

Foucault's Analytics of Sovereignty

Abstract: The classical theory of sovereignty describes sovereignty as absolute and undivided yet no early modern state could claim such features. Historical record instead suggests that sovereignty was always divided and contested. In this article I argue that Foucault offers a competing account of sovereignty that underlines such features and is thus more historically apt. While commentators typically assume that Foucault's understanding of sovereignty is borrowed from the classical theory, I demonstrate instead that he offers a *sui generis* interpretation, which results from the application of his general strategic conception of power to sovereignty itself. In construing sovereignty through a "matrix" of civil war, Foucault thus deprives it of the absoluteness traditionally attributed to it. Instead he views sovereignty as constituted by conflictual and mobile power relations, a precarious political technology that deploys violence to restore its authority. I also motivate Foucault's contention that popular sovereignty remains fundamentally continuous with the absolutist sovereignty it succeeds, insofar as it masks and thereby perpetuates unequal power relations in conditions of social conflict. According to Foucault, sovereignty is not a fact of power but a contestatory claim, a discourse whose mutability helps to explain its persistence today.

Keywords: Foucault; absolutist sovereignty; popular sovereignty; Hobbes; power; conflict

Introduction

A peculiarity of the classical theory of sovereignty is its failure to correspond to historical record. This theory describes sovereignty as absolute and undivided, yet no early modern monarch or state could claim such attributes. The classical theory was, in fact, a response to the very precariousness and dividedness of political power. Thus it was the devastating French Wars of Religion that motivated the first systematic account of sovereignty, provided by Jean Bodin. For Bodin, the resolution to the Wars required that all secular and religious authority be concentrated in one, indivisible power; it was the very distribution of this authority between multiple powers that fueled the conflict.¹ Seventy years later, Hobbes penned his own defense of absolute sovereignty in the immediate aftermath of the English Civil War. Hobbes believed that this war was attributable in

large part to the division of sovereignty between king and parliament; the only political solution was to vest all authority in a single Leviathan.² Finally, in addition to such religious and political conflict, early modernity also oversaw massive social conflict: the state was consistently destabilized by peasant and nascent bourgeois classes alike.³ Hence the theory of sovereignty was less description than political project, less transcription of fact than philosophical dream of stability in turbulent times. Of Hobbes, J. M. Bernstein has written “By 1648, even before it was penned, the Hobbesian conception of an undivided and absolutely authoritative sovereign whose laws are commands was already a backward-looking fantasy.”⁴ We might just stress that it was even more fantasy than backward-looking, as the project of an absolutely authoritative sovereignty had *at no point* been truly realized.⁵

Such observations complicate the widespread consensus that in the late modern era, sovereignty is on the wane.⁶ Of course, this consensus cannot be entirely wrong. Over recent decades, global economic and political forces have rendered the idea of national—or at least classical, Westphalian—sovereignty all but anachronistic. Yet one wonders if the consensus doesn’t sometimes take the “backward-looking fantasy” of Hobbes or Bodin less as fantasy and more as historical fact; if it doesn’t sometimes consider the model of an undivided sovereignty, threatened neither from within nor without, as more of a historical reality than it ever was. For the “waning” of sovereignty would seem to imply a period in which sovereignty existed in its fullness, in all its undivided power.⁷ The characterization of sovereignty as an anachronistic concept entails a period in which it was historically apt. But if this period is a myth, conjured up in part by philosophers, then how ought sovereignty be conceived at all? If the classical theory itself is in some sense fictional, what would a non-fictional theory look like? If sovereignty is from the beginning not absolute but rather, as the historical record suggests, divided, contested, and

besieged, then how should we revise the theory of Bodin and Hobbes? Or else, where can we find an account of sovereignty *qua* always-already divided and defensive?

It is my contention that we can find such an account in the work of Foucault. This contention may at first be surprising, given Foucault's notorious aversion to the "juridico-political" frameworks employed in classical theories of sovereignty, and given his call to "cut off the head of the king" in political thought.⁸ Yet while Foucault believed that power often functioned through modalities other than that of sovereignty, he maintained that it functioned through an irreducibly sovereign modality, too. I seek to argue that Foucault did not, however, merely adopt and replicate the classical model of sovereignty (as many commentators assume), but instead developed a *sui generis* account of it.⁹ Thus, beside and in addition to his novel formulations of disciplinary and governmental power, Foucault ultimately offered his own original account of *sovereign power*. This account is foremost strategic and conflictual. It conceives sovereignty not as the political body formed with the conclusion of the war of all against all (as in Hobbes), but instead, as a mode of power that strategically operates *during* war, a war-like or contested and contestory power. It is for this reason that Foucault's notorious inversion of Clausewitz can be applied to sovereignty: not just politics, but also *sovereignty* is the continuation of war by other means.¹⁰ Constitutively precarious, beset by contestation, sovereignty is never fact, but only claim.¹¹ The aim of this paper is to elaborate this strategic analytics of sovereignty.

I begin by reconstructing Foucault's understanding and critique of the classical theory of sovereignty, before motivating the alternative, strategic conception of sovereign power he proposes in its place. In the following section, I apply this conception to a reading of *Discipline & Punish*, to illustrate the *sui generis* account of sovereignty employed therein. I conclude by arguing

that this account's applicability to both absolutist and popular modalities of sovereignty sheds light on the latter's persistence and tenacity as a modern political discourse.

The Classical Theory of Sovereignty

Foucault's primary contribution to political thought is rightly conceived as the theorization of modes of power irreducible to sovereignty or the state. In concepts such as discipline, government, security, and biopolitics, he proposed logics of power that were instead dispersed through the social body, linked perhaps to the state, but expressing their own immanent rationality. These concepts referred foremost to *modern* political developments. While the precise chronology differs for each, they generally isolate novel political technologies that emerged sometime from the end of the eighteenth century through the nineteenth century. This point has often been interpreted as entailing that the older technology of sovereignty disappears altogether in modernity, or else becomes largely obsolete or anachronistic. A common reading thus holds that for Foucault, modernity is defined by the wholesale replacement of sovereignty by discipline and government. This reading isn't entirely wrong; Foucault certainly believes that modernity witnesses the waning of sovereignty. Yet he repeatedly emphasizes that so sovereignty persists, if in altered form. One way he articulates this persistence is with the metaphor of a triangle of technologies of power: "So we should not see things as the replacement of a society of sovereignty by a society of discipline, and then a society of discipline by a society, say, of government. In fact we have a triangle: sovereignty, discipline, and governmental management."¹² Accordingly, sovereignty comes to coexist with other modes of power. These other modes do not displace the former but instead merely alter or modernize it. Hence, while the sovereignty of the twentieth century may not function exactly as did that of the seventeenth, it nonetheless remains irreducible to these later

technologies. The result might then be characterized as a society of government *and* discipline *and* sovereignty.

