RISK, INSURANCE, SECURITY
EWALD'S HISTORY OF THE WELFARE STATE

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François Ewald's *Histoire de l'état providence*, published here for the first time in English, offers an arresting historical account of the birth of the welfare state in France. The book traces the slow and laborious process by which a liberal juridical regime of fault and personal responsibility, embodied in the 1804 Civil Code of the French Revolution, was displaced by the hitherto unknown technology of social insurance and how this technology provided the blueprint for the twentieth-century welfare state. It shows how the apparently mundane problem of workplace accidents assumed monstrous proportions as the nineteenth century wore on and how the sheer scale of injury, on a par with the massification of industry itself, eventually overwhelmed the capacities of liberal jurisprudence. The book, in Ewald's words, aspires to be three things: a social history of the welfare state, a philosophy of law, and a sociology of risk.[1] Together, these three perspectives give shape to a genealogy, in the Foucauldian style, of social security—the idea that the multiple accidents befalling citizens in and beyond the workplace can be collectively accounted for and managed through the selective redeployment of the much older practice of insurance. As such, the book's interest extends well beyond the specific history of the French welfare state, whose trajectory was reproduced in slightly different form around the world, to throw light on the general process by which risk was first identified as a target of power and subsequently collectivized in the form of social insurance.

Ewald's magnum opus was born out of a collective research endeavor inspired by his thesis supervisor, Michel Foucault, and nurtured in the context of a private reading group made up of Foucault's doctoral students. The tone was set by Foucault's Collège de France seminars of the late 1970s, where he first drew attention to the problematic of "security" as it arose in the large commercial cities of eighteenth- and nineteenth-century Europe. Here he identified a form of power distinct from both the politicotheological framework of sovereignty and the normalizing focus on bodies he had explored

in his study of the prison, *Discipline and Punish*.[2] It was in the eighteenth century, Foucault suggested, that states were for the first time confronted with the problem of managing and regulating the circulation of people, merchandise, and money, at a distance and by approximation, and in the process, began to apprehend their citizens in statistical and probabilistic terms—that is, as a population rather than a sovereign body or collection of subjects.

The subsequent shift in focus from territory and bodies to population demanded an entirely new mode of governing. Where "sovereignty capitalizes a territory" and "discipline structures a space and addresses the central problem of a hierarchical and functional distribution of elements," "security will try to plan a milieu in terms of events or series of events or possible elements, of series that will have to be regulated within a multivalent transformable framework. The specific space of security refers then to a series of possible events; it refers to the temporal and the uncertain, which have to be inserted within a given space."[3] In this particular passage, Foucault focuses on the aleatory and probabilistic dimensions of population science, the forms of projection that attempt to discern the possible, future events that might befall us; elsewhere, he shows how this horizon of events becomes knowable at an aggregate level through the collection of statistical data and how this demographic information opens up the possibility of *normalization*, the prediction or production of population-level equilibria. In Foucault's words, the "mortality rate has to be modified or lowered; life expectancy has to be increased; the birth rate has to be stimulated. And most important of all, regulatory mechanisms must be established to establish an equilibrium, maintain an average, establish a sort of homeostasis, and compensate for variations within this general population and its aleatory field. In a word, security mechanisms have to be installed around the random element inherent in a population of living beings so as to optimize a state of life."[4] These technologies originally derived from the practice of commercial insurance, and yet they were widely and increasingly adapted by states throughout the eighteenth and nineteenth centuries as a way of managing population risks.

