

## **Michel Foucault and the historicity of social norms**

Zouhair Ghazzal  
Institute for Advanced Study, Princeton  
School of Social Science  
zghazza@luc.edu

### **I.**

Going over the New York Times this weekend (the specific date is irrelevant for our purposes), I've noted the following "globalist" expressions:

- jihadi terrorism
- global financial crisis
- toxic assets
- global warming
- energy scarcity
- nuclear proliferation
- cyberspace warfare
- swine flu

That a health pandemic like the current swine flu becomes a "national security" concern, as one health official put it, on a par with so-called jihadi terrorism, is not such much an outcome of "globalization," whatever we understand by such a term, as much as one where the role of the nation-state has considerably shifted in the last couple of centuries. To paraphrase Foucault the state has entered since the last century into the era of bio-power (or bio-politics) where "government" in the sense of institutionalized "technologies of power" implies the control of individual lives through what is looked upon as their well being and safety from education to health care, finance, energy, terrorism, information and cyberspace. However, such control is not primarily disciplinary in nature as was the case in the nineteenth century, even though it does take such an aspect, but one where health, education, information, have been fully integrated into the capitalist market, becoming commodities all by themselves. Having been full integrated into capitalism, they now run as fully efficient consumerist sectors in the neo-liberal tradition of normative efficiency. In other words, they've become normative all by themselves, and to which individual subjects have to abide to. Thus, for example, it is no more an option to take care of yourself in simple hygienic matters, but something commanded by the state, for the simple reason that other people could get infected and harmed.

To reach the point where health becomes a "technique of the self," that is, processes by which the individual acts upon himself, as Foucault would say, internally observed by each individual in society for its own sake and for the wellbeing of individuals and their environments, and where the state assumes the role of control

over various medical institutions and apparatuses, we had to go through all kinds of transformations beginning with the classical age and its ancien régime, to the disciplinary nineteenth-century institutions of the asylum and prison, up to our own century, where the technologies of power associated with the political rationality of neo-liberalism command that anything from education to health care, up to nutrition and information technology, follow a similar consumerist logic as the commodities produced by the industrial and other sectors. In order to create “responsible” individuals with an ability for self-care, there was a historical normative shift between what the state could traditionally do, for instance, protect the national territory from external and internal threats, to an attitude of more extensive control over the lives of individuals and their normative values, as the whole process assumes the existence of individuals who give their own lives a specific entrepreneurial form.

For that very reason it would be absurd to link such social phenomena to “globalization” as some kind of magic bullet, thinking that, for instance, a flu pandemic or cyberspace warfare would have “global” consequences. What should be underscored in the face of such oversimplifications, is that even when a phenomenon has widespread implications across borders, nations, and civilizations, its significance from one context to another varies based on the techniques of domination and the techniques of self in a particular society: How are individuals controlled by others, coerced and manipulated, and how do individuals act upon themselves?

Some strongly minded liberals were offended that we were commanded by our president–commander-in-chief to “wash your hands when you shake hands, cover your mouth when you cough,” or more recently, “If you are considering buying a car, I hope it will be an American car,” and “I want to remind you that if you decide to buy a Chrysler, your warranty will be safe,” on the basis that such concerns should be self-regulated by the neo-liberal market whose inherent competitiveness should auto-regulate economic emergencies of the kind we are experiencing now. As I’ll argue in the final part of my paper there are two complementary brands of neo-liberalism which have emerged in Europe and the US in the first and second half of the twentieth century, and the Obama administration is betting on a capitalism that is more regulated by the state than self-regulated. In both instances, however, what tends to be forgotten is the double bind that connects individuals to such programs as health care and education. On one hand, such programs have been fully integrated into the capitalist economy, and are supposed to be endorsed across the board. Thus, when a flu pandemic all of a sudden erupts, it’s in principle everyone’s responsibility to take care of themselves, their families, elders, and children, and seek the corresponding health care institutions for that very purpose. But, on the other hand, and that’s the economic side of the equation, there are 30 to 40 million American without proper health care insurance, who thus would not necessarily find it beneficial to spend from their own pockets for what looks like a very remote possibility of contamination, while those who are insured have vastly different insurance plans, reflecting their various incomes and class affiliations. In other

words, even when under neo-liberalism the values of the market become the norm, transmitting their own values to other spheres of the lifeworld, they also transmit to those supposedly “universal” spheres (e.g. education and health) their own economic inequalities. So that when a possible pandemic becomes a “national security” concern, individuals would respond to such “security” issues very differently, based primarily on the income irregularities imposed by the capitalist market.

Consider for the sake of comparison how the Egyptian government reacted to the same flu crisis: it ordered the slaughtering of all the pigs in the country, whose number is estimated from 300,000 to a half-a-million. Since there is no evidence that those pigs were infected, the governmental decision went beyond “science” per se into the realm of disciplinary action. Considering that Islam bans the eating of pork’s meat, the decision may have a soft “ideological” side to it in that it reinforces that “Islamic” side of the Egyptian state. However, considering that the pig keepers are for the most part from the Christian Coptic minority, and more specifically from its urban underclass who live in its shanty “illegal” neighborhoods, the decision was perceived as one more attempt to demoralize the Christian minority. But there could be another more fundamental aspect to this flu episode. The pig feeders are in this instance garbage collectors in urban areas, who feed the pigs from the garbage they collect, and recycle the rest in state owned facilities after collecting money for handing in “cleaned” garbage ready for recycling. Moreover, the pigs are kept in the same areas where the collectors and their families live, and the latter feed themselves by slaughtering some of the pigs. From the standpoint of the Egyptian government, therefore, the purpose of the whole operation, as a government official bluntly stated, would be to end the state of chaos once and for all by slaughtering all those pigs who live and breed among humans, and then open up modern farms in non-urban areas, as is the case in Europe and the rest of the civilized world. What is clear in this instance is that the state transcends its restricted role of health-care provider into something more drastic: in the name of the health security of part of the urban underclass, which in this instance is mostly Coptic, the state decides to cut on their living, with the excuse that, through other planned projects, where the keeping and breeding of pigs would be altogether safer and more scientific, the safety of the national territory as a whole would be in much better shape. In short, the state takes a blunt nineteenth-century disciplinary style role, for the simple reason that Egyptian society never went through the requirements of modernity in the first place.

Even though the Egyptian state has benefited from the longstanding weakness of its Coptic minority, pushing for “reforms” that were probably long overdue, and while it remains uncertain how much the state orders would be followed, the state took a stance which deep down is unrelated to the Copts, even though the pig feeders and keepers would be the main ones affected. In effect, the Egyptian state–nation (we’ve not yet into a nation–state) has a lot to catch up to do on its European models. The logic here is a nineteenth-century regulation of space: space is specialized; and every activity has its own space. Consequently, pigs cannot share the same space as

humans, as they have to be bred and fed apart, hence the European model of farming and its “scientific” value for the community at large. In sum, for the Egyptian state what is at stake is not so much the status of the Coptic minority and the harassments it has been constantly subjected to from the Muslim majority, even though that remains a rough and controversial issue, but rather the very authority of the state is at stake here—in terms of its disciplinary powers and its ability to control, command and coerce. The Egyptian state therefore uses an assortment of technologies at its disposal, some of which are purely opportunistic (the sudden outbreak of the swine flu, combined with the historical weakness of the Christian minority),<sup>1</sup> while others come with “scientific” claims (that pigs and humans should not mix; viruses are invisible and highly contagious), not to mention the sheer display of power (police or the military).

A flu is therefore “global” in the sense that it creates a general concern across societies and civilizations wherever they’re politically or economically situated. However, nations do not react the same way to the same event, and not simply as an outcome of basic “cultural” differences, but because state power, the technologies of control, and the techniques of the self, are structured differently from one society to another. The Obama administration did what it did in the context of a society where state power has reached a high level of control over various spheres of the lifeworld; faced with the flu it was a question of doing the right thing for a “normative utility” which cannot be taken lightly—that is, avoiding that the government loses face, knowing that the neo-liberal economy of health has historically created a wide disparity among Americans in their insurance plans (or lack thereof) and in the way they receive health. For the Egyptians, however, it was, indeed, a different matter altogether. Had the pandemic spread around and killed people, the government would have lost face too—and probably some of its symbolic power. Instead, it opted for something more basic—more disciplinary—by ordering the killing of the totality of the pigs in the country.

In this paper, I would like to discuss state power and government based on the research of the late French philosopher Michel Foucault. Foucault did pioneering work within an historical perspective that should be of interest to us. Instead of the regular extensively documented history of the Annales school, he looked at philosophical themes—the subject-object paradigm, power, the self, and the technologies (hermeneutics) of the self—through the lens of a genealogy of history. He is therefore important to dissect those power relations to which we still belong, and which make us as individuals.

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<sup>1</sup> The total number of the Egyptian Copts is estimated at 10 million out of the 70 million Egyptians, or roughly in the order of 10 percent.