Once we grant that sovereignty persists, it becomes a pressing task to say what exactly Foucault means by the term. We are familiar with his penetrating studies of discipline and government. Yet Foucault's discussions of sovereignty are by comparison remarkably concise. This is no doubt due to the fact that Foucault rarely took sovereignty as his primary object of analysis. Hence his discussions of it typically served the purpose of mere foil for the explication of *other* technologies of power. Foucault repeatedly cites the "juridical-political theory of sovereignty," but in doing so he is often less interested in the theory itself, and more interested in generating a contrast by which the features of, for example, discipline are thrown into greater relief. In fact, Foucault typically represents himself as merely recapitulating the classical theory of sovereignty without amendment. While it remains unclear *whose* classical theory he is actually reconstructing—Bodin's? Hobbes's?—Foucault apparently takes his comments to be generally valid across the entire genre. As such comments are Foucault's most direct treatment of sovereignty, they nonetheless provide the best place to start in a reconstruction of his own views.

Accordingly, the most significant feature of the juridical-political theory of sovereignty for Foucault is its *legal* construal of power. For Foucault, this theory holds that law is the "very form of power."¹³ I take it that this statement entails at least two slightly different ideas. The first is that law is the primary *instrument* of sovereignty. Accordingly, the maintenance and expansion of sovereign power is achieved through the instrumental use of law. The field of application for sovereignty is thus given in the division between legality and illegality. All forms of submission are reducible to obedience, while obedience is construed exclusively as obedience to the *law*. Power is thus limited to the punishment of legal transgression. It is essentially negative and

repressive. It does not *produce* docile bodies (as in discipline) or *regulate* life (as in biopolitics) or *conduct* the conduct of men (as in government), but merely *prohibits*. Sovereign power foremost posits a “law of interdiction,” and is guaranteed by the threat of legal punishment.¹⁴ As Alan Hunt has noted, Foucault here invokes an imperative conception of law: law is just “the commands of the sovereign backed by sanctions.”¹⁵ While in other work Foucault theorizes a more comprehensive set of legal and juridical mechanisms irreducible to criminal law, he seems to hold that the classical theory recognizes only the imperative conception.¹⁶ Following from this imperative conception, we may also attribute to Foucault a traditional conception of organ sovereignty, as it is only from a unified sovereign “organ” (such as the monarch) that such imperatives may issue.¹⁷

The other idea entailed by the statement that law is the very form of power is that law comes to discursively *represent* the sovereign. This is signaled, firstly, in Foucault’s further use of the term “juridico-*discursive*” to label the classical theory (and its modern applications). For Foucault, law was thus not only an instrument of power, but further a discourse or “language of power”; it was “the monarchic system’s mode of manifestation and the form of its acceptability.”¹⁸ Thus, beyond the mere instrumental employment of law for the ends of obedience, sovereignty employs a *legitimizing discourse* of law, in which law comes to “code” and legitimate its own exercise.¹⁹ In this discourse, the will of the sovereign is thereby made equivalent to law, becoming “legislative power” as such.²⁰ It is accordingly in the *manifestation* of law that the authority of sovereignty is performed. Sovereignty is not silent, but rather verbose and theatrical. As suggested by Hobbes, it inspires awe—and obedience—through terror.²¹ (For Foucault, public torture is the paradigmatic example of sovereignty’s theatricality, and will be discussed below.)

I take it that Foucault's discussion of the juridico-political theory of sovereignty is intended to more or less accurately represent the classical theory as such. I also take it that Foucault at least partially endorses it; in various places he suggests that it accurately, if not exhaustively, describes power as it functioned under the great monarchies of the late Middle Ages.²² Accordingly, as a first pass over a reconstruction of Foucault's own theory of sovereignty, it would not be inaccurate to claim that he views it foremost as functioning through (1) the instrumental deployment of law and (2) the performance of a discourse of law.

Yet one must further ask if Foucault endorses it as *wholly* adequate to the actual functioning of sovereign power, whether historical or contemporary. While his recapitulations of the classical theory are often followed by criticisms of it, the latter typically only take issue with its extension to non-sovereign forms of power. Are such recapitulations of the classical theory thus his final word on the subject? Are Foucault's innovations in the study of power limited to the field outside of sovereignty? That they are not can be seen in the fact that on two further occasions, thus far not considered, Foucault substantively engaged with not just *the* theory of sovereignty, but rather *Hobbes's* theory. These occasions are Foucault's 1973 and 1976 Collège de France lecture courses.²³ While often read as merely a commentary on Hobbes, I shall instead read these lectures as a commentary on the Hobbesian—and thus classical—*theory of sovereignty*, with important implications for how we understand Foucault's own approach to sovereignty. Taken together, the lecture courses provide the clearest available view on the latter's decisive departure from the classical model. Foucault develops therein a sustained critique of a central premise of Hobbes's theory, and thereby marks the novelty of his own.

The premise that Foucault is foremost concerned with critiquing may be called the *conceptual incompatibility of sovereignty and war*. As Foucault summarizes in his 1973 *Punitive*

Society lectures, sovereignty, for Hobbes, is negatively defined by war. Sovereignty is ultimately the result of the *cessation* of the war of all against all, expressed in the founding moment of the unification of all wills in the single sovereign, and in the disavowal and transfer of natural rights to the body of the Leviathan. Thus the founding of sovereignty itself ends the war of all against all. Because sovereignty is constituted with the disavowal of the natural rights of its subjects, any instances of the war of all against all, in which such natural rights are instead avowed and acted on, renders sovereignty inoperative. As long as the war of all against all continues, so sovereignty remains as yet unconstituted.