The elements were there for a genealogy of social security, but as was often the case with his seminar series, Foucault soon abandoned the problematic of security in favor of newer interests, leaving behind a profusion of tantalizing, half-finished research projects for others to work with. Several of the students in his private seminar took over where Foucault left off and went on to develop much more extensive studies into the history of social insurance. Much of this work began on commission, when the French Labor Ministry approached Foucault's partner, the sociologist Daniel Defert, to deliver a series of studies on

the history of workplace accidents and their management.[5] Defert then contracted a handful of Foucault's students, including Ewald, to help conduct the research. The first report, submitted in 1977, bore the title *The Socialization of Risk and Power in Companies: History of the Political and Juridical Transformations Permitting the Legalization of Professional Risks* and announced the arrival of a concept, social insurance, that would soon become central to the research endeavors of Foucault's students.[6] Building on this excavation work, Foucault's students went on to publish a series of major monographs dealing with the history of social welfare and its correlative concept of risk. Jacques Donzelot's study *The Invention of the Social: Essay on the Decline of Political Passions* appeared in 1984.[7] In 1993, Giovanna Procacci published her doctoral thesis under the title *Governing Misery: The Social Question in France, 1789–1848*.[8] And although he was not a student of Foucault's, the sociologist Robert Castel contributed to this collective research enterprise with the 1981 publication of his *La Gestion des risques*, a study on the displacement of "dangerousness" by "risk" in the management of psychiatric patients.[9] But it was undoubtedly Ewald who delivered the most sustained and important inquiry into the problematic of social security as the guiding framework of the twentieth-century welfare state. Indeed, Ewald claims to have been the first among Foucault's students to have identified the importance of the concepts of social insurance and risk and the first to have illuminated the complex trajectory from commercial insurance to the twentieth-century welfare state.[10] Ewald's doctoral thesis, "Risque, assurance, sécurité," focused precisely on this trajectory. The thesis was defended in 1986 and published in book form the same year, with the title *L'État providence*. A shorter, more concise version, titled *Histoire de l'état providence*, followed ten years later, and it is this version that we have chosen to translate here.

It was in the course of his work for the French Labor Ministry that Ewald came across a piece of legislation—the 1898 law insuring workers against industrial accidents—that would completely reorient his research interests over the next decade. The law came into being after half a century of fractious court battles pitting employers against workers over the question of who should pay for workplace injuries. As the century progressed, it became increasingly obvious that the Civil Code of 1804 was unable to accommodate the sheer scale of the problem. For most of this period, the legal system appeared to be weighted against workers. The configuration of accidents as a problem of tort law meant that workers needed to arraign employers before the courts if they wanted to seek redress for workplace accidents. This in itself posed a significant obstacle to workers who struggled to find the means to cover expensive

court proceedings. But more than this, the very rationality of tort law proved inimical to the management of workplace accidents. The tort law provisions of the Civil Code entailed a highly restrictive understanding of civil liability according to which the personal fault or negligence of the employer had to be proven before compensation could be awarded for damages. In many cases, the chain of causation linking the worker, the employer, and the machine was much too diffuse to merit any personal assignation of responsibility, thereby precluding the award of damages and leaving workers with no means of assistance. The need to determine fault or negligence in order to justify compensation all too often proved a hopeless endeavor in the midst of multiple chains of command and a complex industrial machinery.

Toward the end of the century, the courts strove to redress the balance by extending the scope of negligent behavior and pushing at the limits of causation. Matters came to a head in 1896 when, in the landmark Teffaine case, the Cour de Cassation or Appeals Court ruled that employers should be held liable for any injury caused by things in their possession.[11] Referring to article 1384 paragraph 1 of the Civil Code, the court ruled that French law did in fact recognize some notion of strict liability, implying that fault no longer needed to be proven for the employer to be impugned.[12] All of a sudden, the balance of powers seemed to have shifted in favor of workers, and the scene was set for a flood of litigation. Instead, the French Parliament stepped into the breach and proposed an entirely new mechanism for dealing with the problem, one that would dispense with the courts altogether and save both employers and workers the effort of engaging in lengthy litigation. With one stroke, the 1898 law on workplace accidents overrode the juridical framework of the Civil Code and replaced it with a statutory regime of socialized insurance: workers would now be automatically compensated for "professional risk," encompassing both accidental injury and work-related illnesses, and employers were instructed to create insurance funds to finance the costs. The state, via the use of mandated insurance funds, would now take charge of compensation and thereby ensure workers of adequate and timely redress in the event of an accident. The uncertain and costly route to compensation via the courts was replaced by a system of socialized security that would dispense with the need to adjudicate responsibility and prove fault. The same principle would later be extended to a multitude of other risks, from unemployment to old age.