## II.

I have no intention in my talk today to present you with the totality of Michel Foucault's work, or even one of its many facets and fragments.<sup>2</sup> Besides that such a task would be unfeasible in the context of a small talk, it would present me with the inconvenience of not being able to look at any aspect of his work in depth. Instead I would like to discuss Foucault's work in relation to social norms, which has been our theme for the year. To be sure, there is nothing in Foucault's broad work that would frontally address social norms per se, and unless I missed something there is no book, chapter of a book, article, or lecture that would directly address social norms. In spite of that I claim that the practices of norms, as a form of the power-knowledge relationship, has always been at the heart of Foucault's work from its very beginnings, from the time, back in the 1950s, when he was writing on "mental illness," prior to moving to his first major work, on the history of madness at the classical age, up to the middle works that made up his fame, in particular *The Order of Things* and *Discipline and Punish*, and the final phase of the three-volume *History of Sexuality*, which led Foucault to rethink the Greek, Roman, and Christian heritage. Because "norm" and normative values are present all over in these works, at least from the vintage standpoint of a theory of norms that I'll elucidate in a moment, I'll have to be more selective and limit myself to a couple of issues-problems only. One of them has to do with the epistemological break that Foucault has established with the classical view of what a norm is, and what is it all about. To put it simply, we all tend to understand norm in terms of prohibitions: we're allowed to do particular things, and prohibited from doing others. Moreover, norms tend to be for the most part invisible, hence their strength, and by invisibility I mean that for the most part they are left unexpressed, as if located outside the domain of language altogether; while there are legal norms that are formulated in all kinds of books and law-manuals: the rules of law (*règles de droit*). If we add to this the fact that every society operates within its own sets of norms, and that each historical period operates too within its own normative values, we would have then established the groundwork for both sociological and anthropological work—the synchronic dimension of norms, or how norms operate at a particular time in a given society—on one hand, and historical research, or the diachronic dimension of normative values, that is, how norms change and evolve at a particular historical juncture, with a special attention devoted to epistemological breaks of pertinence, on the other.

What I would like to discuss is how Foucault went beyond such basic views of norms, and then argue why a notion of norms that centers around "practice" and power-knowledge relations is worth the effort, and why it matters for modern (or postmodern) societies. In effect, for Foucault it is not enough that a norm has been "formulated" or is "active"—either directly or by remaining hidden beneath the

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<sup>2</sup> Michel Foucault, 1926–1984, was a French philosopher and professor at the Collège de France; among his works, *The Archeology of Knowledge*, and *Discipline and Punish*; a publication of his seminars at the Collège has been in process for ten years, and is at the point of near completion.

surface—as it’s important that it’s enacted within a multiplicity of practices and through a chain of institutional frameworks. A norm could be formulated in various ways, for instance, in a rule of law, a moral philosophy manual, or in a novel, or an artwork, not to mention all those norms that we hang on to in our daily routines as an outcome of custom and habit. It’s another thing, however, when some of those norms come together to systematically constitute the infrastructural framework of a set of practices that would target the lives of individuals. Think, for instance, of a specific historical phenomenon like the one that Foucault has dubbed “the birth of the prison” (or, if you’re familiar with the Nietzschean genealogy, “the genealogy of the prison” would be even more accurate a description), and why historically speaking, it represents a normative phenomenon whose *modus operandi* is purely disciplinary, hence it involves a myriad of institutionalized power relations, associated with knowledge emanating from various “disciplines,” which target and coerce the human body. In effect, it could be argued that what we today as moderns refer to as “prison” exists under different forms in most societies and civilizations, and it certainly did exist in Europe and the France of the *ancien régime*, or what Foucault has dubbed “the classical age” (the sixteenth–eighteenth centuries). The *ancien régime* prisons were, however, notoriously managed as if acting on behalf of a divine grace, symbolized by the *lettre de cachet* from the monarch-king. It was, indeed, an irony that the triggering event of the French Revolution would be the storming of the Bastille on 14 July 1789, a day that now officially commemorates the *Fête de la Fédération*. Considered as the quintessential prison of its time, even though Paris housed other more extensive prisons, the Bastille was stormed for all its symbols which crystallized around arbitrary power and its limits. What the crowd of 8,000 men and women did not probably realize that day of July 14th was how harmless the French prison system under Louis XVI would look like compared to the disciplinary ones to follow throughout the nineteenth century—one of those transitions between the classical age and modernity upon which Foucault assiduously labored in all his books. The question could be posed in this way: what is it that necessitated that radical shift between the eighteenth and nineteenth centuries, whereby the old personalized system of incarcerating people has given way to much more complex institutions which were able to control and discipline thousands of inmates? Foucault’s analysis would not, however, opt for “causal” explanantia: he would not, for instance, associate the prison-form with, say, the industrial revolution (or proto-industrialization), or the massive movement of urbanization (and the depopulation of the countryside) which took hold of major European cities, or the various migrations of populations and the rise in brigandry and criminality that ensued from such social phenomena, or the massiveness of the Napoleonic army—a complete machinery all by itself, just in sheer numbers and equipment—and its corollary, the modern state, or what would become the welfare state. It is not that Foucault would deny the relevance of such phenomena, nor that the latter were “unrelated” to any of the disciplinary institutions and techniques he has been targeting for his analysis. The truth is that such explanatory techniques, common to historians, would not come to the essential, namely, the disciplinary normative practices themselves: how they came into being, their discourses and

techniques, and their operations in various disciplines from law and education to medicine and psychiatry, not to mention the state and its armed forces.

Let us begin our journey by examining a classical notion of norm, for instance, what the French sociologist Émile Durkheim had stated in his “rules of sociological method” (1894) about what constitutes a “social fact” (*un fait social*):

A social fact is recognized in its external coercive power which it exercises or which it could exercise over individuals; and the presence of such a power is in turn recognizable either due to the existence of some specific sanction, or else to the resistance that the fact opposes to every individual enterprise that tends to violently contest it.

Such a Durkheimian notion of “social fact,” understood as a coercive social norm of sorts, has become the classic example of what sociology should look for in its search for an understanding social phenomena and praxis. In American sociology, the influence of Talcott Parsons has paved the way for the works of Erving Goffman in the field of symbolic interactionism, and to Harold Garfinkel and his ethnomethodological research. But while Goffman looked upon the Durkheimian coercive social facts as individualized *mise-en-scène* enactments that actors routinely deploy in their daily activities, Garfinkel described them in terms of “methods” that members of a group learn how to work through in order understand what they are doing in a situated encounter. As we’ll see in a moment, Foucault for his part had other considerations in mind, as he went through disciplinary practices which worked at the core of different institutional frameworks, from the penitentiary to the medical, up to the army, the hospital, and the school.

For our purposes here, let us note that Durkheim’s social fact entails an *external* act of coercion exercised over individuals. Why this emphasis on the “externality” of coercion, and what does it *mean* that the coercive act should be “external”? Durkheim was in all likelihood attempting to construct a sociology that would not fall within the dubious traps of individualistic psychologism: that is, attempting to explicate human behavior in terms of individual psyches and their contradictory wills. He instead opted for actors that would be subdued to external coercive norms which would tell them what to do and what not to do, hence the externality of the social fact. Such norms, therefore, not only operate within a set of expectations, but more importantly, they work on the assumption that behaviors would “fit” within the expected norm. Without such assumption, all disciplines within the social sciences, which rely heavily on statistical methods based on small representative samples of randomly polled individuals and situations, would cease to exist: at the core of the very existence of such disciplines is the assumption that actors *have to* act in a particular way, and that such a coercive norm must be external to the individual wills. Foucault would even play on the fact that the various “knowledges” of the social sciences, whose first nineteenth-century phase of maturity coincided with the new modern prison system, were more “useful” to the penitentiary than

penal law itself in all its legal elaborations. For his part, Durkheim had already perceived a certain “utility” to crime:

Crime is therefore necessary; it is linked to the fundamental conditions of every social life, and, as an outcome of this, proves to be useful; because the conditions in which it is embedded are in themselves indispensable for the normal evolution of morality and law.

Crime is therefore useful for the simple reason that it forces society (or its “collective consciousness,” *conscience collective*) to create for itself moral and legal constraints that would look at crime and criminals as something repellent. In other words, and in conjunction with Durkheim’s notion of the social fact in the passage above, the externality of a coercive norm (and there is no norm that is not properly speaking coercive) would not be possible were it not for the existence of moral and legal values construed as norms constructed against other norms, such as crime and suicide. It is for this very reason that norms could only be external, in the specific sense that they must display a *statistical regularity* in order to be valid. For example, it would not make much sense to understand suicide in terms of individual actions, whereby each individual would commit suicide for a personal reason that could not be communicated to the outside world. Indeed, Durkheim understands suicide—or crime for that matter—in terms of the social constraints imposed on actors by outside norms. In short, for a norm to be valid and operative, it must be statistically valid, that is, it must manifest a regularity of its own that is independent of the wills of individualized actors. The criminal is therefore a person who challenges such “regularities,” provoking in the common moral and political ethos of the time an anti-crime-norm of sorts.

I would say that Foucault subscribes to such a Durkheimian view of the externality of the norm and normative value, but with an important caveat, as he was not satisfied with *how* such norms operated, and *where* did they come from. If Foucault was at ease with the externality of the norm, he was by contrast dissatisfied with the paucity of the mechanisms through which those same norms would operate. To come back to the nineteenth-century penitentiary, it would be naïve from a Foucauldian perspective to simply assume that the prison was a system which was designed to protect society from crime, or that it acted as deterrent for that very purpose, hence was an externally imposed norm against the anti-norm of crime. Not that the penitentiary did not have such coercive functions of imposing a norm through physical punishment, and at times torture. The problem lies elsewhere: for the prison to normalize, it must first operate within a notion of the “abnormal,” in the sense that it normalizes the abnormal, that is, it must first determine the abnormal within the normal through a grand process of delineation (in the same way that the asylum had to delineate between reason, insanity, and reason); but such abnormality is in itself a notion that neither comes from the legal process, nor a fortiori from the penitentiary itself. Abnormality had indeed crossed the lines of several disciplines, from the medical to the psychiatric, and from law to philosophy, the social sciences, literature and art.

Foucault would therefore work his way throughout the history of madness and the birth of the prison while setting the record straight with both Durkheimians and Marxists alike. Against the Durkheimians Foucault would argue that settling for the externality of norms and their coercive character is not enough: what's important is to describe how norms are concretely deployed, how their discourses are formulated, and how power relations impose constraints and discipline the body, not to mention how non-discursive practices, such as architectural landscapes, play a crucial role in the establishment of norms. Against the Marxists Foucault would argue that establishing the validity of a mode of production (e.g. capitalism) for a particular epoch is not enough either, as the latter presupposes all kinds of microscopic normative values that would act as some kind of matrix to the mode of production in question: what is at issue in nineteenth-century capitalism is not only its vast unprecedented abilities to accumulate capital from surplus-value, but more importantly, to discipline scores of workers in the space of a factory, in the same way that the prison would do the same for its inmates. In short, Foucault was working for an elucidation of the practices of normative values that would not be limited either to their moral and social impact (that is, as externally imposed social facts), nor to some kind of direct link to the relations of production that would eschew the complex nature of such normative phenomena.

