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A Foucauldian Defense of the State: Blandine Kriegel and the *État de Droit*

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This paper examines the career and thought of French political philosopher Blandine Kriegel (b. 1943) from the standpoint of the most striking paradox they present: though she was a student of Michel Foucault, who was famous for his critique of central role that political thinking has traditionally accorded the state, Kriegel has, since the mid-1970s, been one of the foremost champions of the concept of état de droit—*the state as the embodiment of the "rule of law"—in French political debates. At a time when post-1968 critics of Marxism and totalitarianism (notably the so-called* nouveaux philosophes*) were arguing that states were inherently despotic, Kriegel mounted an original defense of the state, which, she argued, had played a central role in establishing legal rights that freed individuals from the "slavery" of civil society. She was able to do this, in part, by drawing on several suggestive elements found in Foucault's work: his concept of biopolitics, the claim that individuals and subjectivity are constituted through power relations, and the insight that war and sovereignty represent alternative ways of conceptualizing power. In this way, she used aspects of Foucault's political thought to arrive at a decidedly non-Foucauldian appreciation of the modern state.*

> I … can do without a theory of the state like I … can do without a heavy meal.
> Michel Foucault, 1979[1]

One of Michel Foucault's most distinctive contributions to political philosophy is the challenge he poses to what is usually deemed modern political thought's central concern: the nature and origin of the sovereign state.[2] The problem with the state, according to Foucault, is that it limits far more than it illuminates our understanding of how power operates in society. The reason is that the modern state is associated with a single, historically situated form of power, which he calls "juridical-discursive." As its name suggests, this power takes its cues, in practice, from law: it commands, forbids, and censors, in a "uniform and massive way." In *The Will to Know*, arguably his most important statement on this matter,

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[1]Michel Foucault, *Naissance de la biopolitique: Cours au Collège de France, 1978–1979* (Paris, 2004), 78.
[2]Among many possible examples, consider what Quentin Skinner says about Jean Bodin: "With this analysis of the state as an omnipotent yet impersonal power, we may be said to enter the modern world." Quentin Skinner, *The Foundations of Modern Political Thought*, vol. 2, *The Age of Reformation* (Cambridge, 1978), 358.

Foucault contends that the proliferation of juridical power coincides historically with the birth of the modern state. In Europe, the state was born as kings swept away the "multiplicity of preexisting powers"—mostly feudal noblemen—that hemmed in their territorial authority. These monarchs proclaimed "*pax et justitia*," with "peace" understood as "the prohibition of feudal or private wars" and "justice" as a "means to suspend the private resolution of conflicts." Though its importance to the modern state is undeniable, the trouble with juridical-discursive power is that it monopolizes our "representation of power," blinding us to equally important power forms. It is in this context that Foucault famously lamented, "In political thought and analysis, we have still not cut off the king's head." We cling to an "image of power-law or power-sovereignty sketched by legal theorists and the monarchical institution." Yet "it is from this very image—that is, the theoretical privilege of law and sovereignty—that one must emancipate oneself, if one wants to undertake an analysis of power" in its concrete forms.[3] Freed from our statist blinkers, we begin to see the technologies of power that played a decisive role in shaping modern society: discipline, which regiments bodies, and biopower, which regulates populations. These power mechanisms reveal the state to be no more than an empty shell, into which any number of power forms may insert themselves. In a 1979 lecture, Foucault remarked, "the state has no essence. The state is not a universal. The state is not in itself an autonomous source of power." The state, he concluded, "has no innards" because "it has no interior."[4]

Given his philosophical suspicion of the state, it might seem surprising that Foucault counted among his students Blandine Kriegel. Few political thinkers in contemporary France have championed the importance of the state to modern political arrangements as enthusiastically as Kriegel. She is particularly well known for her strident defense of the *état de droit* (or *Rechtsstaat*—a state based on the rule of law), a term that was reintroduced into French public discourse in part because of her seminal 1979 essay, *L'État et les esclaves* (The State and the Slaves). Kriegel's defense of the state was launched in a largely unsympathetic context: in the mid-1970s, former student radicals who had soured on Marxism viewed states as intrinsically despotic. *Nouveaux philosophes* like André Glucksmann and proponents of "self-management" socialism argued that top-heavy states should be suspected of harboring tyrannical ambitions. In this hostile climate, Kriegel advanced the original—if highly debatable—claim that the state, far from jeopardizing freedom, was constitutive of it: only a state, she maintained, can emancipate humans from the servitude endemic to civil society.

Yet not only did Kriegel, despite her ties to modern philosophy's preeminent anti-statist, become a passionate champion of the modern state; she also asserted that her intellectual romance with the state had a Foucauldian lineage. In *L'État et les esclaves,* she wrote, "We owe to Michel Foucault in particular something that might seem simple but which in fact required a genuine conversion: an interest in the state. It is on the basis of his work that we went from society to the state, from social struggles to institutions, from demands to disciplines, and from knowledge to

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[3]The quotations in this paragraph are from Foucault, *La volonté de savoir* (Paris, 1976), 107–20.
[4]Foucault, *Naissance de la biopolitique*, 79.

power."[5] At a conference held in Foucault's memory in 1988, Kriegel went a step further. Alluding to the changing intellectual climate of the 1980s, marked by growing criticism of "'68 thought," Kriegel observed, "As a reader of Heidegger and Nietzsche and a critic of the philosophy of the subject, Foucault, we are told, was incapable of reflecting on the doctrine of the rights of man, which has as its foundation the philosophy of the subject." In fact, she contended, Foucault had "opened the path to a return to studies of the state and the law."[6]

What led a student of Foucault's to "recapitate" the king—to advocate, after her teacher's theoretical beheading, the restoration of the state to its traditional pre-eminence? The answer is to be found amid the complex intellectual and political reorientations of the 1970s. While the desire to rehabilitate the state was Kriegel's alone, the way in which she went about it drew deeply on Foucault's thought. After participating in revolutionary politics during the late 1960s, Kriegel began her doctoral studies under Foucault's supervision. Already well versed in the French tradition of epistemology, she adopted Foucault's emerging political-theoretical vocabulary, with its emphasis on "power," "discipline," and "power-knowledge." Her growing interest in the state, at the very time when Foucault was theorizing "micro-powers" and critiquing repression as a political framework, testifies to a significant ambiguity surrounding Foucault's conception of the state. On the one hand, Foucault clearly rejected the centrality of the state to political analysis; yet on the other hand, his assertion that power was omnipresent and constitutive of all relations (a point that itself was a corollary of the destitution of the state's theoretical primacy) proved inseparable in practice from conceptions of the state prevalent among radical intellectuals. This became apparent when André Glucksmann, in a polemical essay condemning Marxism's complicity in Stalinist terror, approvingly cited Foucault to argue that all states are prone to totalitarianism. Fearing that the denunciation of Marx would lead to a rejection of the state *tout court*, Kriegel maintained that antistatism and antitotalitarianism were incompatible. In the process, she had to show that the lessons she had learned from Foucault could be salvaged from the taint of state phobia.

The result was a theory of the state composed of distinctly Foucauldian elements. First, Kriegel drew on Foucault's notion of biopolitics—the idea that the hallmark of modern politics, and thus of the state, is the promotion of life rather than the infliction of death. Second, Kriegel was interested in Foucault's contention that power constitutes subjects, as well as in this claim's implications for the political significance of the body. Third, she was influenced by Foucault's analysis of the early modern conflict between "discourses of the state and of law" and "discourses of war and of history." These elements allowed her to forge, beginning with 1979's *L'État et les esclaves*, her own political-philosophical synthesis: the modern state, she held, is biopolitical; it was born when early modern monarchs established *états de droit* founded on the protection of the body rather than on the freedom

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[5]Blandine Barret-Kriegel, *L'État et les esclaves: Réflexion pour l'histoire des états* (Paris, 1989; first published 1979), 288 n. 4. For most of Kriegel's writings before the mid-1980s she went by "Barret-Kriegel." For clarity's sake, I refer to her in all subsequent notes simply as "Kriegel," even when "Barret-Kriegel" is used in the original.

[6]Kriegel, "Michel Foucault et l'État de police," in *Michel Foucault philosophe: Rencontre internationale, Paris 9, 10, 11 janvier 1988* (Paris, 1989), 222–9, at 222.

of the subject; and, finally, the modern state, even—and perhaps especially— in its absolutist form, can count as its most emancipatory achievement the abolition of the servitude that exists whenever warrior classes dominate society. Not only did Kriegel draw on Foucauldian premises to reach an apparently un-Foucauldian conclusion (that state authority is constitutive of individual rights); she also defended an array of claims advanced by Foucault using a method—the interpretation of classic works of political philosophy—that bore little resemblance to Foucauldian genealogy. However one assesses the intrinsic merits of her argument (which rests on a number of highly contestable claims), Kriegel's theory of the state complicates our understanding of the implications of Foucault's political thought and suggests that, for at least some intellectuals in 1970s France, Foucault's significance lay not simply in his radical critique of statism but in the way he defined a political philosophy that broke with leftist nostrums.