With the passage of this law, Ewald discerns the birth of a new technique of power—"normalization"—and an entirely new kind of legality—"social law." As the operative logic of the welfare state, "normalization" denotes the

redistribution of risks within the limits of the nation and (we might add) the family wage.[13] "Normalization," in this context, no longer refers to the disciplinary standardization of bodies and minds around an anatomical or psychological norm but rather refers to the pooling of risks in the interests of social protection. This practice, Ewald contends, will give rise to an entirely new body of law—one that is embodied in the administrative corpus of workers' compensation statutes, social security legislation, occupational health and safety laws, road safety rules, manufacturing standards, and product regulations. Where Foucault refers to the same developments as indicative of a broad process of "juridical regression," Ewald offers a rather more nuanced picture of the "evolving status of law."[14] At stake here, he notes, is not the marginalization of the "juridical" as such (which Foucault at times seems to conflate with the sovereign mode of power) but rather the displacement of an essentially liberal order of private law, embodied in the tort and contract provisions of the Civil Code, by an entirely new order of law, which can be usefully characterized as "social" and solidaristic.[15] American legal scholars refer to a similar transition from nineteenth-century contract and tort law to twentieth-century administrative law.[16]

As Ewald's history reminds us, the framework of social law was very often promoted by social reformers and business interests as a way of containing the threat of revolution. It would later be denounced for the very same reason by some but not all Communist unions.[17] And although Ewald himself at times seems to confirm this reading, elsewhere he offers a more complex picture of workers, employers, and the state locked in an ongoing battle to define the terms and scope of social insurance.[18] As Ewald notes in the final passages of his monograph, the 1898 law was at best a "Pyrrhic victory" for employers because it left the door wide open for an expropriation of social insurance practices by the union movement. By the end of the nineteenth century, social insurance had become "the form, the instrument, and the stakes" (chapter 9) of political struggles between workers, employers, and the state.

This observation would be borne out by the subsequent history of workers' struggles, although Ewald himself does not pursue his investigation beyond the primordial moment of 1898. In the late 1920s, for instance, Communist, Socialist, and Catholic unions locked horns over the question of whether to support a new social insurance initiative on the part of the state and, if so, with what margin of control by the unions.[19] In the late 1930s, the leftist Popular Front embarked on an extraordinary program of social legislation, hoping ultimately to implement a worker-controlled national insurance fund and pension scheme. This ambition was cut short by the collapse of the Popular

Front in 1938, but it would be implemented, on less favorable terms, by the technocratic government of the post-Liberation period.[20] Later in the twentieth century, the availability of a relatively generous system of social protection was widely blamed for the social unrest and stagflation crisis of the 1970s, when workers were able to push up wages in a context of high unemployment. The French sociologist Michel Crozier was one of three international contributors to the Trilateral Commission's 1975 report, *The Crisis of Democracy*, which identified overly generous welfare programs as a source of social revolution.[21] And with the arrival of persistent unemployment and structural changes to the labor market in the 1980s, new social insurance movements for the long-term unemployed and performing artists have sprung up outside the traditional trade unions.[22] In short, it would be difficult to nominate any significant moment in twentieth-century labor history and beyond, when the question of social insurance was *not* in play. Social insurance never proved to be the antidote to revolutionary struggle that nineteenth-century social reformers (and perhaps Ewald) had hoped for.

