Sovereign Actors of Intelligence: Return to an Empirical Stage. Introduction

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1 Like all lengthy collective projects, this thematic dossier of Champ Pénal/Penal Field has evolved over time.1 Since the call for contributions was first issued in 2017, there have been numerous publications on this research object and our initial focus has been realigned and expanded in response to the papers received and selected. Let us first reiterate the three central themes proposed, themselves reflecting the content of a workshop held during the 15th Conference of the International Association of French-speaking Criminologists (Association internationale des criminologues de langue française) in Versailles in May 2016 (Ocqueteau et al., 2016): What are the links between the intelligence services and the other government security agencies (border police, criminal police, armed forces)? How do the intelligence and secret services bureaucracies function today? How are the intelligence agencies responding to the challenges of press and social media access to open data?

2 We must begin by thanking the authors who responded to our call, as well as the editorial committee and the reviewers who provided helpful suggestions for improving the texts. The five thought-provoking articles in this dossier bear witness to the breadth of interest among social scientists in the evolution of today’s intelligence services, both in France and across the world. The dossier also includes a review of four recently published books. They illustrate the heterogeneity of possible angles of approach, no single academic discipline in France being able to cover the entire field. They were selected by the author (Frédéric Ocqueteau) from among publications released in the same year as the journal’s call for papers.

3 The Champ Pénal/Penal Field dossier begins with an epistemological study (by Pierre France) that sets the scene for the four case studies that follow. The “entry cost” of studying institutions that combine force, cunning and secrecy is always very high. In the early 20th century, the sociologist Georg Simmel had already warned of the risks of
analytical bias in areas where secrecy was involved (Simmel, 1908). Following this logic of extreme caution, Pierre France invites us to give serious thought to the fashionable theme of conspiracy and conspiracism, even arguing for the construction of a genuine scientific branch of learning in this field.

Two of the case studies focus on France. The first, by Sébastien Le Gal, concerns the discovery of a military project, hatched in the aftermath of May 1968, aiming to promote and provide rational argument for new “emergency legislation”. The second, by Virginie Gautron, concerns the creation and use of police files, and the public debate that surrounds them. The other two studies offer complementary viewpoints from outside France, with the aim of placing the French context in perspective and shifting the focus. The first, conducted by a team of Africanist historians and archivists headed by Jean-Pierre Bat, draws upon previously unexploited archives to describe the practical functioning of the Chadian intelligence services under Hissein Habré. The second, by Pierre Berthelet, retraces the construction of the European Union’s Europol agency, whose institutional history is, paradoxically, quite sparsely documented.

1. A new interest in the world of intelligence among French-speaking researchers?

The draft call for papers was initially entitled “The bureacracies of secrecy” in explicit reference to the work of the historical anthropologist Alain Dewerpe, the first author in France to succeed in defining the ideal type of a secret administration (Dewerpe, 1994). The content of the dossier has since shifted away from this perspective to take account of the new avenues explored by the selected authors, signalling, perhaps, the emergence of a very singular path in the field of “intelligence studies”. We are struck by the extent to which research in the French-speaking world, whose critical mass is infinitely smaller than that of the Anglosphere, is also becoming more diverse, as if the genre can no longer be tied to a dominant academic discipline.

Intelligence studies first developed in the United Kingdom and the United States with the creation of two new journals in 1986: Intelligence and National Security and International Journal of Intelligence and Counterintelligence. These publications, whose initial objectives were quite different, did not attract the same readership. While the former became the academic journal of reference at international level, the latter, remaining closer to the community of practitioners, published texts intended for future service personnel and written by former intelligence analysts or instructors in US training schools (Fontaine, 1992).