Communism, the 1960s, and the illusions of the social

Kriegel's abandonment of revolutionary politics is remarkable in light of her family background. If French communism had an aristocracy, one can safely say that she was born nobly. In 2008, she reflected, "I must in all honesty acknowledge the fact that my parents mattered greatly for my intellectual development."[7] Her father, Maurice Valrimont-Kriegel (1914–2006), was a prominent figure in the French Communist Party (PCF). Born to a Jewish family in Alsace, he became an antifascist and trade union activist in the 1930s. After France's fall, he established himself as a leading figure in the resistance group Libération-Sud, organizing military activities around Lyon. Due to his underground work, his daughter Blandine was born in hiding, in 1943. She initially took the name of her mother—Lesouëf de Brévillier —who descended from a family of minor Picard aristocrats and also took part in the resistance. As a member of the military council that led the Forces françaises de l'intérieur (FFI), Valrimont-Kriegel escorted the German general Dietrich von Choltitz to Paris's Montparnasse station to surrender to General Leclerc and Colonel Rol-Tanguy on 25 August 1944, following the insurrection he helped organize. He joined the PCF's central committee in 1947 and represented the Meurthe-et-Moselle, a mining region, in parliament from 1946 to 1958. In 1961, the party, denouncing an "opportunistic deviation," expelled him. Even so, Valrimont-Kriegel remained, until the end of his life, a firm believer in the communist cause.[8]

This was less true of his sister-in-law—Blandine's aunt—who, arguably, played an even greater role in French communism's history. Born into a family of Alsatian Jews, Annie Kriegel (1926–95) also spent her formative years as a communist resistant, before becoming a historian and leading party intellectual in the postwar years, as an editor of the journal *La nouvelle critique* and as the official

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[7]Blandine Kriegel (with Alexis Lacroix) *Querelles françaises* (Paris, 2008), 67.

[8]"Mort du résistance Maurice Kriegel," *Le nouvel observateur*, online edn, 3 Aug. 2006, at www.nouve-lobs.com/societe/20060803.OBS7208/mort-du-resistant-maurice-kriegel-valrimont.html. Kriegel discusses her father in *Querelles françaises*, 67–70. See, too, Maurice Kriegel-Valrimont, *Mémoires rebelles* (with Olivier Buffaud) (Paris, 1999).

in the Paris federation responsible for ideology. The evolution of Soviet communism and Khrushchev's 1956 secret party conference report led her, however, to renounce her faith. She redirected her partisan zeal towards historical understanding: the result was a series of pathbreaking studies of French communism, particularly her 1964 book *Aux origines du communisme français*.[9] By 1968, her politics had veered to the right. She drew close to Raymond Aron and wrote for conservative outlets like *Commentaire* and *Le Figaro*. She became, moreover, an outspoken champion of Israel. Kriegel, it was often remarked, brought the same fervor to denouncing communism that she had once devoted to defending it.[10]

Thus Kriegel was raised in postwar communism's distinct subculture, becoming thoroughly acquainted with its orthodoxies as well as its heresies. She was "awakened to the world," as her husband Alexandre Adler put it, "under the Liberation's burning sun."[11] Her passion for the life of the mind was cultivated by the intellectually formidable company her parents kept: as a child, she recalled, her father took her to meet the surrealist-turned-communist Louis Aragon and Elsa Triolet in the country windmill where they lived. Yet Kriegel's political views as a young adult were closer to her generation's than to her parents'. In the mid-1960s, she was admitted to the École normale supérieure at Fontenay (the women's campus of the prestigious Paris institution). To be a young intellectual attending one of France's premier educational establishments meant, almost necessarily, that one would be politically active—especially when one came from a family of the Kriegels' prestige. At the ENS's Parisian site, a handful of brilliant students active in the Union des étudiants communistes (the major communist student organization) formed what became known as the Cercle d'Ulm. What distinguished them from their peers was their theoretical devotion to the philosopher Louis Althusser, a party member whose austere, structuralist reading of Marx acquired a broader audience with the 1965 publication of *Pour Marx* and *Lire le Capital*. Blandine Kriegel joined Fontenay's Althusserian circle as similar groups were appearing at other universities.[12] Though often arcane, Althusser's theoretical writings clung to a clear political line: that the PCF's lingering Stalinism was necessary to keep the party firmly anchored in the working class. This argument informed his students' opposition to a doctrinally looser form of Marxism which, because it drew inspiration from the Italian Communist Party, earned its followers the sobriquet *les Italiens*. Thus the Cercle d'Ulm simultaneously expressed allegiance to the PCF while trying to wean it from its increasingly reformist and "petty bourgeois" tendencies.[13] Given her familial connection to the party, these positions no doubt made an impression on Kriegel. In 1966, the Althusserians gave these ideas an

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[9]Annie Kriegel, *Aux origines du communisme français, 1914–1920: Contribution à l'histoire du mouvement ouvrier*, 2 vols. (Paris, 1964).

[10]Marc Lazar, "Annie Kriegel, rigueur et passion," *Le monde*, 29 Aug. 1995. See, too, Annie Kriegel's memoirs, *Ce que j'ai cru comprendre* (Paris, 1991).

[11]Alexandre Adler, "Préface," in Kriegel, *Querelles françaises*, 11–59, at 12.

[12]Christophe Bourseiller, *Les Maoïstes: La folle histoire des gardes rouges français* (Paris, 1996), 57.

[13]On the evolution of the Cercle d'Ulm see Frédéric Chateigner, "D'Althusser à Mao: Les *Cahiers marxistes-léninistes*," *Dissidences: Bulletin de liaison et d'étude des mouvements révolutionnaires* 8 (2010), 66–80.

organizational structure by creating the Union des jeunesses communistes (marx-istes–léninistes), or UJC(ml).

Kriegel joined the UJC(ml) in 1967. In contemporary jargon, "Marxist–Leninist" meant "Maoist" since, by late 1966, the organization had endorsed Mao Zedong's newly launched Cultural Revolution.[14] By endorsing the Chinese position, the students were signaling a fundamental reorientation of their political outlook. From their classrooms in Paris, they had previously, if not always intentionally, conceived of politics as a top-down, deductive undertaking, in which good theory led to good praxis. Being a Maoist in 1966 meant accepting Mao's injunction: "Direct your eyes downward, do not hold your head high and gaze at the sky." In other words, revolutionaries must "investigate the conditions of each social class in real life."[15] Mao's thought fostered the conviction that French society was an unexplored continent, but one that, properly understood, would illuminate the path to revolution. Philippe Barret, a member of the Ulm circle whom Kriegel married around this time, later recalled the UJC(ml)'s primary goal in these years: "to organize a workers' vanguard, we had to know, and know everything, about the working class in its entirety."[16] The logical consequence of this insight resulted in one of French Maoism's most distinctive political ventures: the decision in late 1967 that activists should seek employment in French factories so that they might incite the proletariat to revolutionary action. This undertaking was known as *établissement*, drawing on the French translation of one of Mao's pronouncements from the Cultural Revolution, in which he encouraged intellectuals to go to the workers, not simply by "looking at the flowers on horseback," but by "settling down" (*s'établir*)—that is, by living and laboring alongside them.[17] Kriegel did not participate in this episode. Yet its centrality to the UJC (ml)'s experience illustrates a pervasive motif in leftist thought of the era, against which Kriegel would later revolt: the notion that politics is epiphenomenal, an unreal world dissimulating a deeper reality lurking within society's recesses.

The Marxist trope that truth resides in invisible, collective forces received additional theoretical support, for Kreigel and the members of her generation, from structuralism, the intellectual movement that reached its apogee in France during the 1960s. As Kriegel later argued, structuralism was, in many respects, a "philosophy of the social," which harmonized with many of the theoretical assumptions deployed by the 1968 generation in its political activism.[18] Though Foucault at the time was often lumped together with other "structuralists" like Claude Lévi-Strauss, Roland Barthes, Jacques Lacan, and Althusser, Kriegel was inducted into this way of thinking

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[14]See Virginie Linhart, *Volontaires pour l'usine: Vies d'établis, 1967–1977* (Paris, 1994), 23–43; Bourseiller, *Les Maoïstes*; Hervé Hamon and Patrick Rotman, *Génération*, vol. 1, *Les années de rêve* (Paris, 1987), 255–366; Richard Wolin, *The Wind from the East: French Intellectuals, the Cultural Revolution, and the Legacy of the 1960s* (Princeton, 2010).

[15]Mao Zedong's 1941 party directive, quoted in Donald Reid, "*Etablissement*: Working in the Factory to Make Revolution in France," *Radical History Review* 88 (2004), 83–111, at 85.

[16]Philippe Barret, "Signification de l'établissement," *Politique aujourd'hui* 5–6 (1978), 31–6, at 34. An anecdote from the time recounts that the Maoist leader Benny Lévy discouraged Barret from marrying Kriegel because she was a philosopher and an "intellectual" (despite her revolutionary pedigree). Barret disregarded the advice.

[17]Quoted in Reid, "*Etablissement*," 86.