Marx understood history as a trajectory of modes of production which succeed one another thanks to a combination of socio-economic logic. To discover the essence of a mode of production one has to unravel its deepest levels which would remain invisible to a beholder's eye skimming through the surface of things. If we were therefore to think Marx in terms of norms, the mode of production in question would provide us with some clues, as it would shape anything from ideology to law and politics on the upper side of a social formation, down to the relations of production and the material conditions of labor. Marx would therefore argue that a mode of production delimits what would be possible—that is, what would be normative—to think and do both at the macro and micro levels. For his part Foucault argued that Marx comes, so to speak, in two parts, one that is rooted in the tradition of the political economy of the eighteenth century, more specifically David Ricardo (by way of Adam Smith), and another one in nineteenth-century historicism:

[Marx's] economic analyses, the way he analyses the formation of capital are in great part commanded by concepts which he derives from the same line as those in Ricardian economy... But, on the other hand, take his analyses on the Paris commune or the eighteenth Brumaire of Louis-Napoléon, and you've got here a type of historical analysis that manifestly does not belong to the eighteenth century. [DE3, 38–39, also 268.]

That's a surprising comment, and also a confusing one,<sup>3</sup> considering that Marx's mode of production precisely avoids—or rather does not have room for—discrepancies between discursive levels (even though Marx did not reason in terms of discourse, but rather in terms of ideology and “false consciousness”): the mode of production is indeed a totality that structures seemingly unrelated phenomena, such as the way we think and write about history, or the unraveling of political events, or the status of the French peasantry or its urban underclass for that matter. Foucault for his part does also think history in terms of a common stratum that would shape what we think and how we write, and correspondingly, what we're unable to think, a common layer that he dubbed as the *épistémè* of a particular historical epoch (or era), or its peculiar epistemic foundations, even though he postulated that within such a broad division of epistemic discourses various layers of discourse were situated at different levels, whose evolution did not necessarily proceed in one common direction, or whose epistemic foundation at a certain juncture did not necessarily overlap with one another. And Foucault would argue that Marx was precisely such a case in point, as his foundations for political economy (an expression that Marx was fond of) were still within the Ricardian–Smithian traditions of an economy that catered “value” as its most cherished notion. But when it came to a view of history, and the association that Marx made between infrastructural and superstructural phenomena that would change synchronically and diachronically over time, Marx would be looked upon as truly revolutionary, carving a niche of his own that no one had hitherto attempted. But if Marx reasoned in terms of a feudal versus capitalist modes of production, where in the former the relations of production were more personal and not geared towards an accumulation of capital for the sake of accumulating capital, Foucault would for his part distinguish between a classical *épistémè* and one that is more modern: in the former the emphasis was placed on a notion of order, a representation of objects in space that was geometrical, and where the space of knowledge delineated the subject of knowledge from the object to be known; while the latter looked at knowledge and production in terms of radical discontinuities that would be irreversible in their essence:

The classical order distributed within a permanent space the non-quantitative identities and differences that separated and unified things: it was that kind of order that reigned in sovereignty, but each time based on forms and rules that were slightly different, on the discourse of men, the canvas of natural beings and the exchange of wealth. Beginning with the nineteenth century, History would deploy within a temporal series the analogies that would bring to one another distinct analogical organizations... in the same way that Order opened the way towards *successive* identities and differences. [MC 230–31, emphasis by Foucault]

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<sup>3</sup> Foucault's disingenuousness towards Marx was well formulated in Stéphane Legrand, *Les normes chez Foucault* (Paris: Presses Universitaires de France, 2007), 24ff.

We'll see how when it comes to the birth of the prison Foucault places a radical break between the early eighteenth and nineteenth centuries in terms of an *épistémè* of disciplinary incarceration that now targeted souls and bodies as potential anomalies. Moreover, such a disciplinary ethos was neither limited to the prison cell, nor to penal law for that matter, but superseded it towards a form of government that was disciplinary in its essence: that is, it ceased, as was the case in the classical age, to control individuals symbolically from a respectful distance, as individuals belonging to a particular space and kin. In other words, there was a normative shift between the eighteenth and nineteenth centuries that would transform norms into disciplinary practices, absorbing through different institutions (the school, church, army, social sciences, medicine, law, the asylum and the penitentiary) the totality of the body politic.

However, even if we were to accept such a grandiose shift within the nineteenth-century body politic, how can we reconcile the fact that Marx was rooted in *both* an eighteenth *and* a nineteenth centuries *épistémès*, in particular that Marx coordinated his own epistemological breaks from one mode of production to another into precisely what the social infrastructures of a particular society had rendered of political economy? The question is particularly important in relation to understanding the “economic roots” of the eighteenth–nineteenth century shift towards a disciplinary carceral society: was there an “economic” rationale towards such an epistemic shift, in the sense that the evolution of the capitalist mode of production made it imperative to produce a social organization that would not be, so to speak, symbolically controlled from the top–down through sovereign power? From a normative perspective, what is it that prompted such an epistemic shift, and was there an economic incentive, one that Marxists would have typically located within the capitalist mode of production, or were the disciplinary techniques that were deployed in various institutions autonomous in their mode of reasoning?

To simplify, I would situate the problem a bit differently, based on a reading of Foucault at two different levels: one that centers on the Foucault of the 1970s, at the time of the publication of *Discipline and Punish*, and where the post-1968 mood was not particularly favorable to Marxism, looking instead at different explanantia for the survival of late capitalism than the dubious notion of mode of production; such a reading, I would argue, makes incomprehensible the historicisation of norms as I want to elucidate it. My argument is that the writing and peculiar organization of *Discipline and Punish* renders any historicist reading hard to follow, if not outright impossible, as Foucault was adamant at explicating the birth of the prison without any historicist framework that would root it within a socio–economic framework of some kind. But then a second reading is here possible, one that would take Foucault's lectures at the Collège de France on the abnormal, psychiatric power, and bio-power, which were published after his death, into consideration. What would then emerge from such a combined reading are notions of norm, normality, normalcy, and normalization, that would benefit from the hindsight of historicisation of discursive formations. I will argue that there are deeply rooted historical homologies between the contract–form of nineteenth-century capitalism

and the penitentiary—form of the same period, even though a possible “link” between the two would not be that obvious. From the perspective of the school of the Annales, which is sort of a secularization of Marxism, the *mentalités* in question—the disciplinary norms that were deployed in various institutions—would not make much sense on their own, that is, without the socio-economic infrastructures that made their very existence possible. Foucault’s unease with such a problematic, if not his outright embarrassment, is probably one of being able at describing links and analogies between various discursive levels without, however, flatly reducing them to one prime level in some kind of blatant determinism, on one hand, while respecting their different temporalities on the other. In a passage where he celebrated a “come back to history (*revenir à l’histoire*),” in which he reviewed the work of Pierre Chaunu on Seville and the benefits of a serial (statistical) analysis of documents, Foucault was particularly sensitive to the various temporalities in discursive formations:

Serial history enables us to make noticeable different levels of events, some of which would be visible, immediately knowable even by the contemporaries, and then, below such events, which in some way form the workings of history, there would be other events which for their part would be invisible, imperceptible for the contemporaries, and which would be of a different form altogether.

Foucault may be also hinting in the direction of the pioneering work of Fernand Braudel and his Annales school. In effect, Braudel famously conceived of a tripartite temporal division within each historical period: one that was visible at the surface of rapidly moving events, and which centered on the political; a second that was less visible and institutional, with time frameworks that lasted for at least a century; and a third that was so slow to move and that hardly changed. By placing “visibility” below the surface of the political and the event driven phenomena, Braudel places the workings of history within a nineteenth–twentieth centuries *épistémès*, one that glorifies slow moving invisible phenomena below the surface, which were characteristic to both Marx (the relations of production) and Freud (the unconscious). And Foucault probably saw his own work within such an *épistémè*, but with important caveats. First, even though the institutions (e.g. the asylum, the prison) that produce the normative disciplinary space are perfectly visible, by contrast the mechanisms that lie behind the disciplinary norms are invisible. Second, such institutions and their modus operandi have received little attention from Marxist and Annales historians alike, which in itself not only represents a bias towards more traditional socio-economic phenomena, but more importantly, it translates an epistemological failure at discerning, analyzing, and “seeing” those micro-power relations which *precisely* lie at the heart of the modes of subjectification in contemporary European cultures and civilizations, and whose worldwide modern importance has become more manifest since the last century. Indeed, the modern state rests on that ability to govern through beneath-the-surface mechanisms, rooted for the most part within institutional frameworks whose

disciplinary normative power over the lives of individuals has long been established:

I don't think that we should consider the "modern state" as an entity which has developed above individuals, ignoring what they are and even their very existence, but, on the contrary, as a very sophisticated structure, in which individuals can be integrated, under one condition: that this individuality would be shaped in a new form and submitted to a set of very specific patterns.<sup>4</sup>

Put a bit differently, the modern state, unlike the absolutist pastoral states of the classical period, cannot govern from above: the modern state *must* shape individualities from the bottom up, that is, its power rests on a number of artificially constructed institutions outside those of tradition (family, kin, and region), and it's the construction of such individualities, based in turn on micro-power relations, or the modern matrix of individualization, that Foucault was set to unravel in all his work. Having already established his reputation in the study of discourses (which from his standpoint go beyond the communication of ideas, as they have that uncanny power for the organization and regulation of truth within topoi from various disciplines and institutions), Foucault, back in the 1970s, was looking into normative disciplinary techniques that were not necessarily discursive in their essence:

It is necessary also to distinguish power relations from relationships of communication which transmit information by means of a language, a system of signs, or any other symbolic medium. No doubt communicating is always a certain way of acting upon another person or persons. But the production and circulation of elements of meaning can have as their objective or as their consequence certain results in the realm of power; the latter are not simply an aspect of the former. Whether or not they pass through systems of communication, power relations have a specific nature. Power relations, relationships of communication, and objective capacities should not therefore be confused. This not to say that there is a question of three separate domains. [ibid, 786]

Suffice it to say that for our purposes here whether or not a power relation passes through systems of communication is an important issue, even though that will not be our main preoccupation. What I want to focus on in the three remaining sections of this paper are three interrelated issues that would tackle discourse, power, and norm from three different but interrelated perspectives. First, how to describe and analyze the disciplinary relations within the penitentiary, as well as their political significance; or, in other words, how the penitentiary goes beyond itself into the domain of the political, establishing a state control mechanism that was not simply

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<sup>4</sup> Michel Foucault, "Subject and Power," *Critical Inquiry* 8 (1982): 777–95, quote on page 783.

structured from above. Second, I argue that the contract-form that emerged in European capitalism is parallel of the prison-form of the penitentiary age. Finally, I conclude with some thoughts on the genealogy of the modern state and its neo-liberal normative discourse, while pointing to links in terms of what we've thus far achieved.

*From simple prohibition and punishment to forms of normalization and discipline*

The shift that occurred between the early eighteenth and nineteenth centuries could best be described as one that has witnessed a transformation from repressive violence in strategies of law and government (the pastoral power of the absolutist state from above) towards broader and gentler forms of control—inspection, discipline, normalization—hence the birth of the modern asylum and prison. If the old prison was based on the repressive violence of legal and governmental institutions, the modern prison, in its quintessential nineteenth-century disciplinary ethos, would center on the power of normalization, understood as that form of regulation which works by setting standards or norms for proper conduct and correcting deviations from the norm. In its positive, correctional orientation it is therefore different from the simple prohibition and punishment of misconduct.<sup>5</sup> In other words, the traditional notion of norm, in its quintessential Durkheimian orientation, which essentially is based on prohibitions and punishment of misconduct, is not enough to conceptualize the normalizing power of the carceral institutions in nineteenth-century Europe. What is new here is normalization as a form of control which has proven to be systemic and systematic in the same vein. Once normalization has become a practice of correcting deviations from the norm, its power has ceased to be limited to moral prohibition, moving into practices that would prove much broader and more efficient at the same time: the crafting of individualities that are associated with a certain mode of power relations.

The opening section of *Discipline and Punish* sets up the problem of the classical mode of punishment, one that was not yet constructed on the normalization of the abnormal, but on the public display of cruel modes of punishment, hence indirectly on the display of sovereign pastoral power.<sup>6</sup> Between the public regicides of the

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<sup>5</sup> David Garland, "Foucault's "Discipline and Punish"—An Exposition and Critique," *American Bar Foundation Research Journal* 11 (1986): 847–80.

<sup>6</sup> It is possible that on the eastern Mediterranean, within the confines of the old societies of the Ottoman Empire in all their varieties, there was probably no need for a cruel display of punishment, even though it remains to be seen, through careful empirical historical research, whether that was effectively the case. Assuming that the cruel display of punishment was unnecessary under the Ottomans, it was probably because *individual* cases of punishment were still handled, until the late nineteenth century, by the urban sharia courts, which nominally were under state control, while in reality they reflected the communal values of a particular community, city, or region. Hence normative values, prohibition, and the punishment of misconduct were still all tied to moral values, and were perceived as

eighteenth century and the asylums, prisons, and schools of the nineteenth century, a great (epistemological) shift had already occurred: this time the punishment takes place in silence and in private, and proceeds without any overt ceremony or violence.

Needless to say, each period (and each society) witnesses its own penal style, which poses the historical normative problem to explain the disappearance of punishment

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having little impact on the stability of the state and its sovereign sultanic order. Moreover, the *qanunname* genre, which was preponderant in the sixteenth century, fell into desuetude in the seventeenth and eighteenth centuries, only to be picked up in the nineteenth century in the age of the Tanzimat reforms, but this time the spirit of laws was in the direction of Europe rather than Hanafi practice. But the *qanunname* in their essence were traditionally not oriented towards individual cases of punishment, as their main target were collectivities, for instance, peasants who would fail to deliver their taxes (which in the traditional system were collected by the military *timariots* or *sipahi* cavalrymen), or brigands who were attempting to impose conditions on the state while profiting from its inherent weaknesses. So why wasn't there any public punishment in the Ottoman Empire? Because Ottoman absolutism was different from its European counterparts in that it was neither geared towards centralization nor the separation of individuals from their communities and their individualization in disciplinary institutions. In other words, sovereign power did not have to display itself in public punishment and other similar cruel forms of public display. Indeed, the latter assumed a desire of the state to control society symbolically through authorized violence from above, which would have been unnecessary for the Ottomans. However, public punishments seem to have gained some pace during the "nationalist" period, when some of the provinces sought "national" independence from the center, even though in this case punishment was for purely political reasons, hence was unrelated to private crimes and punishments. But the reason why there was no—or very little—public display of punishment in such societies could well be that their notions of torture, truth, and the body were very different from their counterpart on the west of the Mediterranean. In effect, as Foucault has argued (see below), the ceremony of public punishment which followed a finding of guilt was also an act of revelation, revealing to the public the "truth" that had been achieved in secret, repeating the torture of the condemned man and his confession of its justice. What therefore changed in the transition between the old and new penitentiary régimes is that the revelation of "truth" takes place in the publicity of the space of a courtroom, with all kinds of experts—from the lawyers and judges, to the doctor and psychiatrist—battling to "extract" the "truth" from the individual convict. Hence the professionalization of the apparatus of justice, which in turn is based on knowledge derived from the natural and social sciences. Moreover, the differences that we see in the two cultures of the Mediterranean are not simply the outcome of modernity, but are rooted more deeply into longstanding practices related to knowledge, truth, the individualized body and torture.

as a public spectacle of violence against the body and to account for the emergence of the prison as the general form of modern punishment.

*From the scaffold to the penitentiary*

When studying the change in penal technology that occurred in Europe and the United States between roughly 1750 and 1820, Foucault attempted to avoid some methodological pitfalls. First, as noted earlier, there was an attempt from his part to delineate himself from a Marxism that looked upon the relations of production as a core component for the evolution of any society. Since the period under study would be considered as one of proto-industrialization and urbanization at levels unmatched in the classical society of 1550–1750, there would be that temptation to look upon the changes introduced in penal technology as an outcome of an “economic” necessity. We’ll come back later, one more time, on Foucault’s concealment of his debt towards Marx. Second, as, again, noted earlier, there is that temptation to document the change in penal technology in terms of its discursive components, for instance, the recommendations of various European reformists, such as Cesare Beccaria’s (1738–1794) sanctions for more fair and calculated punishments.<sup>7</sup> Having already framed European culture in terms of its discursive and non-discursive practices in his *Archeology of Knowledge*, Foucault was attempting in *Discipline and Punish* to go beyond discourse into modes of power that are based on more gentle physical coercions, and which cannot be reached by discourse alone. In this dark side of the enlightenment what probably emerges best in hindsight are all kinds of technologies of power which the reformers and the ideologues of sorts had left aside in their discourses, in spite of the fact that the Aufklärung was well aware of major changes occurring in society.

When in 1784 Kant asked, Was heisst Aufklärung?, he meant, What’s going on just now? What’s happening to us? What in this world, this period, this precise moment in which we are living? [ibid, 785]

For Foucault the Aufklärung meant that power of a pastoral type, which was limited to the politico-religious sphere, and which orchestrated cruel public punishments, suddenly proliferates into the whole social body, finding support in a multitude of institutions. Moreover, there was an individualizing tactic which characterized a series of powers: within the family, medicine, psychiatry, education, and between employers and employees. In other words, in order to thrive, disciplinary power had first to *individualize* people and dissociate them from their natural kin milieu and regional bonds; and in the meantime create that new disciplined individual. Thus, even though Foucault’s concentration was mainly on the carceral, and even though the latter’s technologies of power were only one “moment” in the totality of the individualizing tactics, it nevertheless represents techniques that have been adopted in various institutions. It is as if techniques of individualization, once adopted within a particular space, spread analogically to other institutions and spaces.

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<sup>7</sup> Beccaria’s *Essay on crimes and punishments* was published in 1764.

In this modern penitentiary system the focus of judgment shifts away from the crime itself towards questions of character, of family background, and of the individual's history and environment. Knowledge of the criminal becomes one of expertise in the various branches of the natural and social sciences, where the criminal is labeled as "abnormal" in need for "correction"—which is precisely the American naming of such "correctional" facilities.

