for both central and local regulatory measures that often interfered very significantly with private property rights.

If the *content* or object of police governance is generally to ensure that movement (of people, things, and wealth) is orderly and efficient, police also takes a distinctive *form*. Foucault points out that Catherine the Great’s police regulations manual states that law or right is composed of general rules, whereas police works on details. Indeed, as legal historians have documented, police regulations are in fact nothing but lists of details, with little by way of overriding rationale. Police power being largely discretionary and often unenumerated, authorities acting under the banner of police are always seeking particular solutions to specific and ever-changing problems of order and security.<sup>30</sup> Highly theorized, largely static legal frameworks are suitable for declarations of sovereignty in the Hobbes tradition, and also for declarations about the limits of sovereignty and the rights of man in the revolutionary tradition. By contrast with both of these highly theorized discourses on sovereignty, the police power is usually exercised through detailed regulations—regulations that are sometimes of general application but that often (typically, one could say) seek to act on specific groups of people or specific activities, spaces, and times. Vagrants, itinerant sellers, prostitutes, and Jews were some of the main groups identified and governed through specific rules in the older police regulations. In the nineteenth century, while vagrancy laws certainly persisted, many of the other special groups were no longer governed through special regulations: however, the police power flourished because the differentiation of space and the differentiation of time increased in importance as regulatory strategies, beginning with maximum hours of labor for child workers and continuing into the twentieth century through myriad mechanisms of municipal, administrative, planning and zoning, and eventually, environmental regulation.

That the differentiated risks posed by capitalist labor, urban space, transportation, moral and social threats, and later, sites and substances identified as dangerous to public health were the main sites giving rise to police innovations and regulations is well known.<sup>31</sup> But what is distinct about Foucault’s account is the analysis of the crucial location of *police* as a rationality of governance that articulates sovereignty with biopolitics and discipline. Police projects, from modest proposals about street cleaning and pub licensing to

large-scale efforts to organize the labor force and create nationwide transportation systems, are exercises of sovereign power: but in police projects, unlike in projects of criminal punishment, sovereignty's aims are to a greater or lesser extent aligned with the interests of the people taken as an aggregate. Police, Foucault comments, reconciles or aligns the welfare of the people in general—the public interest in prosperity, public health, and public order—with the concern to preserve and enhance state power.<sup>32</sup> Tearing down someone's warehouse without compensation to make way for a port (the classic police-power-of-the-state situation) is an exercise of sovereign power. But unlike more purely coercive moves, such expropriation is justified through—and may well actually serve—the general interest of the commercial and consuming publics, which is what U.S. law calls *salus populi*, or general welfare.

Perhaps because he uses French, German, Italian, and Russian sources much more than English sources,<sup>33</sup> Foucault's account of police stresses the absolutist uses of police power. "Police is the direct governmentality of the sovereign as sovereign," Foucault states; "police is the permanent coup d'état."<sup>34</sup> Police rationalities, and the law of the police power, have indeed authorized numerous absolutist exercises of state power. But by emphasizing how sovereign projects are operationalized through police means, Foucault neglects other dimensions or other uses of police power. Perhaps because he was not very familiar with the common law, he misses the paternalistic dimension of police, the dimension that Markus Dubber's work on patriarchy and police has emphasized.<sup>35</sup> In the 1978 lectures, then, *police* is generally presented as quite separate from pastoral power, whereas one could easily have argued (particularly if one considered the English and common law contributions to the doctrine and the practice of police) that police combines and synthesizes sovereignty and pastoral power.<sup>36</sup>