[18]Kriegel, "Préface à l'édition de 1989," in Kriegel, *L'État et les esclaves*, 9–21, at 10.

not by Foucault, but by his mentor, the philosopher of science Georges Canguilhem, a leading representative of the French school of epistemology. Under Canguilhem's direction, she wrote a master's thesis linking science to politics through an exploration of the relationship between classical mechanics and Thomas Hobbes's political thought. This work also resulted in her spending part of 1967 at Oxford. It was in her master's thesis that Kriegel began to blend two paradigms: French epistemology and "Anglo-Saxon liberty," which also implied "a refusal, in its epic and linear self-consciousness, of French rationalism, [which has been] subjectivistic and triumphant from its Cartesian inauguration to its Robespierrian paroxysm."[19]

By the late 1960s, Kriegel's engagement in revolutionary politics was coming to an end. After her Oxford stint, she returned to Paris, where she passed her philosophy *agrégation* and reconnected with the Maoists. May 1968, however, inflicted a serious blow on UJC(ml)'s credibility: it had refused to participate in a student movement that it dismissed as petit bourgeois. Rather than politically advanced, the organization now seemed woefully out of touch with revolutionary aspirations. When the UCJ(ml) dissolved into the even more radical Gauche prolétarienne in the fall of 1968, Kriegel broke with Maoism for good. As her involvement in politics subsided, reflection on politics became the focus of her scholarly work. Her starting point was a critique of her former revolutionary mind-set—above all, what she called "the fetishization of the social." She later characterized this outlook as follows: "May '68, or the lost illusions of the social … That which had been placed between parentheses had to be reintroduced: institutions and law. The visible had to be seen—or, as we said at the time, the unthought had to be thought.[20]

Discovering Foucault: the return of politics

By the time Kriegel had started working with Foucault in the early 1970s, she had begun to reflect on the limitations of the "fetishization of the social." This tendency, she decided, was premised on a dubious hermeneutic: the belief that all human reality could be interpreted as the expression of deep-seated social processes. Kriegel explored this framework's shortcomings in her first major publication, a 1973 essay entitled "History and Politics." It appeared in a journal that championed the very position she was challenging, *Annales: Économies, sociétés, civilisations*, the mouthpiece of Marc Bloch's and Fernand Braudel's eponymous historiographical school, which prioritized the slow-moving course of the *longue durée* over the evanescent flickering of events. Recent history, she contended, challenged this perspective. "Events" had returned with a vengeance—events that are "as unpredictable as typhoons, but as powerful, as frightening, and as obvious as natural catastrophes," of which May 1968 was a prominent example.[21] The reappearance of events was also a return of politics, long occluded by structuralism's assertion of the ontological priority of the social: "The reappearance of the event is indeed, for history, a clear sign of the resurgence of political history, of political knowledge"

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[19]Adler, "Préface," 20.

[20]Kriegel, "Préface à l'édition de 1989," 12.

[21]Blandine Kriegel, "Histoire et politique, ou l'histoire, science des effets," *Annales: économies, sociétés, civilisations* 6/28 (1973), 1437–62, at 1448.

on which the *Annales* school had "turned its back."[22] To understand politics as the surface onto which events are "inscribed" in history, one must read Machiavelli—who first showed that "constitutions result from quarrels and antagonism, not from the original prescriptions of divine nature"—and Lenin. Both conceived of politics as the science of events.[23] Kriegel maintained that an intellectual rehabilitation of events and politics was already underway. For instance, French epistemology, despite its affiliation with structuralism, had managed to remain politically astute: in emphasizing the centrality of epistemological frameworks to the history of science, it was driven to conceptualize what Gaston Bachelard called "epistemological ruptures." A highly relevant theory of events—if not quite of politics—could be found, Kriegel argued, in the work of Alexandre Koyré, Canguilhem, Althusser—and Foucault.

Her doctoral work with Foucault would seem to follow naturally from her studies under Canguilhem, as both thinkers belonged to the French epistemological tradition. But the real significance of meeting Foucault, from her standpoint, was that it occurred at a moment when she was seeking an alternative to the "fetishization of the social." His interest in epistemology notwithstanding, her collaboration with Foucault coincided with the high-water mark of his political thinking, the most important element of which was the Nietzschean conception of power that informed his major works from this period, *Discipline and Punish* (1975) and *The Will to Know* (1976). In addition to serving as Foucault's assistant at the Collège de France, she was involved in Foucault's collective research projects of the early 1970. In 1972, she participated in his research seminar dedicated to the nineteenth-century parricide Pierre Rivière, contributing an essay to the resulting volume.[24] She collaborated in a government-funded project supervised by Foucault on "the history of the notion of habitat in eighteenth- and nineteenth-century thought and architectural practice."[25] Finally, she contributed to a Foucault-led project on the origins of the modern hospital, which produced a collective work entitled *Les machines à guérir* (The Healing Machines).[26]

Her contributions to these projects show Kriegel in broad alignment with Foucault's major preoccupations of the era. In a 1975 essay, she sketched out the main themes of what would become a doctoral dissertation written under Foucault's partial direction on the rise of historiography under monarchical patronage (later published as *L'histoire à l'âge classique*[27]) by linking it to the question of power: "In the eighteenth century," she writes, "historians were passionately interested in the problem of power"—before adding, with a Foucauldian twist, that

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[22]Ibid., 1438.

[23]Ibid.

[24]Michel Foucault, *Moi, Pierre Rivière, ayant égorgé ma mère, ma sœur et mon frère …: Un cas de parricide au XIXe siècle* (Paris, 1973).

[25]Bruno Fortier, ed., *La politique de l'espace urbain (à la fin de l'Ancien régime)* (Paris, 1975).

[26]Michel Foucault, Blandine Barret Kriegel, Anne Thalamy, François Beguin, and Bruno Fortier, eds., *Les machines à guérir: Aux origines de l'hôpital moderne* (Liège and Brussels, 1979; originally published Paris, 1976).

[27]Blandine Kriegel, *L'histoire à l'âge classique*, 4 vols (Paris, 1996; first published 1988). The volume that deals most directly with the monarchical state is vol. 4, *La république incertaine*.

power was also interested in historians.[28] The paper she contributed to the hospitals project examined how eighteenth-century royal scientific academies introduced medical norms into the body politic. In doing so, she invoked Foucault's famous concept of power-knowledge, describing these investigations as "technical operations that associate power and knowledge." Invoking the military terminology pervasive in Foucault's contemporary discussions of power, she characterized scientific investigations as "a tactical stage in a strategy of medicalization."[29] She spoke of the "disciplinary" powers assumed by the Royal Academy of Science in managing urban space during the old regime.[30]

Yet even as Kriegel, finding in Foucault's concern with power a fruitful alternative to Marxism's fixation on the social, clearly grasped her teacher's signature insights—that power is productive rather than creative, that it generates knowledge rather than limiting it, that it pervades the "micro" as well as the "macro" level—she was already employing them to address the more traditional problem of the state. She was particularly interested in monarchs, whose theoretical decapitation Foucault had championed. Her contribution to the Pierre Rivière volume explored how the case of this rural misfit, who in 1835 had slaughtered his family, became entwined with that of Giuseppe Fieschi, King Louis Philippe's would-be assassin, because of the ways in which "parricide" and "regicide" were entangled in French law. Thanks to her research on public health, she became interested in the increasing interventionism of eighteenth-century royal academies: they embodied a "choice of the state," an "exemplary case whereby power enlists knowledge, knowledge distributes power, and of a technocracy that did not wait for its twentieth-century baptism to begin existing in the eighteenth."[31] Finally, the connection between knowledge (particularly the emergence of history as a scholarly practice), law, and the monarchical state was her thesis's primary focus.

Most importantly, Kriegel's growing interest in the state was shaped by Foucault's emerging concept of "biopolitics." Though Foucault first introduced the term in 1974, Kriegel was already using it in her contribution to the urban-space project in 1975. She invoked Foucault's idea—central to biopolitics' definition—that the litmus test of modern power forms lies in fostering life rather than threatening death when she referenced, while discussing the genesis of public health, "the monarchical concern with preserving subjects who were beginning to be seen as the nation's force." She added, "It is henceforth life, in its flow and turbulence, which must be protected and the sick who must be protected."[32] Yet to understand the emergence of Kriegel's mature political thought, we must consider the historical context of the mid-1970s and the post-1968 left's views of the state.

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[28]Blandine Kriegel, "La politique de recherche historique de la monarchie aux XVIIe et XVIIIe siècles," in Kriegel, *Les chemins de l'État* (Paris, 1986), 149–85, at 151. Kriegel dates this text from 1975.

[29]Blandine Kriegel, "L'hôpital comme équipement," in Kriegel, *Les machines à guérir*, 19–30, at 25, 26.

[30]Blandine Kriegel, "Instances politiques et séquences de la médicalisation de l'espace urbain," in Kriegel, *La politique de l'espace urbain*, 153–90, at 156.

[31]Ibid., 165.

[32]Ibid., 175.