However, unlike historians who have limited their studies of the carceral to a descriptive history of the penitentiary institutions, Foucault argues that at their core such institutions share a view of knowledge and society that crosses the boundaries of several disciplines, one where knowledge of the individual self targets the person, family, and professional milieu. It is such a claim to "know" what a "person" "is" that makes knowledge eminently *political*. Punishment is therefore to be understood as "a political tactic," situated within the field of power relations. Compared therefore to the previous "classical" period of early modernity, when the pastoral state was still exercising its political power from above—what Norbert Elias called "the court society"—the nineteenth-century penitentiary had to deliver verdicts in which the "inner truth" of the convict was fully revealed: Who is he? And why did he commit such an abnormal act? There was therefore nothing more shocking than a convict which had nothing to say, whose moment of "truth" had to be revealed by experts who have to fill the convict's long and monotonous "silence," as if they were all trapped in some kind of void. In effect, capturing that moment of "truth" from the convict's own "voice" proves the most arduous experience, which, in the new disciplinary system, cannot be possibly accomplished without a battlefield of experts of sorts, from the criminologist to the psychiatrist, and the family expert to the sociologist and psychoanalyst. In this cohort of experts, the role of lawyers and judges seem altogether vastly diminished. Why did the judiciary cede so much territory, in less than a century, to psychiatrists and other experts? Why did all of a sudden psychiatrists come at the rescue of judges? From a Foucauldian perspective, because the convict, in such long and tedious journey through the space of the courtroom, had to reveal the truth about himself, his criminal act and abnormal soul, the judiciary apparatus reached a point where it became unable to handle what it was originally set to do. In the old classical system, the ceremony of punishment which followed a finding of guilt was also an act of revelation, revealing to the public what had been achieved in secret, repeating the torture of the condemned man and his confession of its justice. In the new system truth had to be assessed—and "extracted" from the culprit who was expected "confess" his crime—methodically, using all kinds of knowledge frameworks from the natural and social sciences. In other words, as truth has shifted from its purely juridical connotations, and moved towards the sciences of experts, the court now becomes only the agent that brings the convict's "case" together into a reasonable verdict.

But now that lawyers and judges routinely use the expertise of doctors and psychiatrists, among others, for the purpose of delivering a truthful verdict, the practices of the latter could place the apparatus of justice into an uncomfortable

position. In effect, justice unwittingly places itself in line with the evolution of the practices in the medical sciences, in particular psychiatric medicine. As the latter evolve, new practices emerge which could infiltrate to those of the judiciary. Once the door for the truth of the convict is open, new forms of normalization could see the light, which the judiciary has to account for. Thus, in the same way that the prison did not “discover” the delinquent, but rather it *fabricated* him, this fabrication was the outcome of an abstract process whereby several disciplines and institutions overlapped, and where psychiatry and medicine would play a key role. There was a fabricated delinquent in the sense of a “social construction” of delinquency: the delinquent had to be constructed as this Other that had to be normalized; hence society operated within a big divide—the normal and the delinquent (or the mad, the insane, the pathological)—which parallels other divides in the medical sciences—the normal and the pathological—or which brings into question that other big divide of the classical age between reason and insanity.

### *The political double bind*

Foucault’s analysis of the carceral does not limit itself to the space of the prison, as it transcends it towards political domination. To the classical political question, How does the state govern, and how does it exercise its control over society?, Marxism would respond that the state is controlled by the same class (or classes) that controls the means of production, hence domination is assured at two levels in some kind of political double bind: through the control of the apparatuses of the state, and through the control of the means and relations of production. Foucault would look at the political double bind a bit differently. Having extensively analyzed carceral space in terms of its disciplinary powers over the individual, Foucault would see the political double bind as “the simultaneous individualization and totalization of modern power structures.” [ibid., 785] In other words, what is missing from both Marxism and the liberal doctrines of the state and political power is precisely their inability to conceptualize the disciplinary and individualizing techniques which make the control of the modern state—hence, its very existence—possible. For this very reason, a change in the mode of government is all by itself insufficient, as the techniques of individualization constitute an inherent aspect of the political double bind which has characterized western civilization since the Enlightenment:

The conclusion would be that the political, ethical, social, philosophical problem of our days is not to try to liberate the individual from the state and from the state’s institutions but to liberate us both from the state and from the type of individualization which is linked to the state. We have to promote new forms of subjectivity through the refusal of this kind of individuality which has been imposed on us through several centuries.

We’re still here with the Foucault of *D&S* who reasoned in terms of types of individualization and forms of subjectivity which in their very essence were of a disciplinary nature, and upon which the control of the modern state rested. A couple of questions come to mind at this stage: (1) What if the modern prison is not limited

to the disciplinary or the correctional? That's particularly obvious in light of the *failures*, throughout the twentieth century, of a "utilitarian"-disciplinary-correctional view of prison facilities in Europe and North America. Yet, the prison still survives, and in the case of the United States, that quintessential liberal culture, it has inaugurated the twenty-first century with over two million inmates, at least half of which turn out to be Afro-Americans. Foucault would probably still argue that, even when the prison "fails" (in the sense of its nineteenth-century mission of "correcting" souls and individuals), it serves as an "excuse" for the total control of society by the apparatuses of the state. In other words, those same techniques of control, which have proven to be a "failure" in the space of the prison, could be "successful" in other areas, for instance, the control of the lives of individuals through the media or the labor market. (2) Yet, thinking of the genealogy of the modern state, to which we'll devote some attention in the last section of this paper, it is difficult to limit its functions to pure control, at least when we follow that "genealogy" through the recently published posthumous "lectures" of the "second" Foucault in his post-disciplinary phase. In this new genealogical conceptualization, it is, indeed, the neo-liberal conceptualization of society and its institutions as something modeled through the efficiency of the market which serves as the normalizing power by setting standards across the board. (3) Which brings us back to the question that we've raised from the beginning: while attempting to circumvent Marxism (reducing Marx's political economy to its eighteenth-century Ricardian components), Foucault left aside, as far as *D&S* is concerned, the possibility of reconciling Marx's structural analysis of nineteenth-century capitalism with his own findings on the penitentiary. Which is precisely what we'll attempt to do in the following section, prior to moving in the concluding section to neo-liberal governmentality.

### *Disciplines as a sort of counter-law*

One of the core arguments in *D&S* is that the effect of disciplinary relations is to undercut the fairness of exchange and the equalities of status provided for in the law and legal doctrine, an effect which operates in an invisible and extra-legal fashion. The disciplines ensure that real constraints and controls are introduced into relationships which the law deems to be voluntary or contractual, thus permitting the coexistence of legal freedom and habitual domination. It is in this sense that the disciplines are said to be "a sort of counter-law" (*D&S* 222). Let's look a bit more closely at this argument from our normative perspective.

Considering that the disciplinary techniques did not evolve as a subject on their own with some kind of an immanent logic, their diffusion obeyed to a historical double bind: first, to the economic determinations, and second, to the juridico-political determinations.<sup>8</sup>

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<sup>8</sup> Stéphane Legrand, *Les normes*, 71ff.

In his documentation of the penitentiary disciplinary techniques, Foucault was not willing to link them in any way to the juridico-legal field, as they seem to have propagated “on their own” without any assistance either from the state or its judicial apparatus for that matter. At one level, therefore, such techniques were so new that the legal field had nothing to offer, and their novelty made them even central to other practices. One could even argue that, in spite of the prison’s “ideological” failure as a “corrective” institution, its *sui generis* disciplinary techniques were so novel that their “success” was granted *outside* the space of the penitentiary—into the political, legal, economic, and scientific institutions of society. Yet, those disciplinary mechanisms are not—and could not—be that independent of the juridical and political formations of society, as they are its most obscure part—a sort of counter-law. To begin with, the system of rights, in particular in its last universal incarnation as Napoleonic civil law, is “egalitarian” in its very essence, as it grants the complete freedom of contract, and symmetrical relations between all parties involved in a contractual relation. On the other hand, “real and corporeal disciplines have constituted the infrastructural underpinnings (*sous-sol*) of formal and juridical freedoms.” Thus, while the contract was the universal form of bringing people together within a free-market economy, the panopticon constituted its other dark side, or the techniques of coercion. Were it not for the disciplinary techniques deployed not only in prisons, but also in schools and manufactures, the capitalist contract—as a tool for the infinite expansion of wealth through the free-wage-labor formula—would not have been possible. Disciplines are therefore precisely this: a counter-law (*contre-droit*) which introduces dissymmetries in relations whose juridical norms guarantee a certain symmetry, and which exclude reciprocities in the juridically defined egalitarian relationships. Where law therefore acts on behalf of universally accepted and symmetrical rules of conduct, the disciplinary norms by contrast create hierarchies, specialties, and asymmetrical relations. In other words, the counter-law becomes the effective and institutional content of the juridical forms. It is indeed the existence of the prison as an apparatus for the propagation of disciplinary norms that would eventually absorb the juridical norms and their claims towards reciprocity and universality.

That disciplinary practices interject themselves within the space of the prison as a counter-law was not *stricto sensu* a novelty. Indeed, in the long evolution between feudalism and the capitalist mode of production, capitalist practices interjected themselves slowly within a production system that was by and large *stricto sensu* artisanal, thanks largely to this practice of *double illegality*. In effect, feudal economies were regulated by state-sovereign decrees (edicts) belonging to the old pastoral order. Obviously, the power of the bourgeoisie and its piecemeal economic incentives did not emerge all at once, but were rather introduced within the old system on a step-by-step basis. Nor were they perfectly well organized and systematic for that matter. Rather, the bourgeoisie—assuming we can speak of such an entity as a coherent group under the ancien régime—introduced its practices as counter-laws within the laws of the sovereign. Take for example artisanal production, which was organized through a set of state-sovereign decrees and edicts, which for the most part were very specific as to what artisans should

produce, for instance, even when it comes to the size of textile items, their substances and qualities, and how such products should be taxed accordingly. How could such extremely precise regulations be circumvented? Not by “breaking the law” per se, but by encouraging practices that would circumvent the rigidity of actual ones. For instance, artisans would be provided with the raw materials (cotton, silk, fibers) in advance as some kind of down-payment, de facto linking them to the capitalist-creditor who invested in their products even before the final product was ready. Such methods enabled artisans (and peasants who were provided advanced cash payments) to free themselves from all kinds of penuries: of raw materials, cash, or products that had no immediate buyers. However, such bourgeois practices were not “breaking the law” per se as much as counter-laws that acted within the state sanctified laws. A century or two later such practices became normative, and acted as normative values with the dominance of the bourgeoisie as a class within the state structure of post-revolutionary France. Another example would be the control of the production, circulation, and prices of grains and other necessary foodstuffs in the economies of the ancien régime, all of which practiced in the old traditions of the sovereign–pastoral state as means to secure the wellbeing of populations, their health, and diets, that is, as ways to avoid food shortages, famines, diseases, or penuries that would affect the general population (however, as we’ll see later, we’re far from the prime normative bio-power of the modern post-industrial state). The logic the political economy school known as the physiocrats addressed precisely such constraints, arguing that letting products and prices openly float in competitive market would entail a better management of food production and circulation of commodities across regions and borders. In other words, what the physiocrats among others were recommending was precisely an undermining of the current rules and regulations through laissez faire–laissez passer practices—which later would become the rule, hence achieve their own normative status—on the basis that the same things would be done, only better.