In the Anglosphere, a large majority of the texts published in Intelligence and National Security also tended to focus on the decision-making process (Van Puyvelde, Curtis, 2016) and policy relevance, with the aim of serving as a guide to policy makers. Indeed, the research object of “intelligence”, and its subsequent problematization, first emerged in relation to the empirical questions put to university “practitioner scholars” (Fry, Hochstein, 1993). But as it progressively extended beyond the confines of the decision-making sphere, the object gained in complexity. New studies began focusing on information content or on the social forms of organization around secrecy, in the footsteps of Georg Simmel, among others. The political and administrative roles of the intelligence services were no longer the sole concern.
In France, by contrast, the object was born far outside the sphere of the intelligence community. French singularity in this respect is striking. It took a good 15 years for the subject to take root in the academic world, where it was addressed mainly by legal scholars (Warusfel, 2000) and historians (Forcade, 2008; Laurent, 2009; Forcade, Laurent, 2019). A general and statistical review of their work has been published recently (Laurent, 2018).

These pioneering authors focused on the highly state-centred dimension of French intelligence. Over the last two decades, work in this field has spawned around thirty PhD theses and a dozen post-doctoral research dissertations (habilitation à diriger des recherches). Apart from a handful of remarkable studies by political scientists, Michel Dobry (1997) in particular, French political science has given priority to theoretical approaches, in a perspective derived from the study of the national interest (raison d’État), but without delving any further. More recently, the sociology of international politics, via the work of Didier Bigo and the journal Cultures et conflits, has begun to address intelligence from the angle of surveillance practices, in a macrosociological and constructivist approach that emphasizes the importance of international cooperation (Bigo, 2011).

Alongside macrosociological analysis of the technologies deployed by state secrecy, and despite the difficulties of accessing research material, several studies (notably those of Pierre France and Virginie Gautron) clearly highlight the need to conduct empirical research, in other words to document small-scale sub-objects (conspiracy theories, police files, practical administrative policing systems, legal strategies for justifying states of emergency, etc.), as a means to grasp the importance and daily functioning of state technologies.

Indeed, these articles all illustrate the enormous variety of methods deployed by the state intelligence services, even including extreme physical violence, as clearly shown in the study by Jean-Pierre Bat, Antoine Duranton, Soheila El Ghaziri, Mathilde Sigalas and Margo Stemmelin. Whatever the diversity of functions officially defined in the intelligence services’ remit (public order, counter-espionage, anti-terrorism), abundant resources are available for taking action with respect to individuals and society. Beyond the use of cunning and force, and recourse to torture – even within democracies’ supposedly least vulnerable to such practices – we note that advanced knowledge has been exhaustively mobilized and recycled since the emergence of statistical reason in the 19th century (Desrosières, 1993) and, most recently, of algorithmic reason in the 21st (Jackson, Laurent, 2019).

It is clear that the increasing demands for transparency and oversight placed upon western intelligence services over the last two decades, associated with a general process of accountability (Born et al., 20015), have not put a stop to the illegal practices of sovereign states, at both domestic and international levels.

At a time when former senior officers of France’s external intelligence agency (Direction générale de la sécurité extérieure, DGSE), experts and influential teachers at Science-Po Paris are evoking the need for transparent public intelligence policies (Cousseran, Hayez, 2015; 2017), it is important to temper the notion that the secret services are entering an era of regulation and respect for the law, even though legitimizing discourse of this type has become a key component of external communication in France. Francophone social science research on the diverse range of intelligence practices cannot simply be grouped together under the general label of...
surveillance studies (Lyon, 2007). In a field that remains scattered and dominated by macrosociological theorization, rather than limiting intelligence to surveillance while making it into a total social fact (Castagnino, 2018), all energies and disciplines must be deployed to provide empirical support for the available analyses.

2. A five-part dossier: disparate disciplines and approaches, original research

Via four case studies, the present dossier thus aims to show that in France, Europe and Africa, population surveillance remains marginal and is by no means a symbol of the intelligence system.