"State phobia" in the anti-totalitarian moment

The immediate context of Kriegel's Foucauldian defense of the state was the polemic launched in 1975 by the so-called *nouveaux philosophes*. Drawing on recent translations of Alexander Solzhenitsyn's works into French, two leftists of the 1968 generation, André Glucksmann and Bernard-Henri Lévy, penned essays in which they claimed that Marxism was inherently totalitarian. They referred to the Russian writer to remind their audiences that socialism, too, has concentration camps. As Michael Scott Christofferson has argued, the stakes of this debate were primarily political: the efforts of intellectuals to smear Marxism as "totalitarian" was, in part, an attempt to reorient the Socialist Party when it seemed on the verge of achieving power while allied to an unreconstructed Communist Party.[33] More generally, the *nouveaux philosophes* manifested, in a somewhat popular vein, the 1968 generation's growing disillusionment with radical politics. But for Kriegel, this debate's significance was more specific. By the early 1970s, she was broadly sympathetic with Lévy and Glucksmann's criticism of Marx. She worried, however, that they were drawing the wrong conclusions. In particular, the *nouveaux philosophes* accused Marxism of having become a vehicle for legitimating state power. For Kriegel, the controversy was a baby-and-bathwater moment: the *nouveaux philosophes*'s condemnation of the Soviet state was spilling over into a more general attack on the state as such. In doing so, Kriegel feared, they were discrediting the most effective institution for *averting* the gulag.

The most influential *nouveau philosophe* pronouncement was André Glucksmann's 1975 essay *La cuisinière et le mangeur d'hommes* (The Cook and the Man-Eater). Glucksmann was a former member of the Maoist organization Gauche prolétarienne (with which Foucault had numerous connections). Glucksmann had also been Foucault's colleague at the philosophy department at the experimental Université de Vincennes, before Foucault accepted his chair at the Collège de France. By 1975, however, Glucksmann's faith in revolutionary politics had disintegrated. Wrapping himself in Solzhenitsyn's mantle, he handed down a moral indictment of Marxism, focusing on its rationalization of political terror. Marxists, he claimed, are too inclined (to paraphrase James C. Scott) to "think like a state." The "cook" in Glucksmann's title alludes to Lenin's assertion that every cook "must learn to govern the state."[34] For intellectuals, the state presents itself as the perfect tool for realizing one's political fantasies—the Archimedean point from which the world can be changed. "Who has not assigned himself the task," Glucksmann asks, "of burnishing concepts to direct an all-powerful state?"[35] But intellectuals invariably fall into a trap: the states they seek to guide become their masters. Even when imprisoned by the state he once served,

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[33]Michael Scott Christofferson, *French Intellectuals against the Left: The Anti-totalitarian Moment of the 1970s* (New York, 2004).

[34]André Glucksmann, *La cuisinière et le mangeur d'hommes: Essai sur l'État, le marxisme, et les camps de concentration* (Paris, 1975), 28. In fact, this statement is a mistranslation of Lenin, who in fact said, "We know that an unskilled laborer or a cook cannot immediately get on with the job of state administration." Lenin, "Can the Bolsheviks Retain State Power?" in Lenin, *Selected Works* (Moscow, 1977), 359–97, at 378.

[35]Ibid., 84.

Bukharin busied himself with writing new constitutions, so enamored was he of the state's omnipotence.

To describe the Soviet state, Glucksmann frequently turned to Foucault. On the face of it, this would seem an odd choice: Foucault, after all, devoted precious few words to analyzing the Soviet Union. He had, however, written extensively on internment, and this, for Glucksmann, was key. For the Soviet Union, Glucksmann maintained, was a vast internment camp that bore more than a passing resemblance to what Foucault, in *Madness and Civilization*, had called the "Great Confinement." One chapter of Glucksmann's polemic was entitled "The Social Reasons for Confinement, or the New Adventures of Louis XIV."[36] According to Glucksmann, the internment of the sick, the mad, and the indigent in the Hôpital général beginning in 1656, which Foucault had described with brio in his first major book, foreshadowed the Stalinist terror. The Soviet Union, Glucksmann asserted, was an "enormous plagiarism" of the seventeenth century. The Hôpital général, he added, "prefigured the concentration camp."[37] Thus Soviet repression was not *sui generis*: it was an extreme instance of the modern state's dehumanizing oppressiveness. In this sense, even while subjecting Marxism to scathing critique, Glucksmann remained faithful to 1960s-style contestation. But his reading of Foucault depended on an interesting displacement: his half-dozen or so quotations from *Madness and Civilization* barely mention the state. Even so, Glucksmann clearly interpreted the institutions described by Foucault (like the Hôpital général) as side effects of the rise of the centralized absolutist government. In the same gesture by which Foucault was enlisted into the antitotalitarian project, he was also identified as a critic and—more problematically—as a theorist of the state.

Some scholars have noted the discrepancy between the views Glucksmann attributes to Foucault and those Foucault actually held, particularly on the question of the state. Christofferson, for instance, observes, "Glucksmann identified power with the state and postulated the existence of a pleb that largely escapes both, whereas Foucault, at his most innovative, considered power to be diffuse and analyzed it in terms of micro-structures that he explicitly developed in opposition to a conceptualization of power in terms of sovereignty located in the state."[38] This divergence is partly due to timing: Glucksmann's citations come almost entirely from *Madness and Civilization*, which appeared in 1961, well before Foucault had begun to think explicitly about power. His first book to highlight this theme, *Discipline and Punish*, was published around the same time as Glucksmann's essay.

But the problem is not merely chronological. Though Glucksmann's reading of Foucault was reductive, it also highlighted the basic ambiguity in Foucault's view of the state. Foucault sought to uncouple the social dynamics of power from their moorings in the state apparatus, while also exploring the proliferation, intensification, and coordination of power in contemporary society in ways that seemed largely consonant with modern thinking about the state (in the vein of Hegel,

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[36]Ibid., 101–13.
[37]Ibid., 112, 109.
[38]Christofferson, *French Intellectuals against the Left*, 198. See, too, Peter Dews, "The *Nouvelle Philosophie* and Foucault," *Economy and Society* 2/8 (1979), 127–71.

Marx, or Weber). The contention that many of modern society's most determining power relations lie beyond the state's reach was central to the way in which Foucault began conceptualizing power in the early 1970s. An early iteration of the argument is found in his November 1971 debate with Noam Chomsky, in which Foucault observed, "there is a habit, at least in European society, to see power as localized in the hands of the government and as exercised through a number of particular institutions, such as the state bureaucracy, the police, the military, and the state apparatus." But, he adds, "I believe that political power is also exercised through a certain number of institutions that seem to have nothing in common with political power, which seem to be independent of it even though they are not": these include the family, the school system, and medical institutions.[39] The most complete formulation of this idea of power is found in 1975's *Discipline and Punish*. There exists a form of power, Foucault explained, that is directed at individuals, which he dubbed the "political technology of the body." This form of power, Foucault argued, is a know-how or practice that cannot be "localized either in a particular type of institution or in the state apparatus": for this reason, it can be described as a "microphysics of power," operating, as it were, beneath that state's radar.[40] Yet as both passages demonstrate, even as he emphasized power's microphysical dynamics, Foucault also suggested that, at a "macrophysical" level, the state latches onto these local power technologies and coordinates them to achieve broader goals. The state, Foucault writes, has "recourse" to discrete power relations; it "utilize[s], valorize[s], and impose[s] some of [their] procedures."[41] Reviewing *Discipline and Punish*, Foucault's student François Ewald implicitly acknowledged this ambiguity while declaring it theoretically fruitful. Foucault, he contended, offers an innovative conception of the state: rather than a *sui generis* institution, it can be seen as a strategy for harnessing and coordinating the web of micro-powers diffused throughout society. Ewald writes, "The interplay of power consists in the system of substitutions and referrals whereby the state and its apparatuses live off the exercise of micro-powers so that they might, in turn, reinforce and legitimate them."[42] Given this conception of the state's inherent ambiguity, it is hardly surprising that Glucksmann could draw on Foucault to turn the mid-1970s "antitotalitarian moment" into an eruption of "state phobia."[43]

Glucksmann and the *nouveaux philosophes* were not the only voices decrying the state in mid-1970s France. They were tapping into a wider sentiment: antistatism became, in this period, one of political discourse's most pervasive and protean idioms. This position was encapsulated by anthropologist Pierre Clastres in the title of his influential 1974 study, *Society against the State*.[44] A variation on these

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[39] Michel Foucault, "De la nature humaine: Justice contre pouvoir" (discussion with Noam Chomsky and F. Elders), in Foucault, *Dits et écrits*, vol. 2, *1970–1975*, ed. Daniel Defert, François Ewald, and Jacques Lagrange (Paris, 1994), 471–512, at 495–6.

[40] Michel Foucault, *Surveiller et punir: Naissance de la prison* (Paris, 1975), 31.

[41] Ibid.

[42] François Ewald, "Anatomie et corps politique," *Critique* 343 (1975), 1228–65, at 1249.

[43] On the meaning of Foucault's critique of "state phobia," see my essay "A Liberal despite Himself: Reflections on a Debate, Reappraisals of a Question," in Stephen W. Sawyer and Daniel Steinmetz Jenkins, eds., *Foucault, Neoliberalism and Beyond* (London, 2019), 1–33, at 26.