The same incompatibility defines the relationship between sovereignty and *civil* war. According to Foucault's interpretation, civil war, for Hobbes, is merely "a historically determinate case of the resurgence of the war of all against all."²⁴ Like the war of all against all, civil war is foremost characterized by the absence of political authority and the concomitant license to use force for the protection of life; its difference from the war of all against all lies merely in the fact that it *succeeds* the commonwealth. As civil war progressively undermines the authority of the sovereign, so it represents a "dissolution" of the commonwealth, a state of affairs in which individuals regain the rights previously transferred to the sovereign, and the sovereign thereby "expires."²⁵ As long as war is kept beyond the boundaries of the commonwealth, the integrity of the sovereign is maintained. Yet the introduction of civil war rapidly undermines it. The conceptual incompatibility of sovereignty and war thus proposes to understand the two as separated by hard boundaries; passage from one to the other, or from the other and back again, is an always present possibility. Yet passage from one to the other entails leaving the first behind. No political community can exist, or exist for long, simultaneously in both. Construed as absolute legislative

power, sovereignty conceptually requires the suspension of the civil war in which this power goes unrecognized.

In his 1976 lectures, “*Society Must Be Defended*”, Foucault considers a further implication of Hobbes’s approach, namely, that sovereignty is always and everywhere *necessarily legitimate*.²⁶ This implication ultimately contrasts with the common view that Hobbes is a pre-eminent theorist not of peace and legitimacy, but of war and domination. Foucault contests this view, arguing instead that Hobbes’s construal of the constitution of sovereignty systematically erases the war that precedes it. Accordingly, even cases of what Hobbes calls sovereignty by acquisition—cases of military conquest or occupation—are ultimately legitimate. This is because in such cases, subjects may be seen to *freely* and *willingly* submit to the new authority, because they could always instead have chosen death over obedience. Quentin Skinner has shown that this perhaps curious view ultimately follows from Hobbes’ conception of liberty. For Hobbes, liberty is construed negatively vis-à-vis external constraints; one is free so long as one is not physically impeded, while even fear of death is not a physical impediment.²⁷ The act of free, willing submission—which parallels the renunciation of natural rights in the state of nature—thereby constitutes the sovereign as the legitimate representative of the vanquished. Hence sovereignty, even when established under the most violent conditions, is necessarily legitimate, because the conditions of war that establish it are immediately replaced by the legitimacy of a representative political relation. War thus disappears from the fabric of the commonwealth, a faint memory with no bearing on the current order, a past experience without political significance. Sovereignty is thus constitutively legitimate and unchallenged. The Leviathan rules, necessarily, over a kingdom at peace.

Yet Foucault is not content with this construal of a pacific, and unchallenged, sovereignty, and he develops his critique of it in the form of an alternative conception of power. In fact, it is his

1973 critique of Hobbes that provides the first extended discussion of the “strategic model of power” which has since become a hallmark of his thought, and which framed both *Discipline & Punish* and *The History of Sexuality, Volume 1*.²⁸ Central to this framework was the idea that war in some way provided the model for power relations more broadly. War was thus an “analyzer of power relations,”²⁹ while the profusion of military metaphors in Foucault’s texts—tactics, strategies, forces, struggles—expressed this basic perspective. In the literature, this model is typically understood as an *alternative* to the sovereign or juridical model.³⁰ Accordingly, it is seen to provide a way of thinking not sovereignty but, typically, discipline. I seek to argue instead that Foucault ultimately applies this model to sovereignty, too. Thus Foucault ultimately applies to sovereignty the general model which many commentators instead take to be his primary means of moving beyond sovereignty *tout court*. As I argue, it is this application that motivates him to find the classical model of sovereignty inadequate—even for the study of sovereignty itself. In the remainder of this section I show how Foucault’s adherence to the strategic model of power thus leads him to criticize Hobbes. In the following section, I illustrate in greater detail the ensuing strategic construal of sovereignty as it is employed in *Discipline & Punish*.

As mentioned above, Foucault’s primary object of criticism vis-à-vis Hobbes is the premise that sovereignty and war are conceptually incompatible. It is not difficult to see how the strategic model of power would challenge this premise. Consider, for example, Foucault’s early formulation of this model: “Civil war is the matrix of all struggles of power, of all strategies of power, and consequently it is also the matrix of all the struggles regarding and against power.” This formulation is taken to redress the longstanding propensity in political philosophy—whether that of Hobbes or others—to “disavow” civil war, or to consider it not constitutively relevant to the study of politics. In contrast, Foucault’s formulation alleges that war should rather provide the

“starting point” for the study of politics, and thus that war can be seen as an intelligible logic within the exercise of all forms of power.³¹ Accordingly, war is not an *other* to politics, but rather, the sphere in which it is constituted. The claim that civil war is the matrix for *all* strategies of power signals its extension to sovereignty. Contra Hobbes, then, the study of sovereignty must *begin* with a consideration of its implication in a logic of conflict. Sovereignty and war are not conceptually incompatible, but rather mutually necessary and inextricably entangled.

Accordingly, in his 1973 discussion of Hobbes, Foucault is foremost concerned with loosening the strict division between sovereignty and war, and in beginning to formulate a conception of their mutual necessity or co-constitution. In the following rejoinder to Hobbes, Foucault further elaborates:

[C]ontrary to what political theory usually assumes, civil war is not prior to the constitution of power; no more than it is what necessarily marks its disappearance or weakening. Civil war is not a sort of antithesis of power, what exists before or reappears after it. Civil war and power are not mutually exclusive. Civil war takes place on the stage of power. There is civil war only in the element of constituted political power; it takes place in order to keep or conquer power, to confiscate or transform it.³²

This passage may be seen to take aim specifically at Hobbes’s contractarian view on the constitution of sovereignty. We have seen that, whether by institution or acquisition, sovereignty, for Hobbes, always marks the founding of a legitimate political order. The consent to be ruled by the Leviathan thus represents a disavowal of natural rights and a necessary suspension of war. Foucault’s war model instead posits that a kind of war may be seen to continue even after the moment of political inauguration. This is a war waged by the subjects of power, who attempt to conquer, confiscate, or transform it. But it is also a war waged by the constituted political power itself—by the sovereign, the state—in order to maintain power. That politics thus exists in the element of war signals its precariousness. Constituted power finds itself always in need of further

support in an ongoing civil war; its security is never guaranteed, its authority constantly challenged.