From the Accident to Risk

Ewald's approach to the question of liberalism is an unfamiliar one, oriented more toward the question of security than wealth and property rights and guided more by the legal history of tort than contract law. Dispensing with the habitual focus on the sovereign subject or the possessive individual, his first insight is to suggest that the problematic of the accident plays a constitutive, even providential, role within liberal philosophy. With the decline of theological doctrines of fate, he observes, liberalism not only recognizes the inevitability of the accident as a fact of life, common to rich and poor, but actively celebrates its role in adjudicating differences of fortune. Thus, Ewald discerns a distinct moral philosophy at work within liberalism. According to its terms, we are all equally subject to the uncertainty of fate, yet we are individually differentiated by our ability to respond to and capitalize on this uncertainty. The blows of misfortune may be beyond my power, but I alone bear responsibility for anticipating and preparing for them. In this way, the accident serves as a test of foresight and prudence; by revealing an individual's willingness and capacity to confront the inevitable misfortunes of life, it also decides his or her worth. "Each is, should be, is supposed to be responsible for his or her own fate, life, destiny" (chapter 1). But for this reason also, the actual distribution of misfortune appears as an irrevocable judgment and an expression of natu-

ral justice—an act of God. According to this conception of things, poverty can only be a mark of personal failure, just as wealth represents the natural reward of those who have exercised foresight.

As a moral philosophy of the accident, Ewald claims, classical economic liberalism finds its exact juridical translation in the Civil Code provisions on civil liability. The French Civil Code of 1804 contains two categories for understanding the problem of civil liability—contract and tort law. Contract law recognizes liability when a defendant has failed to observe implicit or explicit obligations specified in a contract, while tortious liability arises in cases where general rules of conduct, imposed by statute, regulation, or case law, have been breached. Given the way in which work accidents were treated in France, Ewald's specific focus is on the Civil Code provisions on tort, in which fault and personal responsibility play a determining role. Article 1382 of the Code specifies that "any act of man which causes damages to another shall oblige the person by whose fault it occurred to repair it." In other words, the plaintiff must prove a direct line of causation between an individual act and a provable injury to establish a case for civil liability. In order to be awarded compensation, the plaintiff must convince the court that someone is at fault, although the fault in question can extend from deliberate acts to cases of imprudence or lack of foresight. Thus, article 1383 specifies that "one shall be liable not only by reason of one's acts, but also by reason of one's imprudence or negligence."

But beyond this homology between economic liberalism and tort law, Ewald also identifies an intellectual affinity between the liberal philosophy of the accident and the calculus of probability. It is hardly surprising, he notes, that both forms of reasoning emerged around the same time. Both understood the accident as subject to a kind of natural lawfulness: left to itself, it was assumed, the apparent disorder of free wills and chance encounters would generate an order of its own. It is ironic then that the workplace accident would ultimately test the limits of liberalism's capacity to govern. As workplace accidents took on industrial-scale proportions as the nineteenth century progressed, both the moral doctrine of personal responsibility and the juridical doctrine of tort law proved inadequate to the task of governing industrial relations. Tort law may have been sufficient for dealing with accidents as long as the relationship between the plaintiff and the defendant was one of direct personal dependence, as in the domestic household or the small artisanal workshop. Here at least it was possible to establish direct causal relations between the act of the defendant and the wrong suffered by the plaintiff. But as work shifted to the industrial shop floor, it was often impossible to

assign fault for any one incident. By mid-century, the accident of unknown cause had emerged as an apparently insuperable obstacle to the proper compensation of workers. Unless it could be attributed to a precise causal agent, the accident was legally equivalent to an act of God, without recourse or hope of compensation. As a consequence, the worker very often ended up assuming the costs of his or her own welfare, even when the injustice of the situation was patently visible.

A first solution to this problem came in the form of paternalism, the uniquely French system of patronage that was conceived as a means of alleviating the peculiar social insecurities generated by liberalism without empowering the workers against their masters. Famously outlined in Le Play's *La Réforme sociale en France* (1864), the social economy of paternalism represented a corporatist and socially conservative attempt to remedy some of the crude injustices of the industrial workplace. This it hoped to achieve by recreating the imagined dependencies of the feudal household in the context of large industry. Emerging in the first few decades of the nineteenth century, the system of patronage replaced the liberal understanding of the labor contract as a simple exchange of commercial services with a morally charged relationship of mutual obligation. The term *patron* was itself a self-conscious reference to the paterfamilias of the feudal household economy: no longer a mere contractor of services, the *patron* was imagined as a benevolent master responsible for both the labor and well-being of his workers and dependents. The trade-off was strategic. The *patron* agreed to take sole charge of his worker's welfare, relieving him of the burden of personal responsibility, but in exchange prohibited any kind of solidaristic alliance among workers and any kind of state intervention in the workplace. The paternalist welfare regime was astonishingly ambitious: it extended from the care of injured and retired workers to the construction of schools, clinics, and parks for the worker's dependents. Entire factory towns such as Creusot and Mulhouse were built on the paternalist model and thought to be immune from worker unrest. But the failure of this model became clear when a massive strike broke out at Creusot in 1870. Paternalism, it now seemed, was not capable of stemming the tide of worker discontent.