[44] Pierre Clastres, *La société contre l'État* (Paris, 1974).

ideas fed into a major current of the post-Marxist renewal of political thought during these years: the circle around Cornelius Castoriadis and Claude Lefort, the key figures of the dissident Trotskyist group Socialisme ou barbarie. With his theory of "the self-institution of society," Castoriadis argued that the state became important only when civil society's democratic energies congealed into a stagnant, alienated, and bureaucratized form. Castoriadis's thought resonated with broader political conversations, notably through its influence on proponents of *autogestion* ("self-management"). This term, originally coined by Yugoslav socialists, became, in the wake of May 1968, the mantra of the "Second Left" (represented by the CFDT trade union and Michel Rocard's faction in the Socialist Party) as it struggled to prevail over left-wing discourse. In 1976, Pierre Rosanvallon, the idea's leading theorist, explained that *autogestion* "inherits from liberalism the principle of the reduction of state power and the sovereignty of society."[45] Antistatism was also central to more conventional leftist thought. In 1976, the political theorist Nicos Poulantzas edited a collection of essays that appeared as *The Crisis of the State*, in which he contended that the economic predicament had triggered a serious "hegemony crisis" of the capitalist state as such.[46] At a conference that September, the Italian Marxist philosopher Antonio Negri argued, *contra* Poulantzas, that the economic crisis could lead an allegedly "reformist" state to reorganize itself in ways that posed a serious threat to workers' autonomy.[47] Despite the variety of political opinions participating in this discourse, consensus existed on at least one point: the state was indeed, as Nietzsche once put it, "the coldest of cold monsters."

A Foucauldian defense of the state

Kriegel's philosophical defense of the state was triggered by the pervasive antistatism of the mid- to late 1970s, and particularly by the expansive critique of the state that the anti-Marxist turn seemed to authorize. In a 1977 article for *Esprit*, Kriegel worried that little remained of the '68 spirit except a knee-jerk tendency to denounce state barbarism. This attitude, she implied, was politically debilitating: it deprived the left—at the very moment when it seemed poised for electoral victory[48]—of the resources needed to realize its program. She asked, "is it not time to finish with the infantile stage of a Manichean socialism that, in its desire to reject the state, only returns to its most archaic forms? Has the time not come to proceed with the establishment of a socialism that is the heir to the most developed political forms, those of the liberal nation-state?"[49] This would require the refutation of two

[45]Pierre Rosanvallon, *L'âge de l'autogestion, ou la politique au poste du commandement* (Paris, 1976), 48.
[46]Nicos Poulantzas, "Les transformations actuelles de l'État, la crise politique et la crise de l'État," in Poulantzas, ed., *La crise de l'État* (Paris, 1976), 19–58, at 50.
[47]Antonio Negri, "Sur quelques tendances de la théorie communiste de l'État la plus récente: Revue critique," in Association pour la critique des sciences économiques et sociales, *Sur l'État: Colloque de Nice, 8–9–10 septembre 1976* (Brussels, 1977), 375–427, esp. 419.
[48]Though a Socialist–Communist coalition was expected to win parliamentary elections in 1978, conservative parties supporting President Giscard d'Estaing nonetheless prevailed.
[49]Blandine Kriegel, "Echapper à la dérive concentrationnaire," *Esprit*, Oct. 1977, 102. Similar interventions by Kriegel from this time include "L'intellectuel et l'état," *L'Arc* 70 (1977), 57–64; an exchange with

fashionable postulates: that the state is evil and that society is virtuous. Rather than viewing the state as essentially wicked—a gulag waiting to happen—one should, Kriegel argued, investigate "the historical forms of political anatomy that authorize or impede its totalitarianization."[50] Instead of entertaining the illusion of civil society as an earthly paradise, one must reject its "hypostatization" and grasp how it is constituted by the state itself.

As her reference to "political anatomy" suggests, Kriegel, in making these arguments, had Foucault on her mind. In addition to her strident defense of the *état de droit*, the other distinctive trait of her thought in this period was its recourse to ideas she had learned from her mentor. Despite Foucault's effort to emancipate the concept of power from the juridical-discursive model, what Kriegel took from Foucault was a set of arguments that contributed not only to her understanding of the state, but also to the defense she mounted against its many critics. Foucault could serve this function, despite his theoretical antistatism, because his conception of the state was so ambiguous: he appeared both to downgrade its significance and to broaden its reach, to demonstrate that one could dispense with it as a category of analysis while providing evidence of its centrality. But since Foucault himself—faithful, in this respect, to his deeper inclinations—never proposed a theory of the state, all that Kriegel could borrow from him was several fragmentary yet suggestive insights.

Three ideas proved particularly important. First, Kriegel drew deeply on Foucault's notion of "biopolitics." Second, she was intrigued by the idea of *assujettissement*: the role that power plays in creating and fashioning subjects. Third, she was involved in an important dialogue with Foucault over the ideas that he presented in his 1976 lecture course, "Society Must Be Defended," about the significance of the early modern debate between Romanists and Germanists concerning the origin of sovereign power. Kriegel's major philosophical statement on these issues was her 1979 essay *L'État et les esclaves*, her intervention in the *nouveaux philosophes* debate. The upshot was something that Foucault himself never felt compelled to offer: a Foucauldian—or at least Foucault-based—theory of the state.

Sovereignty and biopolitics

One of Foucault's most important innovations of the 1970s was his concepts of "biopower" or "biopolitics." Though Foucault first used these terms in a talk from October 1974,[51] he did not fully spell out their significance until the final lecture of the 1976 Collège de France course. "Biopower," he maintained, represents a distinct alternative to the earlier conception of power that he referred to as "sovereignty." Power forms measure their efficacy according to different benchmarks. A sovereign's strength is most transparent in the act of execution. It is, as Foucault says, the "right of the sword." But the modern state, Foucault maintains, is at the

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Pierre Rosanvallon and Patrick Viveret in *Faire* 27 (1978), 50–56; and an exchange with Daniel Lindenberg, Madeleine Rebérioux, Jacques Julliard, and Paul Noirot called "Les intellectuels et le pouvoir," *Politique hebdo* 1–2 (1978), 42–56.

[50] Kriegel, "Echapper à la dérive concentrationnaire," 101.

[51] Michel Foucault, "La naissance de la médecine sociale," in Foucault, *Dits et écrits*, vol. 3, *1976–1979* (Paris, 1994), 207–28, at, 210.

height of its power when it engenders and optimizes life itself—through economic growth, public health, or birth-promoting devices. Sovereignty, as Foucault famously puts it, seeks "to let live and make die"; biopower, however, strives to "make live and let die."[52]

For Foucault, sovereignty and biopower are thus distinct, even alternative, ways in which power can be exercised. Only by distinguishing them could he call attention simultaneously to the distinctive character of the modern European state (notably, but not exclusively, the welfare state) and to the theoretical drawbacks of universalizing a historically specific form of power (sovereignty). Kriegel, however, feared that such a picture of sovereignty gave credence to exactly the kind of antistatism that Glucksmann and others espoused. Voicing this concern, she wrote in *L'État et les esclaves*,

> Some thus hold the political theory of sovereignty that emerged in Europe in modern times to be the statist ideology par excellence in that, rather than simply emancipating the state [from the church], it legitimized and sanctified power that should have been limited and held in suspicion. In this way, we are told, the ideology of sovereignty opens the door to every kind of despotic transformation of the state and clears the path leading to the disorder of the police state and the corruption of the prison state. We slip imperceptibly from the sovereign state to the totalitarian state.[53]

As an example of this conflation, Kriegel specifically mentions Glucksmann's *La cuisinière*. The problem with this position, Kriegel argued, was that it failed to recognize that, in certain instances, the sovereign state is the *opposite* of the totalitarian state, even the antidote to it. This error is one of historical misunderstanding. Early modern sovereignty is often seen as a kind of extension or generalization of feudal lordship, or *seigneurie*.[54] But drawing on sixteenth- and seventeenth-century royal lawyers, Kriegel demonstrates that the reverse is true: "Sovereign power … is the antithesis of seigniorial power."[55] The basis of seigniorial power, according to the king's legal scholars, is the Roman notion of *imperium*. In Kriegel's description, *imperium* closely resembles Foucault's definition of sovereignty: it refers to civil and military authority at its most potent, as revealed in military command, the right of war and peace, and "the right of life and death."[56] Yet while *imperium* also implies "empire" and thus an incipient notion of the state, Kriegel emphasizes that the scholars who initially proposed the absolutist theory of sovereignty rejected this derivation: their goal was to "show that the sovereign state is not based on war but peace, and that it prefers the silent confrontation of rights to the clamor of arms."[57] By associating the "power of the sword" with feudal lordship rather than with sovereignty, Kriegel presented the position defended by Glucksmann

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[52]Foucault, *"Il faut défendre la société"*: *Cours au Collège de France, 1975–1976* (Paris, 1997), 214. This lecture is in many respects a rough draft of the final chapter of *La volonté de savoir*, 177–211.