This early construal of Foucault's strategic conception of power anticipates later formulations likewise relevant to his critique of Hobbes. In *The History of Sexuality, Volume 1* Foucault accordingly held that power was not definitively *possessed*, but was rather relational, mobile, reversible, and precarious. Power is not acquired as though it were a *thing*, but instead operates "as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses [force relations]."³³ Or, as he put it in "*Society Must Be Defended*", "power is not something that is divided between those who have it and hold it exclusively, and those who do not have it and are subject to it. Power must ... be analyzed as something that circulates."³⁴ It is clear that Foucault's critique of Hobbes already applies such ideas to the study of sovereignty. Political power is not definitively possessed by the sovereign, or the state. Instead, it circulates ceaselessly through myriad struggles and confrontations. With the apparent cessation of war it does not come to rest in the body of a legitimate sovereign. It does not come to rest at all. Accordingly, Foucault's strategic conception of power may be seen to strain the basic premise of Hobbes: that from the concept of sovereignty follows the cessation of war and the willful obedience of subjects.

While Foucault's remarks on Hobbes's theory of sovereignty are primarily critical, and while the alternative conception of power he proposes doesn't extensively theorize sovereignty, it nonetheless has clear implications for how Foucault understands sovereign power, implications which will be illustrated in the following section. For now it will be enough to sketch a kind of *anti-Hobbesian analytics of sovereignty* that emerges by implication from these discussions.³⁵ According to this analytics, sovereignty is to be understood as traversed by social conflict to the

same extent as any other field of power relations. This conflict at the heart of sovereignty thus deprives it of the absoluteness traditionally attributed to it. It puts into radical question the authority of that power defined by Hobbes as the authority that *cannot* be put into question. Sovereignty is thus not a space of power defined by absolute rule and the elimination of war, but is instead characterized by conflict, contestation, and the reversibility of force relations. Foucault summarizes this basic disagreement in the following, definitive statement: “we have to reject the image Hobbes [proposed] in which, with the appearance of the exercise of sovereign [power], war is expelled from [the sovereign power’s] space.”³⁶ In bringing war to bear on sovereign power, Foucault thus fundamentally reorients the political space of sovereignty, and relativizes its authority to all those forces aligned against it; in rejecting the Hobbesian division between politics and war, he humbles the absolutist pretensions of the Leviathan, bringing it down to the earthly struggles of a civil war. I shall now turn to Foucault’s employment and development of this anti-Hobbesian analytics in *Discipline & Punish*.

Sovereign Power in *Discipline & Punish*

Prima facie, *Discipline & Punish* has little to do with sovereignty. As the title indicates, its primary interest is instead the disciplinary power that emerges in the nineteenth century. The discussion of sovereign torture therein appears merely to negatively index the novelty of this new modality of power. Accordingly, the reception of this text typically held that it was Foucault’s theorization of discipline—and not sovereignty—that marked its contribution to political thought (whether this contribution was welcome or not). I wish to argue not that *Discipline & Punish* has *something* to do with sovereignty—this itself is indicated rather obviously by the lengthy examination of torture, the entire chapter (and more) dedicated to the genealogical exposition of this paradigmatic

expression of sovereign power. Instead I seek to argue more precisely that it is the war model elaborated above that provides the theoretical framing for this exposition. Accordingly, the text may be read as a *genealogical illustration of Foucault's conflictual construal of sovereignty*. By thusly reading *Discipline & Punish*, I shall draw attention to the *sui generis* account of sovereign power thus far overlooked in the literature. Yet this text doesn't only illustrate the model of power theorized elsewhere in Foucault's *oeuvre*. It also draws attention to one more feature of sovereignty, not yet considered: that its *violence* is foremost deployed when sovereign authority is challenged. As will be shown, for Foucault, sovereign violence operates as the forceful and often theatrical restoration of an authority put under question.

Read with the strategic conception of power in mind, what is immediately striking about *Discipline & Punish* is its apparent commitment to the anti-Hobbesian idea of an imbrication of sovereignty and civil war.³⁷ This commitment comes out most clearly in Foucault's discussion of the status of law and crime vis-à-vis sovereign power. Recall that Foucault largely upholds the traditional view on the predominantly *legal* nature of sovereign power. This view entails not only that law and sovereign are identical, but further, that law discursively *represents* the will of the sovereign.³⁸ Sovereign power functions not only through the instrumentalization of prohibitory law, but also through a discourse of power which postulates its equivalence with sovereignty. Accordingly, the transgression of law, while an injury to the kingdom, must also be construed as an attack on the sovereign himself. Thus *every* crime, no matter its apparent victim or relative gravity, must be construed as undermining sovereign authority. Crime cannot be interpreted as mere infraction, under the sovereign mechanics of power. Instead, it bears an immediately political character. As Foucault summarizes, "In every offense was a *crimen majestatis* and in the least

criminal a potential regicide.”³⁹ That sovereignty functions foremost through mechanisms of law entails that an attack on the latter is no less than an attack on the former.

If crime is thus irreducibly political, then the criminal cannot be conceived merely as an errant citizen or individual. Instead, the criminal, in attacking the sovereign, becomes an *enemy*; his infraction is seen as an act of war. To the sovereign, “disobedience was an act of hostility, the first sign of rebellion, which is not in principle different from civil war.”⁴⁰ Thus we see in *Discipline & Punish* Foucault’s employment of civil war as a matrix for the relations between law, illegality, and sovereignty. Recall that, according to this matrix, “Civil war is not a sort of antithesis of power, what exists before or reappears after it.... Civil war takes place on the stage of power.”⁴¹ Here this entails that the constituted sovereign power is always pursued by civil war, while the paradigmatic form of civil war is conflict over the law. Criminality becomes the belligerent act *par excellence*. Every crime represents a weakening of power, a minute shift in the balance of forces, a momentary “eclipse” of sovereign authority. In a context of constant civil war, law becomes the banner which must stand if sovereignty is not to fall.⁴²

Hence, in *Discipline & Punish*, sovereign power is situated foremost in the context of civil war. It is found to be always under threat or siege, while its equation with and dependence on law renders it vulnerable to a constant barrage of transgressions which, to a greater or lesser extent, weaken its foundations, its symbolic monopoly on legitimate coercion, its absoluteness. The sovereignty figured in *Discipline & Punish* is not that of the Leviathan, ruling over a kingdom at peace; the legitimacy of the Prince does not go unchallenged. Accordingly, the text may be seen to genealogically illustrate the conflictual construal of sovereignty canvassed above. It applies Foucault’s strategic conception of power not just to discipline, but further, to the technology of

power that discipline succeeds. Power, whether disciplinary or sovereign, is thus here construed on a model of war.