The introductory epistemological analysis by Pierre France marks, in our view, a genuine turning point in a highly toxic state of affairs. It challenges the reflexes of lazy thinking, including that of academics, journalists and police officers, among whom the denunciation of a conspiracy theory constitutes a minimal point of convergence, often driven by the primal urge to defend their personal territory. Against different currents claiming to provide evidence of a conspiracy theory, Pierre France demonstrates the limits of culturalist, functionalist and objectivist interpretations. Seeking to understand the position of an epistemic community whose social theorizations emerge through a process of mutual feedback, the author demolishes the belief in a unified theory. Rather, he suggests that conspiracy stories surface simultaneously through rumour and panic. In doing so, he challenges the idea of a purported golden age of conspiracism that heralds, through an induction effect, a second age of conspiracism in the era of social media. Excessive psychological and individual focus on the figure of the conspirator or conspirators represents a further risk, that of implicitly directing analysis towards a pathologization of individuals, or even exposing population groups to the threat of collective victimization. The author also denounces a widespread tendency among journalists who believe themselves immunized from such deviance by stigmatizing the doublespeak of all authorized spokespeople in the public sphere. The converging professional attitudes of investigative journalists and intelligence officers who ascribe to themselves the formal vocation of exposing conspiracy theories or fake news could become a new and salutory object of scientific investigation if the conspiratorial impulses linked to the spread of disinformation were to diffuse across all sections of society. The task in such case, according to the author, would be to develop a new programme of political sociology based on quantitative and qualitative research around the “conspirasphere”, its imagined world, and the actors most familiar with political destabilization techniques. Without belittling the role of specialized government services in combating conspiracism, the revelations stemming from this programme might well confirm a reality that has remained relatively unutterable up to now: the existence of layers of objective convergence between actors more prone to demonizing each other than to seeking greater compatibility between the cognitive and material tools at their disposal in the fight against conspiracism. It being understood that absolute transparency is never a desirable goal for a democracy, even a perfectible one.

And this is the very point made in Virginie Gautron’s article, extremely rigorous in its grasp of the arcane functioning of what remains of our État de droit (rule of law), notably since the recent state of emergency (2017-2018). With no disloyalty to her explicit defence of citizens’ rights fragilized by the phenomenal increase in state-
funded police intelligence gathering methods, Virginie Gautron describes the practically unwinnable battle between David and Goliath: defenders of human rights against advocates of legalized storage of all personal data. She argues that oversight is a veritable facade, and that faced with the weakness of bodies such as the French data protection agency (Commission nationale de l’informatique et des libertés, CNIL), and the hesitancy of administrative jurisdictions, any hope of a rebalancing of forces must come from the the European Court of Human Rights (ECHR). She also explains that when investigating how data files held by the six inner-circle French intelligence agencies are actually used, legal scholars’ difficulties in gaining field access do not necessarily reflect an a priori police suspicion that they are looking for evidence of discriminatory police misconduct. Drawing upon abundant research material and an analysis of the how the actors of justice, the enlightened doctrine and the independent authorities enter the fray, she shows the ever-increasing capacity of police memory to gather information on an indefinite number of suspect population categories. As “victims”’ demand for security becomes insatiable, the political responses, limited to checks that the police files do indeed correspond to a security objective, give them little satisfaction, The alleged threat posed by suspect, menacing populations, presented as dangerous or vulnerable, is increasing continuously, while the traditional categories applied by the administrative and criminal police are becoming blurred. This classic distinction is becoming less heuristic and pragmatic, with concerns for operational efficacy receiving a more attentive political ear than any protests about the threat to basic freedoms. This is even reinforced by the diffusion among the elites of a belief in the algorithmic predictions fostered by the mercantile dissemination of tools supposedly capable of helping the police to detect the weak signals that betray the existence of hotbeds of risk or danger, before they even emerge.