[53]Kriegel, *L'État et les esclaves*, 45.

[54]Kriegel has in mind Perry Anderson's arguments in *Lineages of the Absolutist State* (London, 1974).

[55]Kriegel, *L'État et les esclaves*, 53.

[56]Ibid.

[57]Ibid., 54.

and other antistatists as illusory. A society without the state would not consist of a thriving network of self-managing associations (or entrepreneurs competing in a free market), but of constant warfare and social relations resembling feudal Europe's. The "fetishization of the social," which Kriegel had criticized, was essentially the outlook of feudal lords: "It is not an exaggeration to say that social philosophy differs little from the seigniorial doctrine, which, having lost a sense of the independence of the juridico-political, ends up believing that the social is everything."[58]

Even as she accused the *nouveaux philosophes* of letting their hostility to the state blind them to the despotism of civil society, she subtly molded Foucault's ideas to suit her purposes. If the "right of the sword" epitomized seigniorial power—and not sovereignty, as Foucault had argued—then what kind of power did sovereignty wield? Surprisingly, Kriegel's answer is biopower—or at least something close. The state, for Kriegel, is the institution that ends private wars and frees individuals from feudal servitude. Thus while "the age of *biopolitics* … the development of which in the nineteenth century Michel Foucault has described, has yet to come … we already find ourselves within the political symbolism of life." She adds: "Lordship [*Seigneurie*] was war; the sovereign state will be peace."[59] In her conclusion, she makes the same point more forcefully still: "Anti-seigniorial and opposed to slavery, classical [i.e. early modern] political philosophy, by legitimating individual rights, security, and later liberty and by subjecting the sovereign to law, deployed biopolitics."[60] For Foucault, biopower was the antonym of sovereignty; for Kriegel, the two are effectively synonyms. Foucault recognized alternatives to the "power of the sword"—that some power forms can promote life rather than end it. But where for Foucault biopolitics transcends the narrow confines of early modern sovereignty, Kriegel argued that the efforts of absolutist kings to replace the feudal "roar of battle" with the quiet murmur of peace and law amounted in practice to the biopolitical task of *faire vivre*—making life.

Power, individuals, subjects

Another idea that influenced Kriegel was Foucault's claim not only that power controls individuals, but that to some degree it creates them—specifically, that it constitutes them as subjects. This is one of the most arresting arguments that Foucault advances in *Discipline and Punish*.[61] According to Foucault, modern institutions like prisons do not merely act on individuals; they invent forms of individuality that serve as correlates for their manipulative imperatives. With this claim, Foucault directly challenged social contract theory, which holds that it is individuals who create power structures rather than power structures that create individuals. Foucault writes,

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[58]Ibid., 64.
[59]Ibid., 59.
[60]Ibid., 281.
[61]This idea is also found in the work of Kriegel's teacher Louis Althusser, though Kriegel makes no reference to his version of the argument, notably his concept of "interpellation."

It is often said that the model of a society in which individuals are the con-
stituent elements is borrowed from the abstract juridical forms of the contract
and exchange. Commercial society would thus have imagined itself as a con-
tractual association of isolated juridical subjects. Perhaps. Indeed, seventeenth-
and eighteenth-century political theory often seems to have obeyed this
schema. But one must not forget that at the same time a technology existed
for effectively constituting individuals as correlative elements of power and
knowledge. The individual is undoubtedly the fictitious atom of an "ideo-
logical" representation of society; but it is also a reality that is fabricated by
that specific power technology called "discipline."[62]

Furthermore, this contention bolstered Foucault's larger point that power is not merely
negative (in this sense that it excludes or represses), but also productive, since it creates
its reality—including the reality that is the individual. Finally, Foucault maintained not
only that power creates individuals—i.e. human beings in their particularity—but that
it specifically creates subjects, in the philosophical sense of beings that are able to will
their actions. The mind–body dualism implicit in the idea of the subject is, according
to Foucault, a means by which power manipulates bodies: far from escaping the
clutches of power, the "soul" is power's most perfect creation, a mechanism though
which bodies can be known and directed. "The soul," Foucault famously observes,
is "the prison of the body."[63] As such, the soul is a classic example of *assujettissement*:
the process of "subjectification," by which we are subjected (in the sense of dominated)
to the extent that we are subjects (in the philosophical sense).

    Yet this idea, which is often considered to make Foucault's thought impermeable
to political liberalism (if power constitutes individuals, then how can it be account-
able to them?), struck Kriegel as offering insight into the origins of the *état de droit*.
She agreed with Foucault that the significance of social-contract theory for modern
power arrangements had been exaggerated. These theories, moreover, are incipi-
ently antistatist: they make it possible to champion both the individual and the soci-
ety (to the degree that society is an association of contracting individuals) against
the state. Yet the most ancient doctrine of individual rights is, according to, Kriegel,
"neither *civil*, *societal*, nor *social* but … resolutely *statist* ."[64] Personal liberty was, in
fact, a creation of the early modern absolutist state—the "coldest of cold monsters"
if ever there was one. For it is the Western European absolutist state, Kriegel con-
tends, that emancipated serfs in the royal domains and relentlessly challenged the
efforts of overmighty subjects to preserve relations of personal servitude. Hence the
title of Kriegel's essay, *L'État et les esclaves*: the state is the institution that frees indi-
viduals from the "slavery" of feudal society. Consequently, the origin of political lib-
erty is not to be found in social-contract theory, but rather in the effort of absolute
monarchs and their apologists to end the servitude pervasive in civil society and
replace aristocratic militarism with the rule of law. Individuals, at least in so far
as they are juridically defined, are creations of the absolutist state: "unless juridical
statutes have a political guarantor, there are no individual rights, there are only

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[62]Foucault, *Surveiller et punir*, 195–6.
[63]Ibid., 34.
[64]Kriegel, *L'État et les esclaves*, 75, original emphasis.

pious protests about man's value. Without an *état de droit*, there are no human rights."[65] "Individual rights," she adds, are not "individualistic":[66] they are created by the state as part of an effort to organize sovereign power along "anti-imperial" (in the sense of seigniorial *imperium*) lines.

But if the absolutist state creates individuals, in ways that recall Foucault's claims about discipline, Kriegel intriguingly argues that it does *not* produce subjects—at least not ones in which souls imprison bodies. Indeed, Kriegel suggests that the great achievements she attributes to absolutism—the establishment of the principle of personal freedom based on the inviolability of the body—result from the fact that it has no need to constitute individuals as subjects. In Hobbes's account, "the sovereign confiscates subjectivity for himself alone."[67] But rather than leading to royal despotism, this act marks the individual's emancipation from seigniorial despotism: personal security, which was so precarious in the state of nature, becomes generalized and guaranteed by law once one submits to Leviathan. Kriegel recognizes that other early modern political thinkers do see individuals as subjects. However, in these instances, Cartesian dualism serves as a safeguard of sorts against *assujettissement*: while classical political philosophy maintains that the soul can be freely alienated, it "forbids the trading of life," i.e. one's body.[68] Kriegel thus reassembles Foucault's arguments about the relation between power, individuals, and subjects into a striking new synthesis: sovereign power creates individuals through the establishment of the rule of law, freeing them from seigniorial power; yet sovereign power lacks discipline's insidiousness, for, in ensuring personal security, it guarantees, at minimum, bodily inviolability. The body is—or can be—the emancipator of the soul.

Looking beyond *L'État et les esclaves*, it is worth noting that Kriegel's argument that modern rights theory has no historical basis in the philosophy of the subject is one to which she attached increasing importance during the 1980s. The growing interest in political philosophy during these years was usually accompanied by a reassertion of the philosophy of the subject. This was particularly evident in Luc Ferry and Alain Renaut's 1985 essay *La pensée 68*, which attacked the antihumanism of Foucault and his generation while calling for a "return to the subject."[69] Acknowledging this trend in her preface to the 1989 reprint of *L'État et les esclaves*, Kriegel asserted, "*the philosophy of the subject never and in no way founds the doctrine of human rights .*"[70] Individual rights, as defined by Hobbes, Spinoza, or Locke, rest on a conception of the individual fully immersed in the physical world, emphasizing personal security above all else. The philosophy of the subject, however, in subordinating the body to the mind, is better suited to a theory of the administrative state than to human rights:

> Indeed, in such a philosophy, the subject is no longer connected to nature except through the intermediary of his own understanding. He is, in the first instance, pure thought, a thing that thinks. Consequently, he is not a

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[65] Ibid., 103.
[66] Ibid., 88.
[67] Ibid., 86.
[68] Ibid., 93.
[69] Luc Ferry and Alain Renaut, *La pensée 68: Essai sur l'anti-humanisme contemporain* (Paris, 1985).
[70] Blandine Kriegel, "Préface à l'édition de 1989," 16, original emphasis.

natural thing among natural things, a body among bodies; it is less important for a subject to appropriate its own body than to expand its own determinations. The body is no longer but the application point of good policing that occurs through the subject's understanding.[71]