Yet the most striking feature of Foucault's discussion of sovereignty is its meticulous analysis of *public torture*. This analysis brings us to a final feature of sovereignty, namely, the conditions under which it deploys violence, along with its mode of deployment. In *Discipline & Punish*, Foucault explicitly links this deployment to attempts to *restore* sovereign authority in moments of its waning. If crime is seen as an attack on the sovereign, then sovereign violence will seek to restore the authority of the sovereign thereby compromised. Put differently, violence is marshalled in moments in which the sovereign's capacity to command obedience wanes. It is thus deployed when the law of the sovereign is threatened, and it seeks to reassert the sovereign's legal authority, its capacity to command obedience to its law. Accordingly, sovereign violence—and its quintessential form, public torture—is not to be viewed as the expression of absolute power. It does not manifest the monarch at his most powerful. In fact, the opposite. In Arendtian terms, one may say that violence is instead deployed when sovereignty finds itself at its most *powerless*.⁴³ It is deployed when its primary standard of power, law, loses its authority, when its commands no longer secure immediate obedience. Hence sovereign violence is an instrumental tactic for the shoring up of a sovereignty under eclipse. Sovereignty's authority must be reactivated and restored because, in a state of war, this authority has markedly waned. The precariousness of sovereignty is the occasion for the ferocity of its violence.

If the conditions for the deployment of sovereign violence are found in threats to sovereign authority, its mode of deployment will be essentially performative: from a state of powerlessness, sovereignty must perform its power. Accordingly, the public execution, for example, entails more than a legal function. It achieves more than the mere judicial punishment of an individual's

infraction. It further fulfils a *political* function, through the performance and symbolic restoration of an authority temporarily lost. Recall that above, law was considered not only the instrument of sovereignty, but also its “mode of manifestation.” The manifestation of law coded the legitimacy and power of the sovereign. Accordingly, it is in manifestations—foremost in public, ritualized displays of royal justice—that the absoluteness of sovereignty is made tangible. Such ritualized displays become a central means for the maintenance of a sovereign power always under siege. In more traditionally Foucauldian terms, we may say that sovereign violence is always accompanied by a form of power-knowledge, by a kind of legitimating discourse. This violence is not “silent,” it does not consist solely in force.⁴⁴ Instead, it is constitutively tied to a discourse on the legitimacy, and might, of the sovereign himself. (And so as with the strategic conception of power, we now see another extension of a famous Foucauldian insight—here, the co-constitution of power and knowledge—to the analysis of sovereignty.)

Foucault’s strategic construal of sovereignty and sovereign violence, along with their fundamentally performative dimension, is expressed in the following passage, quoted at length:

The public execution, then, has a juridico-political function. It is a ceremonial by which a momentarily injured sovereignty is reconstituted. It restores that sovereignty by manifesting it at its most spectacular. The public execution ... belongs to a whole series of great rituals in which power is eclipsed and restored...; over and above the crime that has placed the sovereign in contempt, it deploys before all eyes an invincible force. Its aim is not so much to re-establish a balance as to bring into play, as its extreme point, the dissymmetry between the subject who has dared to violate the law and the all-powerful sovereign who displays his strength.... In this liturgy of punishment, there must be an emphatic affirmation of power and of its intrinsic superiority.... The public execution did not re-establish justice; it reactivated power.⁴⁵

This passage encapsulates the chief points of Foucault’s account of sovereignty: (1) that sovereignty is not absolute, but rather contested and precarious, best understood on a model of war; (2) that on this model, crime itself represents a political injury to the authority of the sovereign; (3) that sovereign violence is the strategic response to the *loss* or *waning* of this

authority; and (4) that sovereign violence is performative and seeks to restore and reactivate power. It is perhaps this final point that best underscores the first. For the very need to repeatedly perform its power indicates the deficit of this power in the first place, or else the constant challenges to which it must respond. Thus the very *ritualization* of public execution—and its existence alongside numerous other “great rituals in which power is eclipsed and restored”—indicates the regularity with which this spectacularized sovereign power is called upon, as necessary to forestall the fall of the king. In an unceasing battle, constant, visible reminders of the latter’s might are imperative. But this necessity reveals the constitutive weakness of sovereignty. It is permanently precarious, its guarantee of the law tenuous and contested. The performative character of sovereign violence thus underscores its fragility, and that it rests merely on the shaky foundation of iterated manifestations of power. Sovereignty, for Foucault, is thus ultimately an absoluteness without absolute power, or an absoluteness whose absoluteness is always contested and must always be restored, resignified and manifested. The long historical waning of sovereignty through modernity occurs alongside its quotidian ebb and flow.

Absolutist and Popular Sovereignities

If Foucault is right, then sovereign violence foremost responds to threats to sovereign power. Sovereignty itself would then be construed as constitutively precarious and beset by near constant war. Such a construal accords with historical record. The early modern state formed in the midst of violent religious, political, and social conflict. The specific political arrangements of sovereignty thus emerged through the monarch’s conflict with religious dissenters, antagonistic parliaments, and restive peasants and bourgeois alike. (The relative weight of each depending on specific national context.) While the absolutist state was the consequence of these conflicts,

historical scholarship has long cast doubt on the extent to which this state was actually absolute.⁴⁶ From a Foucauldian standpoint, then, classical theories of sovereignty would be viewed as aspirational projects for the absoluteness of a sovereignty that remained out of reach. These theories sought normative justification for the only kind of rule their authors imagined could definitively end all conflict, yet unlike Foucault's descriptive theory, they fell analytically short of power as it was actually exercised. By challenging in particular the "nostalgic" Hobbesian theory, Foucault proposed an account much closer to actual historical fact. This account certainly drew from Hobbes—the construal of sovereignty as a constitutively legal power remains faithful to the former. Yet it humbled Hobbes' account, too, in claiming that the Leviathan is not an exit from war, but its continuation by other means.