If the bourgeoisie introduced therefore itself as a class through counter-law practices, it was only to convert counter-law to law once it seized power. In that open universal space of bourgeois power, the classical juridico–political power of the pastoral state would gradually give way to other norms of power–knowledge–truth, one where disciplinary techniques would serve as premium practices for political control—not only of the popular proletarian classes, but of society at large as well. In other words, disciplinary techniques were not meant to only leverage class struggles—that is, to serve as *inter*-class disciplinary practices of one class over another—but mainly as disciplines *within* the dominant and well-off classes. Such a universalism—or, more precisely, such a total control of society by the apparatuses of the state—is what delineates classical political power from the modern ones: no more public representations of the sovereign, whereby the munificence of the state, punishment, honor, the court society and its noble origins were all publicly displayed and exhibited; instead, invisible machines of power, which produce knowledge, have their systems of truth, normalize people, and normalize society through disciplinary techniques. “Disciplines,” instead of serving as independent units of knowledge that would bring the truth of various realities of

the life-world, would by the nineteenth century come to one another help, as if each one independently reached a dead end on its own, and had to rescue itself by opening up to the “truth” of another discipline. Hence penal justice reached a point by the early nineteenth century—more precisely with the promulgation of the Napoleonic Code pénal in 1810 and its aftermath—whereby not only the causes of a crime had to be known and rationalized, but more importantly, the personality of the criminal—that abnormal creature—had to be understood and domesticated. But the more judges plunged into the psyche of that abnormal criminal, the more they realized that penal justice had anything substantive to offer. Hence penal justice had gradually to open itself to medicine, psychiatry, and criminology, not to mention the role of the social sciences, beginning with sociology. By the nineteenth century, therefore, penal justice was not working anymore on its own, as an independent discipline, as it did in the classical age, but more as a combined judicial–psychiatric field where psychiatry come at the rescue of law. Over time, both—psychiatry and law—affect one another, so that doctors would not diagnose—reveal their truth—without that feel for the legal implications of their findings.

Foucault would argue that the “ethno-epistemology” of entire “disciplines” and their practitioners (or personages) has changed over the course of the nineteenth century, as new norms of knowledge have been introduced, making it impossible for such disciplines to spin on their own.

For a long time, medicine, psychiatry, penal justice, and criminology remained—and in large part still remain—within the limits of a manifestation of truth inside the norms of knowledge and a production of truth in the form of the test, the second of these always tending to hide beneath and getting its justification from the first. The current crisis in these “disciplines” does not simply call into question their limits or uncertainties in the sphere of knowledge; it calls knowledge into question, the form of knowledge, the “subject–object” norm; it questions the relations between our society’s economic and political structures and knowledge (not in its true and untrue contents but in its “power-knowledge” functions). A historico-political crisis, then.<sup>9</sup>

The word “norm” appears twice in this opening passage: the first time were are told of the existence of “norms of knowledge,” and the second time on the existence of a “subject–object” norm. The “norms of knowledge” come in association with the “production of truth,” which we are told receive their justification from knowledge. Hence knowledge is normative in the sense that there are truths that construct it, give it shape, and impose an order on what to accept and not to accept as true–false. However, since knowledge and truth for Foucault never come as a couple on their

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<sup>9</sup> Opening passage to the “course-summary” on “psychiatric power,” *le pouvoir psychiatrique*, delivered in 1973–74, which were later published, after Foucault’s premature death, in one volume as *Résumé des cours* (1989), and which group all the “summaries” from 1971 to 1984.

own without that other element called power, what is at stake here is the power-knowledge combination. One could even say, when it comes to norms and normative values, that the “norms of knowledge” are nothing else but the power relations that regulate the inner workings of a particular discipline. But, again, as a statement, that’s not enough, because it would limit the discipline in question to its true and untrue contents, leaving aside a society’s economic and political structures. Yet, from everything that we’ve said thus far, by the nineteenth century various disciplines, like the ones that Foucault enumerates in the above passage, were already in crisis, a historico-political crisis. Since it was not simply a question of the “veracity” of those disciplines, in the sense of a true–false alternative, what kind of historico-political crisis was Foucault pointing at?

### III.

Do we still live in a disciplinary society? Foucault would reply that for this early twenty-first century—a process whose beginnings could be traced back to the middle of the last century—the “control” of population has shifted towards what he had labeled as bio-power. The latter assumes what western societies (Europe and North America) have achieved through disciplinary practices, but then expanded them much further into a more global control of populations through labor, security, health, and education.

To understand how we reached the stage we’re into now, let’s briefly survey our main findings thus far.

Up to the eighteenth century political power could be described as “control of society from above”: it was pastoral power whose techniques were a combination of legal and political discourses and whose value was mostly symbolic. What was going on in society, however, should not be underestimated, in particular in relation to what would emerge at the disciplinary age. In effect, advances made in the sciences and technologies, in particular the sciences of nature and medicine, the evolution of law, the social sciences, humanities and the arts, all point to a uniqueness in the cultures of western societies and civilizations. Foucault was particularly interested in how the modalities of knowledge and truth were formulated throughout the classical age, and how they were transformed by the end of the eighteenth century. The norms of knowledge were constructed around the “subject–object” norm, based in turn on making things visible—either through words or images—through systems of representation. All kinds of institutions, scientific, social, and political, were created that would manipulate that truth–knowledge visibility with the subject–object norm, which poses the notion of a knowing subject confronted with an object to be known and represented, for instance, for purposes of scientific explanation and experimentation. It is precisely because of the existence of such an “ethno-epistemology” that crossed the lines and boundaries of a multitude of disciplines and institutions, in the arts, sciences, and politics, that the ancien régime of the west, which evolved from old feudal Europe, could not be placed on par with the evolution of similar institutions either in Buddhist–Confucian China of the Qing

dynasty, or of the Ottomans on the eastern Mediterranean, not to mention other political dynasties in other parts of Asia. The reason is that western institutions had by the early modern period drastically revised their old scholastic (Aristotelian) heritage, which they had inherited from the ancients, and by setting them apart from the ancients, they had also managed to create something new for Europe and vis-à-vis the rest of the world.

Instead of the prescriptive forms of knowledge that were common to Asian and Islamic societies and civilizations, knowledge in Europe would orient itself towards knowledge of the world, that is, reality. Kant formulated the problem phenomenologically: we have the certainty of a knowing subject (the Cartesian certainty of the “I think”), and the object to be known, which lies outside the subject, and which constitutes the thing-in-itself, that is, the thing that we will be known to the subject only as “phenomena”—no more. The norms of knowledge would therefore hinge for centuries on that uncertainty between the subject-object norm, what the subject can effectively know of those things-in-themselves which are only “reproduced”—represented—through the “phenomena” produced by the categories of the mind. It is that kind of uncertainty between what we know, what we don’t know, and can know, as set within the subject-object duality that would translate differently from one discipline to another. Foucault, however, would distance himself from the common lot of hermeneutical and phenomenological analyses of western texts, practices, and institutions, on at least two grounds. First, he would look at this modern western heritage historically, more specifically in terms of the genealogy of the historicity of social norms: at which specific historical juncture would, for instance, a norm of knowledge become predominantly normative, and under which specific historical circumstances. Second, he would associate the ethno-epistemology (or ethno-methodology) of a specific norm of knowledge with its “power-knowledge” functions, that is, society’s economic and political structures and knowledge.

Consider, for example, the field of medicine, with the space connected to it, namely, the hospital. The hospital was still an ambiguous place quite late, a place of investigation for a hidden truth and of testing for a truth to be produced. As a space, the hospital heavily depended on the findings of the field of medicine, and at the same time generated its own practices, that is, its own truth findings, or its own power-knowledge formula. Medicine, for its part, like the rest of the sciences, had generated its own truth formulas through experimenting and testing, as the human body became the laboratory for new findings and theories. However, the hospital was the space where true illness was at stake: should the hospital, a reception structure for illness, be a space of knowledge or a place of testing? Foucault notes that it was indeed testing per se that posed the greatest challenges.

The eighteenth-century hospital was supposed to create the conditions that would allow the truth of the sickness to break out. Thus, it was a place of observation and demonstration, but also of purification and testing. It constituted a sort of complex setup designed both to bring out and actually

produce illness: a botanical place for the contemplation of species, a still-alchemical place for the elaboration of pathological substances.<sup>10</sup>

Notice how Foucault asserts that in order to diagnose and test an illness, the space of the hospital must also “produce” it: why should the hospital produce an illness? Because ideally, in order to reach the truth about an illness, one must let it develop in time, understand its process, prior to coming to a resolution on how to bring it to an end. In other words, because the truth here is about something as complex as the human body, which cannot be reduced to its repetitive functions only (as falling bodies in space would), the eighteenth-century hospital was “a place of investigation for a hidden truth and of testing for a truth to be produced.” Truth had to be “produced” and not simply “discovered.” Think, for instance, of all the dilemmas that a hospital would typically face at “producing illness”: would it be moral to let an illness develop over a human body in order to test it more thoroughly, by letting it develop within a specific space-time framework? Or should the testing be undergone over an animal body?