Foucault's significance lies in the way that he showed connection between the "theory of man as a subject and the police state [*État de police*]."[72] Yet Kriegel interprets this insight with great originality and considerable license. Rather than as a blanket authorization to regard the state with suspicion, she sees it as admitting a clear and preferable alternative: instead of the subject and the police state, the individual and the *état de droit*. In a short book on Foucault from 2004, she wrote,

> But contrary to what his petit bourgeois [!] interpreters and detractors failed to see, so furious are they to see subjectivity taken off of its pedestal, Foucault cannot be understood unless one takes account of his individualistic vision. *The individual against the subject* . We are emancipated, one by one, by abandoning the alienating narcissism of the subject. Liberation consists of rediscovering the world beyond the facticity of systems through constructions that are always necessarily personal.[73]

In Kriegel's hands, Foucault's positions on individuality and subjectivity, which are usually taken to be serious challenges to liberal political theory, become the basis for her idiosyncratic brand of liberalism.[74]

Romanists versus Germanists, law versus war

The third shadow that Foucault cast over Kriegel's theory of the state was his 1976 Collège de France lecture course. This course marks a crucial point in the evolution of Foucault's thought in the 1970s. Having sketched out his critique of the juridical conception of power in *Discipline and Punish*, he now devoted an entire course to pursuing this line of analysis. Rather than focus on institutions like prisons or psychiatric hospitals, Foucault instead considered the history, from the seventeenth to the twentieth centuries, of two conflicting political discourses: on the one hand, a juridical discourse equating power with sovereignty and law; on the other, a historical discourse that defined power as conquest and force. The former was associated with the rise of the absolutist state and its apologists, such as Bodin, Machiavelli, and Hobbes, while the latter was articulated, in turn, by religious dissidents (the Levelers), anti-absolutist aristocrats (Boulainvilliers), and nineteenth-century proponents of the concept of social class (Thierry and Marx). In the latter, Foucault found a kind of stand-in for his own emerging ideas, according to which power was better understood on the model of war than of law.

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[71]Ibid., 18. Kriegel uses precisely the same words in her contribution to the 1988 Foucault conference. See Kriegel, "Michel Foucault et l'État de police," 227.

[72]Kriegel, "Michel Foucault et l'État de police," 227.

[73]Blandine Kriegel, *Michel Foucault aujourd'hui* (Paris, 2004), 92–3, original emphasis.

[74]Kriegel's most important and complete presentation of these ideas is found in "Les droits de l'homme et le droit naturel," in Dominique Colas and Claude Emeri, eds., *Droits, institutions et systèmes politiques: Mélanges offerts à Maurice Duverger* (Paris, 1987), 3–42.

If these concerns sound familiar—classical political thought, the seventeenth century, sovereignty, and so on—it is no accident. In her book on Foucault, Kriegel claims that he addressed these themes in his 1976 course after she had introduced him to them (she had encountered them in her doctoral work). She recalls,

> Working on the establishment of scholarly history in the classical age under his direction, I encountered the quarrel between the Germanists and the Romanists which divided eighteenth-century historians, and I brought it to [Foucault's] attention. So Foucault, too, read the Germanist thinkers, notably Coke and Selden in England and Boulainvilliers in France and drew his conclusions, which were very different from those that struck me. Foucault adopted as his own the points of view of the Germanist current and notably those of Boulainvilliers, for whom 'it was war that presided at the birth of the state.'"[75]

The different interpretations that teacher and student made of this same body of material provide a particularly intriguing vantage point for assessing their points of convergence and divergence.

For Foucault, the appeal of the Germanists was that they sanctioned his own theory of power while situating it in a longer historical trajectory. The Germanist thesis held that the French kingdom was founded with the Frankish conquests of the sixth century. It purports to explain, moreover, the old regime's social hierarchy: aristocrats conceived of themselves as the noble, warrior descendants of their Frankish ancestors, ruling over the plebian Gauls. More generally, Foucault was drawn to the Germanist thesis because it illustrated his view that power is best understood on the model of war rather than law—that "beneath political power, that which roars and operates is essentially and primarily a bellicose relationship."[76] Moreover, the Germanist thesis perfectly supported Foucault's critique of the state. At issue in the dispute between Germanists and Romanists was the legitimacy of the absolutist monarchy: the Germanist thesis was the class ideology of the French aristocracy as it struggled to protect its rights against monarchical incursion. Consequently, rather than take the royal position at face value, the aristocracy used history to denounce it as usurpation, even as a military conquest: for this reason, Foucault, anticipating his well-known remark from *The Will to Know*, says that this discourse "cuts off the king's head."[77] He was particularly drawn to the work of the French aristocrat Henri de Boulainvilliers, in whom Foucault saw his own views foreshadowed: "It is not in the juridical terms of sovereignty but in the historical terms of domination and the play of power relations that Boulainvilliers described the phenomenon of power."[78]

Against Foucault, Kriegel defended the Romanist thesis. Though the specifics of its historical argument could vary, it generally held that France was ultimately

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[75]Kriegel, *Michel Foucault aujourd'hui*, 80–81.
[76]Foucault, *"Il faut défendre la société"*, 18.
[77]Ibid., 51.
[78]Ibid., 150.

Roman in origin, and, consistent with this tradition, a strong, centralized state, averse to feudal parceling, was entirely legitimate. Kriegel's main argument for this view was precisely her contention, *contra* Foucault, that states end more wars than they perpetuate. For Kriegel, as we have seen, the absolutist state was already biopolitical: "Sovereign states intensely work their gardens and expand only to enclose. An intensive 'new political culture'—of which Vauban offered a model in the image of the *pré carré*—succeeds the extensive militarization of the ancient and Germanic worlds."[79] Acknowledging the frame of reference she shares with Foucault, she noted that writers such as Boulanvilliers, "rather than founding the state on law, along the lines of classical political theory … build society's identity on history and conquest."[80] Kriegel did not claim that war disappeared: externally, states continued to fight one another, while internally states struggled to make their territories governable. But even so, they introduced law as the new basis upon which power was exercised. Thus law cannot be seen as the pursuit of war by other means, as the absolutist state, in promulgating law, was self-limiting: "Though absolute, sovereign power is always limited. Without it, sovereignty would, in the eyes of state-idolaters, be lordship."[81] Though both Kriegel and Foucault recognized that the quarrel between the Germanists and the Romanists had something crucial to say about the modern state—to the point of quietly reenacting the controversy between themselves—their perspectives were sharply divergent: where the teacher saw the state as both the outcome of and the participant in a social war, the student contended that the end of private, feudal wars (and the oppression that they entailed) was the state's greatest historic achievement.

In making this point, Kriegel, moreover, diverged from Foucault in another way: she employed a methodology that had little in common with her teacher's, even as she claimed a Foucauldian lineage for her approach. In her dissertation, she said that she had been decisively influenced by the French epistemologists, notably Gaston Bachelard and Georges Canguilhem, and that their insights had guided her study of the conception of erudition espoused by old-regime historians like Jean Mabillon. Foucault, she asserted, had shown that one could "transcend the opposition between the history of ideas and social history" by embracing "cultural history," of which she considered her work to be an example.[82] Yet in *L'État et les esclaves*, Kriegel drew almost entirely on conventional intellectual history to advance her polemical project, not least in her consideration of the Romanists and the Germanists. This approach was needed, she maintained, to bring back into focus politics, law, and ideology, which had been overlooked by the contemporary infatuation with the "social." Her method consisted of a close, chronological reading of "legists and jusnaturalist philosophers."[83] In *L'État et les eclaves*, she analyzed authors such as Thomas Aquinas, Charles Loyseau, Jean Bodin, Thomas

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[79]Kriegel, *L'État et les esclaves*, 67. During the Middle Ages, *pré carré* referred to a lord's personal domain. The term was popularized by Vauban, Louis XIV's chief military engineer, who used it to refer to the extensive fortifications he built along France's northeastern border.

[80]Ibid., 186.

[81]Ibid., 70.

[82]Kriegel, *L'histoire à l'âge classique*, vol. 1, *Jean Mabillon*: 19.

[83]Kriegel, *L'État et les esclaves*, 41.

Hobbes, Montesquieu, and Karl Marx, weaving into her account insights from scholars as varied as Michel Villey, Émile Boutmy, Louis Dumont, and Pierre Chaunu. Furthermore, despite her stated interest in history, Kriegel tended to peremptorily conflate the Old Regime monarchy with modern legal principles. Though Foucault believed that all genealogy was ultimately a "history of the present," his narratives emphasized the way in which historical discontinuities reveal occluded political possibilities. Thus while Kriegel drew on many discrete theoretical claims advanced by Foucault, she made little use of Foucault's archaeological and genealogical methods, which relied on nonphilosophical texts, often associated with specialized fields of knowledge or particular institutions, to unearth epistemological paradigms and power mechanisms from the past. Because she believed that the "ontological dimension of law" was missing from Foucault's work and that of his contemporaries, she had no qualms in engaging in a kind of synoptic history of legal doctrines.[84] This approach had much in common with the discourse analysis embraced by the historian François Furet and his followers as well as the thinkers of the liberal revival of the 1970s and 1980s. Kriegel's methodological departure from her teacher explains, to a degree, her Pollyannish view of the early modern state, whose virtues Foucault, whatever his shortcomings, was little inclined to celebrate.