With his account of sovereignty, however, Foucault aims not only at historical aptness, but also contemporary relevance. This account is intended to describe not just the way sovereignty functioned in the 17th century, but also its contemporary mode of operation. Yet the success of such an intent is immediately rendered doubtful when one considers the fact that Foucault's comments on sovereignty are mostly limited to the consideration of absolutist sovereignty, at the expense of any sustained engagement with a distinctly *popular* form or theory of sovereignty. Indeed, in *Discipline & Punish*, the primary rhetorical function of the analysis of sovereignty lies in the generation of a contrast between an "old" technology of power—here typified in the medieval ritual of public torture ordered by the monarch—and a new technology that at least partly displaces it. Hence while Foucault elucidates a shift in the dominant mode of punishment, so he largely ignores a contemporaneous transformation in the form of sovereignty, as numerous monarchies across Europe were gradually replaced by more representative or democratic regimes. To these latter regimes, which claim to represent the will of the people and not that of the

sovereign, popular sovereignty appears a more appropriate concept than its absolutist predecessor. Yet Foucault's comments on sovereignty focus stubbornly on the rule of the king.

If perhaps stubborn, this focus is also intentional. Foucault is not unaware of the passage to popular sovereignty, and this is made evident in a few highly condensed passages across his *oeuvre* in which he addresses it directly. Accordingly, I wish to claim that the distinction between absolutist and popular sovereignty for Foucault remains more apparent than real, and that the changes inaugurated by the latter are less significant than its continuities with the former. In what follows, I shall return to the two features of the classical theory of sovereignty that Foucault endorsed and considered definitive for the functioning of sovereignty as a mode of power: its instrumentalization of law and its discursive character. I shall briefly explain how Foucault tracks each feature across popular sovereignty, too, and why he finds these continuities more analytically significant than the discontinuities.

Beginning with sovereignty's juridical character: Foucault's brief acknowledgements of popular sovereignty typically appear in those broader discussions that appeal to a contrast between sovereignty *simpliciter* and other technologies of power, for example, discipline and government.⁴⁷ In such discussions, the contrast is often specifically intended to highlight the *non-juridical* nature of the latter. There, Foucault seems to suggest that more important than an apparent transfer of sovereignty from monarch to body of the people is the continuous operation of sovereignty, however construed, as an essentially juridical and prohibitory power. If the *real* innovation lies in non-juridical modes of power, then we may infer that the juridical basis of popular sovereignty keeps it in fundamental proximity to absolutist sovereignty. Foucault suggests as much in a 1978 lecture, in which he considers Hobbes and Rousseau (the latter being a central figure in the development of the theory of popular sovereignty) in the same theoretical

camp vis-à-vis theories of government. For *both* thinkers, Foucault claims, “the sovereign is the person who can say no to any individual’s desire”; the difference between the two lies only in competing strategies for “how to legitimize this ‘no’ opposed to individuals’ desire and found it on the will of these same individuals.”⁴⁸ This characterization of the commonality between Hobbes and Rousseau remains undeveloped in Foucault. Nonetheless, it hints at arguments made by other anti-sovereign thinkers, such as Hannah Arendt, according to whom attempts to represent the will of the people in a sovereign form lead inevitably to the construction of a unitary legislative power as arbitrary as that of monarchical sovereignty.⁴⁹ Andrew Arato and Jean Cohen provide the following summary of Arendt’s position, which also tracks Foucault’s: “Sovereignty [absolutist and popular] is construed as the assertion of the will, as the ultimate discretion of an uncommanded commander who is *legibus solutus*—the source of law and so unbound by law—thus arbitrary, leveling, homogenizing, and solipsistic by definition.”⁵⁰ Foucault likewise contends that even an apparently democratized sovereignty remains formally continuous with Hobbes’s absolutist conception, insofar as it functions foremost through the imposition of prohibitory, imperative law.⁵¹ The representational content of sovereignty may change from will of the monarch to general will, but its basic, juridical mechanics remain the same.

Foucault’s discussions of the discursive character of popular sovereignty likewise lead to a view on the latter’s more basic continuity with absolutist sovereignty. Admittedly, Foucault tracks an important shift in this character with the passage to popular sovereignty. However, this shift does not result in sovereignty becoming representative of the general will. Instead, it further facilitates domination—now, primarily, the domination characteristic of disciplinary society. Accordingly, the new, discursive function of sovereignty “masks” or “conceals” modern

disciplinary power relations with its discourse of rights and liberties. Foucault thus contrasts the formal representation of a general will to the actual domination persistent in society: “although, in a formal way, the representative régime makes it possible ... for the will of all to form the fundamental authority of sovereignty, the disciplines provide, at the base, a guarantee of the submission of forces and bodies.”⁵² This novel masking function undoubtedly indicates a real modification in the nature of sovereignty. With the advent of discipline, sovereignty adapts to better ensure its functioning. Here, sovereignty becomes articulated with discipline, a legitimating discourse that provides the semblance of representation while obscuring actual relations of domination. The discourse of sovereignty is thus no longer limited to the performance of the monarch’s authority, but instead expands to include the legitimization of modern society.

This novelty, however, should not obscure a more fundamental continuity. For Foucault, the democratic and egalitarian ideals that correspond to the discourse of popular sovereignty are persistently undercut by the actual functioning of discipline; the constitution of the general will remains merely “formal.” The “people” remains a fiction—and thus here, too, Foucault departs from Hobbes, for whom the covenant transforms the disparate multitude into the “distinct moral person” of a unified “state.”⁵³ Hence the discourse of popular sovereignty here obscures the continuation of social disunity and conflict. Or rather, it obscures the ongoing civil war in which it is itself a partisan instrument. We may thus be justified in viewing the discursive development of sovereignty as a novel “tactic” in a civil war whose terrain shifts historically. The civil war in which classical absolutist sovereignty functions is not, for example, interrupted in 1789 (or 1649 for that matter) but rather develops on a further political plane. Moreover, Foucault repeatedly emphasizes the persistence of challenges to discipline, the pervasive “counter-powers” that

render obedience far from guaranteed.⁵⁴ Such challenges are further evidence of the ongoing civil war in which the modern discourse of sovereignty must intervene. Sovereignty thus remains a discourse—if a quite mutable one—in conditions of conflict wherein power relations are unstable and reversible, and authority is constantly contested.