Another solution, arising within the case law of the courts, was to push tort law to its limits and extend it well beyond the original intentions of the Civil Code. In this way, the French case law of the late nineteenth century ended up recognizing the concept of strict (that is, no-fault) liability for "things in one's possession." Hence, an employer in possession of a complex machinery could in principle be rendered liable for workers' injuries through the mere fact of

ownership. But although this solution had the merit of widening the scope of legitimate injury, it didn't dispense with the slow and costly process of litigation.

As such, the extension of strict liability to workplace accidents signaled the exhaustion of tort law itself as a reliable means of dealing with the risks of mass manufacture. The sheer regularity of workplace accidents overwhelmed the heuristic of fault, suggesting as it did that accidents were not rare or exceptional events but rather simple facts of industrial life—regular, routine, and to be expected. In this context, it no longer made sense to conceive of the injury as an accident, a punctual event interrupting the normal laws of nature; rather it began to assume the qualities of a statistical regularity, an event whose likelihood could be calculated in probabilistic terms—that is, as a function of risk. More than this, the phenomenon of the industrial accident seemed to suggest that most causes were too complex to be known or blamed on any one individual. The incorporation of muscles, metal, wood, and stone into a complex automatic machinery meant either that no one was responsible for any one incident or that all were potentially responsible for the accidents suffered by others. In any event, the question of assigning fault was now redundant. If the workplace injury was both a normal part of industrial experience and a risk factor referable to a statistical series rather than a punctual accident, then it needed to be managed in a routine and collective fashion. At this point, French legislators turned to an instrument that many employers were already using as a means of covering the costs of court-awarded damages to injured workers—that of insurance. Having originated as a commercial innovation, insurance had acquired an increasingly social function in the course of the nineteenth century. When they ratified the French law on work accidents of 1898, French legislators completed this evolution by assigning to the state the function of insurer of last resort and designating workers as the holders of a collective insurance policy vis-à-vis the state. This was the first step toward the development of social insurance—the idea that the state should underwrite the ensemble of "social risks" incurred by its citizens, ensuring the general social security of its policyholders in the event of economic loss.

The route from commercial to social insurance was by no means preordained. As Ewald reminds us, the speculative logic of insurance was for many years much more prominent than its potential actuarial functions. From its first widespread commercial use in fifteenth-century Genoa, insurance was much more closely associated with games of chance and wagers than with the virtue of collective foresight. The first insurance contracts were negotiated between traders, who were looking for a way to hedge against the danger of

cargo loss, and merchants, who anticipated that profits were to be made by exploiting the need for financial protection among a sufficiently large population of clients. Tellingly, the word "risk" derives from the early modern Italian *risco* (reef), which in turn references the ever-present danger of shipwreck that confronted traders in their travels to the New World. The word encapsulates the technical innovation of early insurance contracts, which drew on the established probabilistic logic of gambling but applied it for the first time to the practical question of how to compensate for economic loss while making a profit. The concept of risk thereby acquired a very specific meaning at the interface of the economic and the mathematical: more than a simple calculus of probability, it came to designate the future likelihood of an event as it related to a specific stock of capital. And more than a punctual accident or roll of the dice, risk was understood to be collective by its very nature, since the insurer's calculus was based on the intuition that profits could be made only as long as risk was shared. Hence, the three features of risk as defined by Ewald: risk belongs to the future, yet is calculable in probabilistic terms; risk is always collective in nature, a quality of populations; and risk translates all loss into a capital loss.