Along similar lines, because the sovereign and specifically absolutist dimension of police science and police power is so heavily emphasized, the liberal revolution in law and in economics is presented as a negation of police, rather than as a revision or modification of police techniques. At the end of the final 1978 lecture, Foucault had run out of time and did not develop the analysis of liberalism that had been foreshadowed in the first few lectures; but he concludes his account of the governmentalization of modern states by stating that liberal governmentality opposed itself in every respect to the governmentality developed within the idea of a police state (*un Etat de police*).<sup>37</sup> This is somewhat misleading. It is of course true that writers such as Adam Smith furthered their own arguments about freeing the natural processes of the marketplace by denouncing the regulatory constraints of

the old police economy. However, in the moral and social fields, as distinct from the economic, Smith certainly did not believe in abandoning police mentalities and practices, and neither did liberal legal authorities on the other side of the Atlantic. And in any case, even in the economic field, while certain police practices for regulating the economy (e.g., sharp curbs on where and when markets could be held) disappeared with free enterprise and free trade, the state did by no means lose its sovereign power to interfere with private property rights—and not just in somewhat unusual fields such as eminent domain. I have argued elsewhere that the legal technology of business licensing is one that enables police aims—including moral-ordering aims—to be pursued without imposing a direct surveillance of private spaces and private lives by state agents.<sup>38</sup> No doubt other examples could be found, within the common law tradition, of techniques that happily combine liberal philosophical and economic rationalities with the police objective of maximizing order, prosperity, and efficiency and that exercise much coercion in the name of the general welfare or public interest. The relation between police and liberalism is not necessarily a negative one, as Foucault almost claims here.

A final feature of the discussion of police in the 1978 lectures is well worth discussing here, especially because Chris Tomlins's chapter speaks directly to this. Departing from the conventional view of police as the purely domestic ordering of the kingdom, Foucault tells us (with very few references, unfortunately) that police is not a strictly domestic governmentality. The European equilibrium of states established by the Treaty of Westphalia, Foucault argues, is also a site of and for police. Each of the European states—and Europe is defined as a plurality of states in equilibrium, a diagram of power elsewhere contrasted to the unitarian and expansive logic of empire<sup>39</sup>—has to treat the internal order and economy of the other states as integral to its own welfare. "Equilibrium is only maintained to the extent to which each of the states is capable of increasing its own strength [but] at a rate that does not threaten other states."<sup>40</sup> Therefore, each state must be assured that other states are effectively minding their own order, their own police. "The European equilibrium thus functions as a sort of inter-state police or inter-state law [*droit*]. The European equilibrium gives the community of states the right to make sure that police matters are in good order in each of its states."<sup>41</sup> This quasi-international-law doctrine of intervention in what were not yet called failed states was formalized, Foucault claims, in the 1815 Treaty of Vienna.

Clearly, these comments on international police are highly relevant to today's international law and international police discussions—much more relevant now than they were in the cold war, two-superpower world of 1978.

### *Governmentality and Security*

What Foucault meant by *governmentality* has been the subject of so many discussions that a brief and general overview of the term and its implications has become almost impossible. In any case, a recent annual-review essay covers much of this ground for a sociolegal audience.<sup>42</sup> Referring readers who want more background on the governmentality literature to that essay, I will here address only a feature of the 1978 lectures that is not found elsewhere in Foucault's available work. This is how governmentality emerges, briefly in the second lecture and in full-dress form in the fourth lecture, as a replacement for what in the course summary and the title of the lecture series Foucault had earlier called security.

In regard to security, the first thing to note is that the meaning of the English word does not coincide exactly with that of the French word *securité* as Foucault uses it. *Securité* is the future-oriented management of risks; by contrast, security forces would fall under the rubric of *sûreté*. Machiavelli, Foucault tells us, is certainly keen to defend the *sûreté* of the sovereign but is not yet able to think in terms of security.<sup>43</sup> In keeping with this, in Canada today the Quebec provincial police's official title is *Sûreté du Québec*, whereas in discussions of social security or food security, the term is *securité*. Security in this latter sense is somewhat detached from (or is not contained by) the project of sovereignty. One way of characterizing it is by saying that security is positioned as the larger, overarching rationale within which police mechanisms do a great deal of their work. Elsewhere Foucault states that governmentality (i.e., what had in the first three lectures been called security) arises from a novel combination of three existing elements: pastoral power, diplomatic-military strategies, and *la police*.<sup>44</sup>

Security, as Jeremy Bentham pointed out, is the necessary complement of liberty; it secures liberty, literally, being essentially future oriented and risk driven. But it is, or at least it becomes, an end in itself as well as a means to the end of liberty. Security, as Hobbes as well as Bentham put it long ago, is the ultimate end of law—security is what sovereignty is *for*. Maintaining security is difficult for modern states not only because people are keen to pursue liberty but also because economic change brings with it new security needs. With the rise of modern economic and social practices and modern knowledges, new entities, such as labor markets, have to be secured that were unknown to princes concerned only with territories and loyal subjects.