Elucidating Foucault's view that sovereignty, whether absolutist or popular, is a mutable discourse helps to further underscore his distance from Hobbes. It demonstrates that, *contra* Hobbes and much Western political thought, sovereignty is not a fact, a state of affairs, or a condition in which a political authority either finds itself or not. Instead, Foucault views sovereignty as a *claim*. Sovereignty is not the fact of irresistible power, but instead a discourse that performs an authority which must be obeyed, or an articulated set of rights and obligations to which one must conform. In fact it is precisely this line of thought which historian F. H. Hinsley expresses as follows: "Men do not wield or submit to sovereignty. They wield or submit to authority or power.... [S]overeignty is not a fact. It is a concept which men in certain circumstances have applied—a quality they have attributed or a claim they have counterposed—to the political power which they or other men were exercising."⁵⁵ Hinsley's formulation, which anticipates Foucault's own, helps to further deflate the aspirations of the classical theory of sovereignty, by contrasting authority to political concepts, and placing sovereignty definitively in the latter category. *Contra* Hobbes, then, sovereignty is not a fact inaugurated by way of the social contract; instead it is a concept which must be applied, or else a discourse which must be repeatedly circulated and performed. Above I underscored the relational character of sovereignty, according to Foucault—sovereignty's status as mobile social relation, as opposed to static thing. Here we might further emphasize its mutability and adaptability, its status as a flexible discourse of power which does not disappear with the passage to representative

democracy, but only changes form. And surely the persistence of discourses of sovereignty today, in our apparently post-sovereign age, further testifies to its flexibility and tenacity.

Conclusion

The intent of this article has been to sketch the contours of the *sui generis* account of sovereignty found in Foucault. I thus challenged the common views that either (1) Foucault believes sovereignty to be wholly irrelevant to a typology of modern technologies of power, or (2) his views on sovereignty are not unique, and instead borrowed more or less wholesale from the classical theory. While Foucault certainly upholds the classical emphasis on law, so he also views sovereignty through a framework of civil war, in which the founding of sovereignty is not the cessation of war, but its continuation by other means. Accordingly, sovereignty is fundamentally precarious, beset by conflict and crisis; it falls far short of the absoluteness ascribed to it whether by Hobbes or Bodin or any other classical theorist. I also considered Foucault's views on popular sovereignty, and concluded that the latter maintains significant continuities with its absolutist predecessor. From a Foucauldian view, of course, any contemporary account of politics will need to acknowledge disciplinary, biopolitical, and governmental logics of power. Yet this article has advocated the addition of a distinctly Foucauldian construal of sovereignty to the list. Such a sovereignty is besieged and contested, but also spectacular, a technology of power adaptable and tenacious, whose contestation appears an unavoidable horizon of politics even in our apparently post-sovereign age.

Notes

1. Loick, *A Critique of Sovereignty*, 4-5.
2. Bernstein, "Without Sovereignty or Miracles," 21.
3. For the social and class nature of the conflict, see Anderson, *Lineages of the Absolutist State*.

4. Bernstein, “Without Sovereignty or Miracles,” 22.
5. In the English case, this is foremost seen in the very early establishment of a Parliament on which the sovereign depended for consent in legislative matters. See Anderson, *Lineages of the Absolutist State*, 115. In the French, there is a general (if now qualified) historiographic consensus that the absolutist state—even that of Louis XIV—depended on collaboration with powerful social groups outside the monarchy. For a review essay on this consensus and its qualifications, see Beik, “The Absolutism of Luis XIV as Social Collaboration.”
6. For the particular language of a “waning” sovereignty, see Brown, *Walled States, Waning Sovereignty*.
7. Brown, for her part, acknowledges that sovereignty from its beginning is at least somewhat fictional. *Ibid.*, 22. My intention in this essay is to emphasize the constitutive nature of this fiction.
8. Foucault, *History of Sexuality Vol. 1*, 88-9.
9. Some commentators have recently sought to reconstruct a distinctly Foucauldian view on sovereignty. See Butler, “Indefinite Detention” and Erlenbusch, “The Place of Sovereignty.” However, these commentators are typically less interested in analyzing sovereignty as a distinct political technology that dates to the late Middle Ages, than in viewing it within a broader field of *modern* governmentality to which it is subordinated. Such accounts thus typically still assume that Foucault doesn’t propose any revisions to the classical model as such, and that it is only his theorizations of *other* modes of power that provide reason for reinterpreting sovereignty. In contrast, I argue that Foucault believes the classical model is inadequate on its own terms, and that he employs a competing, *sui generis* framework in its place.
10. Foucault proposes this inversion as a hypothesis at the start of his “*Society Must Be Defended*” lecture course: “Power is war, the continuation of war by other means. At this point, we can invert Clausewitz’s proposition and say that politics is the continuation of war by other means.” Foucault, “*Society Must Be Defended*,” 15.
11. I borrow this distinction between sovereignty *qua* fact and sovereignty *qua* claim from Hinsley, *Sovereignty*, which I briefly consider below.
12. Foucault, *Security, Territory, Population*, 107. Elsewhere, too, Foucault provides comparable characterizations of the persistence of sovereignty alongside newer technologies of power. Cf. *Ibid.*, 8, 10; Foucault, *History of Sexuality Vol. 1*, 89; Foucault, “*Society Must Be Defended*,” 37-9.
13. Foucault, *History of Sexuality Vol. 1*, 88.
14. *Ibid.*, 86.
15. Hunt, “Encounters with juridical assemblages,” 75. Hunt notes that Foucault’s view here accords with John Austin’s well-known construal of the imperative conception of law. See Austin, *The Province of Jurisprudence Determined*.
16. For a survey of further discussions of law in which Foucault does not conceive the latter foremost in imperative terms, see Gordon, “Expelled questions.”
17. On the relationship between organ sovereignty and the imperative conception of law, as construed by the classical theory of sovereignty, see Cohen, *Globalization and Sovereignty*, 26-8.
18. Foucault, *History of Sexuality Vol. 1*, 87.
19. *Ibid.*, 88.
20. *Ibid.*, 85. This equivalence is also cited in *Discipline & Punish*: “law represents the will of the sovereign.” Foucault, *Discipline & Punish*, 47. While Foucault’s discussion of this equivalence between law and the sovereign will is highly schematic, it can be confirmed in the classical theory, and from two different, if related, starting points. One starting point is the idea, found in Bodin, Hobbes and numerous other theorists of absolutism, that the sovereign is the sole lawmaking authority. According to this idea, not just executive functions, but further, all legislative functions rest with the sovereign. See Bodin, *On Sovereignty* and Hobbes, *Leviathan*. The second starting point is the common early modern idea of an equivalence between sovereign and body politic (which includes law), and of which Hobbes, with his organological metaphor of the Leviathan, is a key example. On this second point, see Ernst H. Kantorowicz’s genealogy of the early modern legal concept of the king’s two bodies, which Foucault cites multiple times in his *oeuvre*, including in *Discipline & Punish*. Kantorowicz, *The King’s Two Bodies*.
21. Hobbes, *Leviathan*, 227.
22. Foucault, *History of Sexuality Vol. 1*, 86-9; Foucault, “*Society Must Be Defended*,” 34. Note also a passing criticism of the juridico-political theory, which, while unelaborated in the text, already indicates Foucault’s dissatisfaction with the theory: “[The juridico-political conception] is by no means adequate to describe the manner in which power [including monarchical power] was and is exercised, but it is the code according to which power presents itself and prescribes that we conceive of it. The history of the monarchy went hand in hand with the covering