Pierre Berthelet, a legal scholar specialized in European law enforcement and security institutions, tends to agree with Virginie Gautron’s relative optimism as to the role of the ECHR in controlling abusive policing practices in European member states. In his highly documented analysis of Europol, the European law enforcement agency, he argues that its progressive institutionalization and rooting in the European institutional landscape have, up to now, been a good indicator of the solid construction of a European rule of law, under the scrutiny of a Parliament eager to play its role in drawing up the rules of governance, as testified by Europol’s transparency, improved oversight and accountability. But the author has now tempered this apparent initial idealism born out of hopes that a coordinated law enforcement structure would establish a strong foothold. For Berthelet, major environmental and internal shifts threaten to slow down, if not halt, the mechanism driving the virtuous cycle of secret service cooperation. He documents two of the most problematic changes in European intelligence cooperation. First, he argues, based on the disparate information at their disposal, the administrations that supply intelligence have different understandings of the threats to be countered. Second, the mass computerization of their own data, as part of the big data revolution, have obscured the mechanisms of decision making, while interoperable computer systems tend to foster a headlong rush to protect increasingly uncontrollable data. Berthelet points up other dangers linked to Europe’s practical institutional architecture that threaten to take Europol out of parliamentary control. In the footsteps of Pollitt, he cites the mechanisms of agencification specific to the decentralized governance of the European Union. This barbaric term also applies to Europol, which could end up becoming an empty shell, formally overseeing inter-
agency cooperation that is much more difficult to control in practice, with the structure becoming increasingly emancipated from its original custodian.

In line with a fertile research tradition of contextualizing recourse to states of emergency in historical circumstances where political regimes felt weakened and under threat, the fortuitous discovery of archives detailing an aborted project provides an excellent opportunity for historians of the rule of law to revisit the political history of a destabilized regime. What new insights might we obtain about the 2015 reform of the intelligence services (law of 24 July) in France, and the liberticidal security measures taken under the state of emergency declared in November 2015 in light of this newly discovered project to redefine the legal foundations of the state of emergency after the crisis of 1968? Sébastien Le Gal’s study of the project, entrusted to the Armed Forces Central Command (État-Major des Armées) and abandoned in 1971, sheds valuable new light on this question. Revealing the political genesis of the project, the strategic benefits and the institutional constraints encountered by its authors, Sébastien Le Gal concludes by asking whether democracies have the capacity to anticipate measures for thwarting future hostile attempts to destabilize the regime in place. He seems to think not, providing support for the hypotheses formulated by other political scientists, whereby a state of emergency can only be the consequence of legislation adopted by a political class in a state of panic.

Is it possible to delve further into the ‘black box’ of an intelligence service and to more fully objectify its practical relationship with the political world? This is the challenge taken up by the Africanist anthropologist Jean-Pierre Bat and his colleagues in their ground-breaking study. Their innovative research describes the routine operation of the Documentation and Security Division (Direction de la documentation et de la sécurité, DDS), set up in Chad by its president, Hissein Habré, in the 1980s. The retrospective insights it provides are remarkable. Not only was the research team able to access all of the Division’s internal documentation thanks to circumstances linked to Hissein Habré’s trial before the International Criminal Court (ICC), but they also succeeded in matching these archive data against the testimonies of informers who collaborated directly with the DDS. The portrait that emerges of this nascent bureaucracy of secret in post-colonial Africa cannot be attributed solely to its ties with the system of terror set up to deal with opponents of the regime. The study focuses above all on the long-term impact of techniques aiming to strengthen the grip of this new Division through training and acquisition of know-how by its actors, the informers eavesdropping on Chadian society. The aim was to gather intelligence and spread terror to prop up a dictatorial regime; but in this context as in others, while dictatorships end, the tools of repression and intelligence live on. Before addressing the question of how intelligence institutions become institutionalized, some blinkers must first be removed.
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AUTHORS

FRÉDÉRIC OCQUETEAU
Directeur de recherche CNRS, Centre de recherches sociologiques sur le droit et les institutions pénales
Immeuble Edison, 43, boulevard Vauban, 78280 Guyancourt
ocqueteau[at]cesdip.fr

SÉBASTIEN-YVES LAURENT
Professeur à l’Université de Bordeaux, CMRP-IRM
sebastien.laurent[at]u-bordeaux.fr