Foucault explains the difference between the logic of sovereignty and that of security in the first lecture with an example: while a theft is treated by the system of sovereign criminal law as an act to be punished, assemblages of

security (what Foucault calls *le dispositif de sécurité*) insert the phenomenon of theft—turned into an aggregate—into a series of probable events and set out to govern the general problem of future thefts as it affects not individuals, or the sovereign, but rather the population.<sup>45</sup> Indeed, security only begins to exist as a goal and a rationality of governance as the population emerges from older entities, such as subjects and souls.

This is a relatively familiar argument and so need not detain us here. What is worth pointing out—aside from the interesting contrast between security in the sense of social security and security in the sense of the sovereign's security, *sûreté*—is the fact that *governmentality* (*gouvernementalité*) was a neologism with which Foucault began to experiment only as he was actually delivering the lectures. And frustratingly for governmentality scholars, he does not explain why he changed terms. He simply walks in one day (February 1, 1978) and declares that if he were able to go back and correct the theme and title of that year's lectures, he would no longer use the advertised title, "*Sécurité, territoire, population*," but rather "Lectures on Governmentality." Then he goes on to talk about techniques of governmentality, with security quietly receding into the background.

One possible explanation of the shift from assemblages of security to governmentality may lie in the fact that security had strong statist and authoritarian connotations for Foucault's audience, even after he distinguished it from *sûreté*. Given that Foucault sought to emphasize the contrast between police (and reason of state) rationalities, on the one hand, and (liberal) governmentality on the other, *security* was perhaps not the best term. Security definitely includes police as a discursive field and, at the level of practice, relies heavily on police techniques. The neologism *governmentality*, by contrast, had no authoritarian, security-force associations and was thus better suited to Foucault's project in the 1978 lectures, which was to highlight the novel features of what he called the governmentalization of the state.

If Foucault had not changed his mind and had kept "security" as the title of the lecture that found its way into *The Foucault Effect*, the central role of police practices and rationalities in modern liberal states would have been clearer. On the other hand, the innovations of neoliberalism would have become less visible if "security" had remained the overarching title. Graham Burchell, for instance, contributed an important essay gathering the elements of Foucault's not wholly critical analysis of liberalism, an essay that emphasized even more than Foucault's own lectures did the break between the state of police and liberalism.<sup>46</sup>

Foucault's tactical and hence somewhat shifting conceptualization is compatible with somewhat different accounts. Burchell looks to Foucault for

inspiration for his own quite positive account of liberalism (an account in which persistent sovereign practices and negative biopolitical projects are left out of the picture altogether). Many other scholars, however, including me, use Foucault to further their critical understanding of capitalism and liberalism.<sup>47</sup>

Be that as it may, with the benefit of hindsight we can now see that there might have been some value—especially to us today, since we are drowning in neoliberalism rather than in 1970s' Marxism—in keeping the original term *security*. Among other things, this term might have made it more difficult for Foucault's work on governmentalization and subsequent governmentality studies to be seen as overly friendly to neoliberalism by Burchell and others. The dispersed discussions of governmentality in the 1978 lectures tend to identify governmentality with liberal political economy: we are repeatedly told that governmentality incentivizes rather than prohibits, it engages in cost-benefit analyses rather than forbidding anything, and so forth.<sup>48</sup> The persistence into the present, in fully liberalized states, of governmental mechanisms based on older police rationalities is simply ignored. By focusing on the rise of physiocratic economics and associated state policies—rather than on morals laws, colonial strategies, national security, or other illiberal dimensions of modern state activity—Foucault tends to reproduce liberal political economy's own identification of liberal economic practices with freedom from state coercion as such.