Foucault even asks the obvious question regarding the “normality” of a disease, in the same way that the same period, but for an institution like the asylum, and later for the juridico-psychiatric institutions, the issue of the “normal individual” was raised (with the “abnormal” naturally hidden in its shadow): “What is a normal disease? What is a disease that follows its course? A disease that leads to death, or one that heals spontaneously once its development is completed?”

We all know what took place between the eighteenth–nineteenth centuries in the medicine–hospital fields: Louis Pasteur groundbreaking discoveries of the microbes. “Up to that moment, the hospital space and the physician’s body had had the role of producing the “critical” truth of disease; now the physician’s body and the overcrowded hospital appeared as producers of disease’s reality.” In the traditional epistemological construction of knowledge, subject and object were perceived as independent of one another, each one leading its own life; a physician’s body would “produce” illness while at the same time being “outside” it, in a total act of independence from what has been produced. Pasteur’s findings, however, made it look as if the physician’s body *was* in effect producing the disease, transmitting it, and a main source of contagion for that matter. Decades later, Heisenberg’s uncertainty principle would set similar uncertainties on the physicist’s body and his tools as producers of erroneous measurements: again, the subject–object dichotomy becomes problematic. However, Foucault does not see this as a defeat to science; on the contrary, pace the Pasteurian findings new powers would emerge: “By aseptifying the physician and the hospital, one gave them a new innocence, from which they drew new powers, and a new status in men’s imagination.”

What is of interest to us here in the context of our topic on the historicity of norms are the parallels that Foucault draws between various practices and institutions.

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<sup>10</sup> From the “psychiatric power” course–summary (see note supra).

Think for instance of the combination of the madman and the psychiatrist in the space of the asylum.

We're told that prior to the eighteenth century madness was not systematically interned; and it was considered essentially as a form of error and illusion, belonging in essence to the world's chimeras. That's why there was no systematic internment of those who were perceived as madmen, as their cure was not perceived to be in the artificial space of the hospital, a space where truth is at the same time produced and observed. Rather, the therapeutic places that were recognized were in nature, and prescriptions given by doctors were looked upon as natural, such as travel, rest, countryside, walking, eating and sleeping well. As with medicine and the hospital, the nineteenth century would bring its own changes to madness and psychiatry.

The practice of internment at the beginning of the nineteenth century coincides with the moment when madness is perceived less in relation to delusion than in relation to regular, normal behavior; when it appears no longer as disturbed judgment but as a disorder in one's way of acting, of willing, of experimenting passions, of making decisions, and of being free; in short, when it is no longer inscribed on the axis truth-error-consciousness but on the axis passion-will-freedom...

The key element here is that of "normal behavior," which we'll encounter later with penal law and the penitentiary in their attempts to "understand" the rationality of crime through the persona of the offender. In the case of nineteenth-century madness, the asylum, and the psychiatric hospital, kept to a certain extent their functions of the previous century: make it possible to uncover the truth of the mental illness. But with the notion of madness not simply as a natural aberration, but of a disturbed will, "the diseased will, which could very well remain beyond the grasp so long as it did not express itself in any delirium, will produce illness in broad daylight through the resistance it offers against the healthy will of the physician..." With the space of the nineteenth-century psychiatric hospital would therefore emerge a set of practices that were already common within the space of the hospital at large: diagnosis and classification in order to confront the disease. But in addition to that there were all kinds of techniques and procedures employed in asylums of the nineteenth century: isolation, private or public interrogations, punishment techniques such as cold showers, moral talks, and relations of servitude between patient and physician, all of which, we ought to add, were already implemented in penitentiary institutions.

However, parallels between medicine and its general hospital, on one hand, and the psychiatric and penal institutions on the other, should be drawn carefully. Foucault reminds us that in the Pasteurian hospital the "truth-producing" function of the disease continues to fade; the physician as truth-producer disappears into a knowledge structure. On the other hand, in the psychiatric hospital, as in the penitentiary (or the carceral institutions), the role and power of the physician, in his role as producer of truth, intensifies. In other words, the physician—as that

“normal” human being—can still pose himself as a separate entity—a truth producer—from his patient. There is no fear of contamination in this respect. Moreover, this heightening of the powers of the physician happens at a time when medical power finds its guarantees and its justifications in the privilege of expertise (*connaissance*); the doctor is qualified, the doctor knows the diseases and the patients, he possesses a scientific knowledge that is of the same type as that of the chemist and the biologist, and that is what authorizes him to intervene and decide.

A new reality begins to therefore emerge for this nineteenth century in the production of truth–knowledge, as in several institutions—schools, factories, hospitals, and prisons—which were hitherto perceived as unrelated, there was a clear-cut separation between those who hold the power and those who don’t. More precisely, what characterized such institutions were a set of epistemological and methodological assumptions and practices which brought them close to one another. First and foremost there was that strong idea that there was a truth to be detected about mental illness, the convict, the madman, the abnormal, the undisciplined student, which implied posing them as “objects” of study and testing. Opposite to such an object stood a myriad of authorities from the psychiatrist, the doctor, the teacher, the judge, to the policeman and warden, who were deliverers and producers of truth. In the same way that the psychiatrist was formally charged with producing the truth of illness in the hospital space, other authority figures had similar functions in their own institutions. There was therefore a sur-coding (*surcodage*) of normativities, or the insertion of the same epistemological code within several normative domains.

Let us look more closely at the “homologies” between various normativities which in principle belonged to various disciplines and institutions. Consider, for instance, what a major French nineteenth-century psychiatric expert (Jean-Étienne Dominique Esquirol, 1772–1840) listed as the five main reasons for the practice justifying the isolation of madmen.

1. to ensure their safety and that of their families;
2. to free them from outside influences;
3. to overcome their personal resistances;
4. to subject them to a medical regimen;
5. to impose new intellectual and moral habits on them.

What is revealing in such classification–recommendations is that with some minor modifications the same could be said about the urgent need to close down on prison inmates. In his 1805 published thesis, *The passions considered as causes, symptoms and means of cure in cases of insanity*, Esquirol, like Pinel, believed that the origin of mental illness lies in the passions of the soul and was convinced that madness does not fully and irremediably affect a patient’s reason. By the time, the great retranscription of madness into mental illness, which had been initiated in the seventeenth century, had already been completed into the nineteenth. In similar vein, a retranscription of the criminal into a delinquent—the homo criminalis—took

place, where again delinquency, through incarceration, would be normalized, brought to normality. The insane, the madman, the delinquent, the vagabond, all have now sciences studying their “cases,” recommending across the board separation for the sake of normalization. It is important to underscore at this stage that disciplinary practices receive their normative values not from the logic of “discipline” itself but from rationalizations contained in the medical and psychiatric sciences, often endorsed by the judiciary, whose legal–juridical discourse would not *on its own* “comprehend” such phenomena as madness, insanity, and delinquency. Moreover, notice how in Esquirol’s depiction of madness and insanity notice how “passion” is all at once identified as “cause,” “symptom,” and “means” of cure in cases of insanity. The practice of internment at the beginning of the nineteenth century coincides with the moment when madness is perceived less in relation to delusion than in relation to regular, normal behavior; when it appears no longer as disturbed judgment but as a disorder in one’s way of acting, of willing, of experiencing passions, of making decisions, and of being free; in short, when it is no longer inscribed on the axis of truth–error–consciousness but on the axis of passion–will–freedom.

That global social order of interment was obviously not confined to the discourses of those who held medical, psychiatric, or political and judicial power, as all kinds of antipsychiatry, anti-carceral, and utopian and romantic movements of sorts erupted which opposed the principles of that era of the *grand enfermement*. Suffice it to note for our purposes here that when the great asylum structures were put into place at the beginning of the nineteenth century, they were justified by a marvelous harmony between the requirements of the social order (which demanded to be protected against the disorder of madmen) and the needs of therapeutics (which called for the isolation of patients). Such requirements of the social order also commanded that the delinquent, now perceived as a dangerous person which needs to be “corrected”—or normalized—should be separated from the rest of mankind and locked in a correctional facility (the American term for such facilities proves far more accurate than the European notion of “prison”). Hence between psychiatry, medicine, and the judicial apparatus there were parallels in their various epistemologies, methods, conceptions, all of which operated within the normal–abnormal divide, as if there was a movement of general sur-coding of normativities from one discipline to another, and from one institution to the next, which operated through all kinds of analogies, retranscriptions, and the detection of homologous processes.

To conclude this section, let us ask, where did that movement of general sur-coding lead to?

In the process of “overlap” between disciplines and institutions, the latter affected one another in their jargons, discourses, and practices, as if no single discipline–institution could stand on its own anymore. Consider, for instance, how law and psychiatry became so embedded together that, at least as far as criminal law is concerned, it was unable to function without that psychiatric other. It was as if

everything operated through processes of doubling: the judge could not decide on the fate of the criminal–delinquent on his own, before summoning the opinion of a psychiatric–medical expert; the judge therefore de facto became a judge–medical expert, sort of double personality that juggles between disciplines and institutions. For his part, the delinquent, that dangerous homo criminalis, became a personage not determined in reference to the crime he committed, but in relation to his nature, and to what would be diagnosed and knowable of his perversions and abnormalities. In other words, the delinquent doubles as a criminal, as defined by penal law, and as a case study for psychiatrists and doctors. On the other hand, pressures emanating from the labor market and the capitalist economy, which compel for a free moving labor force, create a conflict with the demands to social institutions to control uprooted populations, such as vagabonds, brigands, or peasants and laborers moving around in search for secure market conditions. When such groups were looked upon as “dangerous” to the general population, authorities proceeded through processes of criminalization and internment. Hence everything operated through a double bind process: on the one hand, the labor force had to be set free, not simply in its movements, but also in its readiness for free contracts; on the other hand, that same labor force, was perceived as potentially dangerous, and had therefore to be criminalized and disciplined.