Conclusion: inverting Foucault

Like François Ewald, who also was Foucault's student and Collège de France assistant, Blandine Kriegel offers an intriguing standpoint from which to assess the impact of Foucault's thought on the intellectual trajectory of the '68 generation. First, it is noteworthy that what Kriegel took from Foucault was not so much an overarching method as a series of discrete philosophical propositions that proved instrumental in reconstructing a coherent political outlook in the wake of Marxism's apparent demise and in crafting a response to the problematic antistatism that mid-1970s antitotalitarianism seemed to authorize. As we have seen, she never rigorously attempted to apply Foucault's method to political analysis. What she took from Foucault was a series of intriguing ideas that were detachable from the larger body of his thought: the idea of biopolitics; the propositions that power constitutes individuals and that philosophical subjectivity can become enmeshed in oppressive power relations; and the suggestion that war and sovereignty represent alternative ways of conceptualizing power and, as such, provide a useful framework for thinking about the nature of the modern state. Foucault's famous claim that his books offered not so much an all-encompassing "theory" as multipurpose "toolboxes" seems particularly relevant to Kriegel's appropriation of his ideas.[85]

Second, again like Ewald, Kriegel drew on Foucault to define a post-1968 political vision that was opposed to the leftist politics of social contestation with which

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[84]Kriegel, *Querelles françaises*, 134. Foucault, admittedly, did not always follow his own method. Is it interesting, though, that one of the works in which he reverts to a familiar form of intellectual history is the lecture course that Kriegel claims to have influenced—the 1976 lectures, *"Il faut défendre la société"*. Even here, though, Foucault's interest in the theory and history of the French state's origin in civil war was tied to strategies for legitimating and delegitimating the state.

[85]Michel Foucault, "Prisons et asiles dans le mécanisme du pouvoir," in Foucault, *Dits et écrits*, 2: 523.

she and Foucault had once been closely identified. The responsibility for Ewald's and Kriegel's gravitation to reformist and, arguably, conservative politics cannot be pinned on Foucault. But the fact that both seized upon the explanatory potential of Foucault's ideas when they were searching for philosophical alternatives to Marxism is worth pondering. In Ewald's case, it involved recognizing how economic and governmental institutions (like work accidents legislation) are political technologies that obey a logic that cannot be reduced to exploitation or oppression. In Kriegel's case, Foucault helped her to see—paradoxically, given how Foucault is often read—that individual liberty is not found "naturally" in civil society, but is, rather, a creation of the modern state. Though one could reasonably object that such a reading misinterprets Foucault, it arises in part from the ambiguous nature of his analysis of the state, which simultaneously minimizes and maximizes its importance (Kriegel, in essence, endorses the maximal interpretation but gives it a positive spin). Interestingly, for both Ewald and Kriegel, the topics that they researched under Foucault's supervision would become something more than objects of purely academic interest. Ewald, after writing a dissertation on the birth of the "insurance society," went to work for the French insurance industry, which brought him into the orbit of the MEDEF, France's main employers' organization.[86] Kriegel, after championing the modern state's emancipatory achievements in her first book, eventually found herself commissioned to write various reports for the state, before acquiring an office, during President Jacques Chirac's second term (2002–7), in the Élysée Palace itself. She has even continued to evoke some of the ideas she developed under Foucault's tutelage in the reports she has written for the French government: in her controversial 2002 report on violence in French television, her claim that the state had a legitimate right, even a duty, to bring degrading displays of violence in the virtual public sphere to an end recalled the central thesis of *L'État et les esclaves*, itself a distant echo of Foucault's analysis of the interplay between competing discourses of war and sovereignty in his 1976 course.[87] While Kriegel acknowledges that her political evolution differed from Foucault's, she too, like Ewald, attributes her political maturation to her former mentor. In 2004, she explained the nature of this intellectual debt:

> Foucault did not rediscover the *état de droit* beyond the police state, nor human rights beyond his critique of humanism … In short, he did not realize the intellectual program assigned to our generation which is only in the process of being realized. But at the very least, he guided us until the very end in the crossing of the desert that led us from the subject to the individual, society to the state, institutions to knowledge, socialism to democracy, and revolt to reconstruction.[88]

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[86]This and other aspects of Ewald's career are discussed in my essay "Accidents Happen: François Ewald, the Anti-revolutionary Foucault, and the Intellectual Politics of the French Welfare State," *Journal of Modern History* 3/82 (2010), 585–624.

[87]Blandine Kriegel, *La violence à la télévision: Rapport de Madame Blandine Kriegel à Monsieur Jean-Jacques Aillagon, Ministère de la culture et de la communication* (Paris, 2002).

[88]Kriegel, *Michel Foucault aujourd'hui*, 97.

While this article has focused on Foucault's influence on Kriegel, the merits of her argument also deserve assessment. Kriegel undoubtedly makes a powerful case for the central role of the monarchical state in the establishment of institutions and practices that are constitutive of liberal democracy, such as the rule of law and personal liberties. Yet in taking this polemical stand, she overlooked many of the egregious ways in which monarchical institutions contravened the very principles she attributed to them. In France, kings continued to uphold serfdom on private lands and in the colonies well into the early modern period. Furthermore, events such as the St Bartholomew's Day Massacre or the Revocation of the Edict of Nantes (to name but a few) hardly suggest a strong relationship between absolutism and bodily inviolability.[89] Without even dwelling on the famous account of Damiens's execution presented in the opening pages of *Discipline and Punish*, it is surprising how little Kriegel has to say about the connections Foucault saw between sovereign power and punitive violence. While kings may have ended feudal strife, the monarch's judicial role could be based, Foucault observed, on the right to "wage war on his enemies."[90] Moreover, the spectacular viciousness of royal punishment was, Foucault contended, the direct consequence of sovereign power's precarity and inefficiency—its "mixture of weakness and excess, exaggerations and shortcomings."[91] Not only was Foucault, contrary to Kriegel's assertions, deeply interested in the law, but his genealogical method, with its focus on power mechanisms, allowed him to analyze the discrepancies between legal principle and punitive practices. While the conclusions to which her Foucauldian premises led her are no doubt original, it is far from evident that Kriegel's account of the state improves on Foucault's.

Yet whatever the merits of her own argument, Kriegel's significance lies in her abandonment of the grim and haunting account of the modern state with which Foucault remains associated. Needless to say, there is no evidence that Foucault subscribed to his student's views. Even so, the ambivalence of Foucault's account of state power seems to have played a part in her analysis. By viewing power and, by extension, the state (in so far as the state is a complex configuration of power relations) as practices and technologies, Foucault deprived them of the class character with which they are endowed in Marxist theory. His critique of repression as the dominant idiom for conceptualizing power and his attention to power's creative potential yielded an original way of thinking about the state that clashed considerably with the leftist reflexes of his contemporaries, however much he may have agreed with them in other respects. And in his own work in the late 1970s, with its focus on governmentality, liberalism, and political economy, Foucault at least partially abandoned the bleak picture of modern power relations he seemed to have presented in *Discipline and Punish*. Kriegel's theses may not be prefigured in Foucault, but his account of the state—what it prioritized and downplayed—was not incidental to the conclusions his student reached.

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[89]I am grateful to an anonymous reader for *Modern Intellectual History* for pointing out the shortcomings of Kriegel's thesis. For an important critique of common assumptions about the contrast between "free labor" in Western Europe and serfdom in Eastern Europe see Alessandro Staziani, *Bondage: Labor and Rights in Eurasia from the Sixteenth to the Early Twentieth Centuries* (New York, 2014).

[90]Foucault, *Surveiller et punir*, 52.

[91]Ibid., 83.

How exactly should one think about the relationship between Foucault and Kriegel, whose political philosophies diverge so considerably, despite the personal relations, historical experiences, and philosophical concerns they so obviously shared? One possibility is to consider the intellectual fate of Carl von Clausewitz. The Prussian officer's famous maxim—"war is the continuation of politics by other means"—is arguably as famous in the "inverted" form proposed by various twentieth-century thinkers, including Lenin and Foucault himself—"politics is the continuation of war by other means"—than in its original iteration. Perhaps a similar relationship exists between Foucault and Kriegel. Such an inversion implies disagreement (over the relationship between terms), but also agreement (concerning which terms are relevant to thinking about a particular problem). Foucault claims: "Biopolitics is an alternative to sovereignty." Kriegel replies: "Sovereignty is already biopolitical." Foucault asserts: "Discipline individualizes" and "philosophical subjectivity makes the body the prisoner of the soul." Kriegel answers: "Sovereignty individualizes" and "the absence of philosophical subjectivity frees the body from the grips of power." The professor: "The state is thinly disguised civil war." The student: "The state is civil war expressly forbidden." As this game suggests, a certain kind of intellectual fidelity to Foucault may be possible even on the part of those who have turned their back on his most characteristic commitments—including his deep suspicion of the state and liberal political theory.