### *Discipline*

*Discipline and Punish* is probably the best known of Foucault's works. Therefore, the general understanding of Foucault's innovative terms—*surveillance* and *discipline*—is very much tethered to that book's central argument, which contrasts sovereign practices for punishing offenders with disciplinary techniques for reforming and rehabilitating deviants. The brilliance of that work was to show that disciplinary techniques needed their own history, a history that ought not to be reduced to the history of a particular institution (the army, the prison, the school). Thus, just as the security-governmentality lectures perform an anti-institutional reading of state practices, so too *Discipline and Punish* foregrounds practices of governance, seeing institutions merely as temporary sites on which various practices were tried out and articulated with other practices. Governing strategies being by nature flexible and adaptable, and thus to some extent site specific, our current understanding of *discipline* is perhaps overly influenced by the specific context of Foucault's discovery—that is, the criminal justice system, and punishment in particular. (Army training

camp and schoolroom practices are discussed as well, but most of Foucault's research was conducted in the archives of the French prison system.)

The security-governmentality lectures stay away from the realm of punishment and document disciplinary practices being developed elsewhere, most importantly in the economic realm. The control of grain prices, grain growing, and grain exports and imports are discussed at some length in the initial lectures, as a way of showing how disciplinary techniques (pioneered by mercantilist economic writers) differed from the sovereign practices of the feudal economy, on the one hand, and from the liberal free-trade practices of the later nineteenth-century economy. City building and city planning provide Foucault with another way to demonstrate shifts in practices: for sovereignty, cities (royal cities, preferably) need to "capitalize" a territory and constantly pose problems of loyalty (a point well borne out by the English history of the municipal corporation, not mentioned by Foucault); whereas disciplinary cities need to architecturalize space and create symmetry and beauty. On their part, cities of security are less concerned to establish visually appealing grids of authority and instead work with probabilities, rates, and risks.<sup>49</sup>

The comments about discipline in the 1978 lectures are brief and undeveloped, and it would not be appropriate to make them do too much work, given Foucault's decision to not publish these lectures or even to reuse them (as he reused the material on pastoral power and on police for the Stanford Tanner lectures). But what can be said is that *Discipline and Punish* explores only one face of discipline. Discipline is not a concept—something that becomes clearer when one considers that the original title of the well-known book is *Surveiller et punir*, a two-verb combination that resists turning the new form of power-knowledge under study into a thing. *Discipline* (in my view) is an umbrella term for a family of techniques of governance that resemble each other but whose specific features vary from one location to another and from one time period and one political moment to another. The normalization of bodies and the normalization of souls and desires are certainly key features of disciplinary projects from the penitentiary to the self-esteem workshop; but discipline as such is not exhausted by the sovereignty versus discipline contrast set out in *Discipline and Punish*. Spaces too can be normalized (as in the discussion of royal vs. disciplinary cities); and even the price of bread can be said to be subject either to sovereign controls (a set price) or to disciplinary measures that seek to govern markets in a normalizing manner but without arbitrary, top-down price setting.<sup>50</sup> The terms of Foucault's analysis remain always flexible and open ended and change as the research develops. There is no one master genealogy, of discipline or of anything else.

*Conclusion*

It should be clear by now, I hope, that the 1978 lectures at the College de France can be read with profit by those interested in questions of law and sovereignty, including the more specific question of police. In reading and using these texts, it is important to constantly keep in mind that Foucault does not present either contributions to existing theoretical debates or alternative theories. He uses terms tactically, usually using terms borrowed from history itself (e.g., *police*) but sometimes developing neologisms (*governmentality*, *biopolitics*) to stress that his own analysis runs counter to the received epistemology of power. What we have in the lectures is a series of insights and conceptual innovations that must be borrowed carefully, since the tactical context in which they were developed (most importantly, the dominance of Marxist epistemologies) is no longer immediately visible. In borrowing and adapting insights, bits of research, and philosophical decisions, we will have to strive to be as keenly aware of our own intellectual-political context as Foucault was of his.