We are now ready to tackle the third phase of population control by the modern nation–state. In the classical age, up to the early eighteenth century, the power of the state was limited to its juridical discursive role, that is, the power of the sovereign in conjunction with the symbolic order of law. By the nineteenth century the power of the nation–state rested on disciplinary practices and techniques. It is important to underscore that such techniques did not exclusively emanate from the institutions of the state, but from society at large, more precisely from various social and medical institutions which operated within similar ethno–epistemic backgrounds. Moreover, the normative power of various disciplines (as operated, for instance, within the confines of the asylum, prison, hospital, school, or army barrack) did not emanate from them per se, but rather from the various institutional disciplines and their various epistemological frameworks which operated within the grand normal–abnormal divide, and that abnormal personage that needs to be “corrected” in a special confined place. Let’s keep in mind such *normative institutional dependence*, and the fact that the disciplinary norms are not self-regulated, in order to better understand the role of the modern state, which I’ll address in a moment. In the final analysis, the shift between the classical age and nineteenth-century modernity was primordial in terms of a nation–state which controlled its populations and territories through a complex network of disciplinary institutions and their power–knowledge relations. When we casually reprimand states, in particular in developing third-world countries, for their failures to implement democratic institutions, we tend to forget that such institutions require a disciplined population, in the double sense of the term: as individuated subjects, which have subjugated to the power relations located within a national territory; and as disciplined subjects, which have been individuated through the normalizing practices of various institutions.

Indeed, such disciplinary powers acts as an historical a priori upon which the real power modern state rests. In effect, our age, at least for the industrial neo-liberal world, could be described as post-disciplinary, not in the sense that such techniques are not important anymore, but that they prove insufficient on their own. Foucault argues that the modern state rests on bio-power, or a complex web of operations that govern populations in terms of various “rights” considered as necessary for the wellbeing of every individual, and where security, health, education, and justice, are among its chief components. We’ll have to examine how traditional nineteenth-century notion of justice, criminality, health, and security, which were tied to disciplinary techniques receiving their normative values from various institutional frameworks (legal, medical, psychiatric, or carceral), received a major normative transformation throughout the twentieth century, a shift in perspective that is still with us in the early twenty-first century.

To begin, let us reconsider the question that we’ve raised at the beginning of this exposé: How does health become an individual right protected by the state? And how does a health care issue metamorphose into a national security issue? Such questions would have been inconceivable within the epistemological framework of the institutions that we’ve examined. In the nineteenth century health was not so much a right but a space through which the normal–abnormal divide operated, and which was at the heart of the epistemological framework set out by disciplines like medicine and psychiatry. In other words, health was about normalizing individuals, telling them what to do and what to avoid in order to keep themselves healthy. Such a normalizing power was disciplinary in its essence, as it operated within the confines of specific spaces (e.g. the hospital and the asylum) for the sake of controlling and “correcting” the abnormal. Even though we’re still within that kind of epistemological framework, the changes within the last century are drastic enough to merit special attention. What has changed is that the *economy*, more specifically the neo-liberal economy, as an assortment of ways for doing things and for governing individuals and populations has itself become *normative*. The neo-liberal economy as norm retranscribes its own logic to other spheres of the lifeworld (*lebenswelt*): education, health, justice, and security. But before that such spheres would have been transformed, following the neo-liberal logic of conducting things, into fully commercialized and consumerized living spaces. In other words, by being fully integrated within the sphere of the neo-liberal economy, they now operate as norms of their own. That in the early twenty-first century *health is a norm*, is an outcome of a long historical trajectory of at least two centuries, part of which we’ve already elucidated. For our purposes, however, we need to examine some of the basic assumptions of neo-liberalism, which Foucault associates with the genealogy of the modern state.

Neo-liberal governmentality, Foucault argues, is an outcome of the birth of biopolitics. For Foucault the modern nation–state is more than an aggregate of apparatuses of domination. Indeed, government is here perceived in the strong sense of the term, as a reciprocal constitution of power techniques and forms of

knowledge, which are brought together through a political rationality underpinning them. Foucault argues that the mentality (*mentalité*) of the modern state is one of neo-liberalism which comes in two sorts, and which he analyzes in relation to two economic schools: the “inequality is equal for all,” or the Ordo-liberals, and the social as a form of the economic, or the Chicago school.

### *Inequality is equal for all*

In reference to the journal *Ordo*, the stronghold of the Freiburg School between 1928–1930, Foucault describes the Ordo-liberals as a group that endeavored to re-define the economic (capitalist) rationality in order to prevent the social irrationality of capitalism from unfolding. Hence unlike the neo-Marxists of the Frankfurt School (e.g. Adorno and Horkheimer) who reasoned in terms of an *inherent* problem within capitalism—or the irrational rationality of capitalist society—which led, among others, to the social political disasters in the first-half of the twentieth century, such as the experience of Nazism in Germany, the Ordo-liberals adopted an anti-naturalistic conception of the market and of the principle of competition. The Ordo-liberals believe that the state and the market economy are not juxtaposed to each other but that the one mutually presumes the existence of the other. Thus, the focus of theoretical debate is on the fact that capitalism is a construct: If capitalism is an economic–institutional unity, then we must be able to intervene in this ensemble in such a way that in one and the same process we both change capitalism and “invent” a new capitalism. From this angle, we consider less an existing form of capitalism and instead try to create a new one. The Ordo-liberals replace the conception of the economy as a domain of autonomous rules and laws by a concept of “economic order” (*Wirtschaftsordnung*) as an object of social intervention and political regulation. For this reason, the Ordo-liberals change the theoretical angle, construing the economy not in naturalistic but in institutionalist terms. Under such conditions, it is no longer meaningful to speak of the destructive “logic of capital,” as such talk assumes the existence of an autonomous domain of the economy with its own rules and limits. Regarding the special historical situation in post-war Germany, the question faced by the Ordo-liberals was how a state could be created on the basis of economic liberty, whereby the latter doubles up as the principle of state legitimation and state self-delimitation. In other words, what is involved is not the legitimation of an already extant state, but a form of legitimation that founds a state: the economic liberty produces the legitimacy for a form of sovereignty limited to guaranteeing economic activity.

### *The social as a form of the economic*

The Chicago School brand of liberalism is much different. Foucault suggests that the key element in the Chicago School’s approach is their consistent expansion of the economic form to apply to the social sphere, thus eliding any difference between the economy and the social. In the process, they transpose economic analytical schemata and criteria for economic decision making onto spheres which are not, or certainly not exclusively, economic areas, or indeed stand out for differing from any

economic rationality. Whereas the Ordo-liberals in West Germany pursued the idea of governing society in the name of the economy, the US neo-liberals attempt to redefine the social sphere as a form of the economic domain. The model of rational-economic action serves as a principle for justifying and limiting governmental action, in which context government itself becomes a sort of enterprise whose task it is to universalize competition and invent market-shaped system of action for individuals, groups, and institutions.

The Chicago School view of an efficiently geared market-shaped system is not only *the* core norm for a neo-liberal economy, but more importantly, it *norms* other spheres of the lifeworld with the same normative values of efficiency and competition which were originally crafted exclusively for the economic sphere. Thus, health, nutrition, education, information, justice and law, all become modeled through the economic neo-liberal norm, and their normativeness is essential to understand the bio-power of the modern state. For example, in the case of the analysis of criminality and penal justice, the Chicago neo-liberals break away from nineteenth-century disciplinary analyses that we've discussed earlier. In lieu of a view of the homo criminalis which operates within a grand divide between the normal and the abnormal, and a notion of crime where the criminal must be "scientifically" understood through the lenses of medicine, biology, psychiatry, and psychoanalysis and "corrected" accordingly through penitentiary facilities, the Chicago School of law and economics looks at the criminal as a rational-economic individual who invests, expects, a certain profit, and risks making a loss. From the angle of homo economicus there is no fundamental difference between murder and a parking offense. It is the task of the penal system to respond to a supply of crimes, and punishment is one of the means of constraining the negative externalities of specific actions. Moreover, since the criminal is a rational-economic individual who invests, and calculates profits and losses accordingly, punishment should be "calculated" in proportion to the criminal's investment, not necessarily as "deterrence" for future acts, but on the basis of economic rationality.

When it comes to the modern state and its genealogy, what is it that changed between the nineteenth and twentieth centuries?

Simply put, and to pursue on the norm theme a bit further, the nineteenth century produced a set of disciplinary practices in various institutions which were not in themselves normative, in that they received their norms from the *outside*: for instance, psychiatric institutions and medical sciences *constructed* that borderline between the normal and the pathological, the abnormal, the insane and the mad; in similar vein, the construction of the delinquent as the new homo criminalis came also from various institutions, to which penal law added its own stamp. All in all, the nineteenth century managed to consolidate state power in a way that was both unprecedented and very different from that of the ancien régime. Instead of this power from above, with its symbolic representations and public ceremonies of punishment, nineteenth-century state power has become infiltrated across the board—as micro-power—controlling lives and individuals. To be sure, the

twentieth century did not modify such outlook, even though “control” in this instance, means more than disciplinary practices which overlap across disciplines and institutions. In effect, and for our century, an inheritance from the previous one, neo-liberalism in all its subtle variations establishes the norms of governance, in conjunction with the technologies of the self, which are integrated into structures of coercion and domination. What has traditionally in western cultures been assessed in terms of their “value” for society at large, basic utilities like health, education, information, food and diet, have all been commercialized and open to consumerism. Such utilities have themselves become normative, in that they do not merely operate as “values” for the wellbeing of the individual and society, but mainly as norms that tell us how to take care of ourselves, and what to do and not to do. It is therefore no accident that what is merely perceived as a *potential* flu epidemic de facto develops into a “national security” concern: it has been a long way for the state to reach that phase, and to pose itself as the protector of individual and collective health—all its power relations are at stake in an operation like this one.