up of the facts and procedures of power by juridico-political discourse.” Foucault, *History of Sexuality Vol. 1*, 87-88. An elaboration of these facts and procedures is left out of *The History of Sexuality* entirely; it is the task of this article to try to provide it by tracing Foucault’s account of sovereignty to other texts.

23. Foucault, *Punitive Society*; Foucault, “*Society Must Be Defended*”.

24. Foucault, *Punitive Society*, 25.

25. Hobbes, *Leviathan*, 375

26. Foucault, “*Society Must Be Defended*”, 94-9.

27. Skinner, *Hobbes and Republican Liberty*, 134-8.

28. As Arnold I. Davidson rightly notes, Foucault’s development of this model dates at least back to 1971. See Davidson, “Introduction,” xix. Thus it should come as no surprise that, in 1973—a couple years prior to the publication of *Discipline & Punish* and *The History of Sexuality*—Foucault already employs a version of it.

29. Foucault, “*Society Must Be Defended*”, 266.

30. This view is widespread and is found, for example, in McWhorter, “Decapitating Power,” and Davidson, “Introduction.” Foucault certainly makes some statements that appear to confirm it. See, for example, Foucault, “Power and Sex,” 123. The remainder of this article argues that careful consideration of Foucault’s critique of Hobbes, and of his approach to sovereignty in *Discipline & Punish*, demonstrates that the opposition between sovereignty and the strategic conception of power is overdrawn.

31. Foucault, *Punitive Society*, 13.

32. *Ibid.*, 29.

33. Foucault, *History of Sexuality Vol. 1*, 92.

34. Foucault, “*Society Must Be Defended*”, 29.

35. In describing Foucault’s interpretation of sovereignty as an “analytics” and not, for example, as a “theory,” I am following Foucault’s own, nominalist advocacy for an *analytics* of power in place of a *theory* of power. See Foucault, *History of Sexuality Vol. 1*, 82.

36. Foucault, *Punitive Society*, 32.

37. This is perhaps less surprising, if no less striking, when one considers that the first draft of *Discipline & Punish* was finished in 1973, the year of Foucault’s *Punitive Society* lectures. Harcourt, “Course Context.”

38. As mentioned above, Foucault doesn’t elaborate the identification between sovereign and law. On this point, it’s possible that he had in mind Kantorowicz’s discussion of the king’s two bodies, one physical and one political (also cited above). If this is the case, then the latter, political body would be that which is equivalent to law, and thus injured by the transgression of law. The gloss of Dreyfus and Rabinow seems to assume this possibility (intentionally or not), when they use the language of the *body* of the king being injured by legal transgression—even though Foucault doesn’t use this language himself: “A breach of the law was seen as an act of war, as a violent attack on the body of the king.” Dreyfus and Rabinow, *Michel Foucault*, 145. Yet the absence of this language on Foucault’s part—in fact, he seems almost to actively *avoid* the term “body” in his descriptions of the sovereign, reserving it instead for the “least body of the condemned man”—makes it more difficult to pin down exactly what political theological picture he invokes in these passages on the metaphysics of sovereign torture. Foucault, *Discipline & Punish*, 29.

39. Foucault, *Discipline & Punish*, 53-4.

40. *Ibid.*, 57

41. Foucault, *Punitive Society*, 29.

42. In his 1971-1972 lecture course at the Collège de France, Foucault articulates the politicization of crime vis-à-vis sovereign power as follows: “if the public power suffers injury through the crime, then crime is always, in at least one of its dimensions, an attack on the public power, a struggle against it, the temporary suspensions of its laws.” Foucault, *Penal Theories and Institutions*, 190. The analytical continuity between this early lecture course and *Discipline & Punish* would seem to provide further evidence for a stable, *sui generis* account of sovereignty in Foucault’s work of this period.

43. For Arendt’s classic distinction between violence and power, see Arendt, *On Violence*.

44. This same point is made, if in a rather different context, in *The Punitive Society*, where Foucault argues against “the schema of ideology according to which power can produce only ideological effects in the realm of knowledge (*connaissance*), that is to say power either functions in the silent fashion of violence or in the discursive and wordy fashion of ideology. Now power is not caught in this alternative of either being exercised purely and simply through violent imposition, or hiding itself and getting itself accepted by holding the wordy discourse of ideology.” Foucault, *Punitive Society*, 233.

45. Foucault, *Discipline & Punish*, 48-9.
46. See Beik, “The Absolutism of Luis XIV as Social Collaboration.”
47. See Foucault, *Discipline & Punish*, 221-3; Foucault, “*Society Must Be Defended*”, 35-40; Foucault, *Security, Territory, Population*, 70-4.
48. Foucault, *Security, Territory, Population*, 73.
49. See Arendt, *On Revolution*.
50. Arato and Cohen, “Banishing the Sovereign?,” 307.
51. For another version of this claim, which also focuses on the continuity between Hobbes and Rousseau, see Hardt and Negri, *Empire*, 85.
52. Foucault, *Discipline & Punish*, 222.
53. Skinner, “Genealogy,” 355.
54. Foucault, *Discipline & Punish*, 219.
55. Hinsley, *Sovereignty*, 1.

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