A further step toward social insurance was made with the development of social statistics in the nineteenth century. Here the sociologist and mathematician Adolphe Quetelet (1796–1874) played a key role. Quetelet, whom Ewald sees as a much more perceptive analyst of the social than Auguste Comte, set out to develop a systematic theory of the "average man," using the combined methods of probability theory and statistics and applying them to historical data on all aspects of human behavior. His treatise on social physics brought to fruition a project that had been foreshadowed by Condorcet and Laplace but that hitherto had floundered on the paucity of available statistical data.[23] When Quetelet began this work, he had few resources to draw upon other than the mortality tables used by life insurance companies. Later, he was able to collect much more extensive population-wide data from state administrators on birth and mortality statistics, criminal prosecutions, and disease. Quetelet himself was instrumental in pushing for the establishment of government statistical bureaus and standardized practices of state data collection through his work with the International Statistical Congress.[24] This process of bureaucratic scale-up would prove invaluable to the project of social insurance. Only once the state had developed the means to consult longitudinal data on its own populations was it able to make reliable predictions about the demographic future and thus take on the role of social insurer. The availability of vast, standardized pools of demographic data made the technique of insur-

ance amenable to the needs of the state and turned what was often a speculative undertaking for both insurer and insured into a sound actuarial practice. Insurance would henceforth be reimagined in solidaristic and actuarial terms as a form of mutual protection and would give rise to the idea that "social security" should form the horizon of state intervention.

In France as in many other countries, the promulgation of a first law on workplace accidents led, within a few decades, to a gradual broadening of social insurance to include provisions for old age and illness, along with an extension of coverage beyond the worker to his dependents. This trajectory, as Ewald points out, was one that would be replicated by countries across Europe, sometimes considerably earlier and sometimes much later. As is well known, Imperial Germany was the first to introduce a comprehensive system of social welfare in the 1880s, when the conservative chancellor Otto von Bismarck pushed through a series of laws insuring against workplace accidents, sickness, and old age in an effort to stave off the threat of socialism. Louis-Napoléon Bonaparte had advanced a similar proposal in France as far back as 1850. At the time, however, the political landscape in France was not ripe for such large-scale interventions on the part of the state, and it was not until 1898 that a first form of social insurance—namely, workers' compensation—would be adopted. Some three decades later, on April 5, 1928, and April 30, 1930, France implemented a social insurance system extending beyond the workplace to cover the multiple risks of old age, sickness, maternity, death, and disability.[25] After World War II, William Beveridge set the stage for the creation of the postwar welfare state in Great Britain: his report *Social Insurance and Allied Services* (1942) called for the creation of a universal welfare system financed by taxes and eschewing all invidious distinctions between the working and nonworking poor. Rising to the challenge, France followed suit. France's law no. 46–1146, passed on May 22, 1946, created a universal system of social insurance combining elements of the Bismarckian (contribution-based social insurance) and British (universalist) welfare state and guaranteeing all French people the right to "social security."[26]

In North America, too, the prehistory of the New Deal state lies in the late nineteenth-century encounter between the industrial accident and classical tort law. John Witt, whose *Accidental Republic* traces a North American history of industrial accidents in many respects parallel to Ewald's history of France, explains how in the American context, the pervasiveness of the free labor doctrine and employment at will made the transition from tort law to social insurance particularly difficult.[27] Like the French Civil Code, the American common

law of contract and tort held that the parties to a contractual exchange of service had entered into a relationship at will and were therefore liable for any harm that might befall them in that context. Only if fault or negligence on the part of the employer could be directly proven was it possible to lay a charge against him. Here, as in France, the problem was that most industrial accidents could not readily be attributed to a single causal agent. As the jurist Oliver Wendell Holmes remarked, the peculiar conditions of industrialization appeared to have created a special kind of legal category—"the nonnegligent victim of nonfaulty harm"[28]—for which tort law had no answer. Workers at first responded to this conundrum by creating their own forms of mutual aid and cooperative insurance. Based on the principle of voluntary participation, these institutions offered them some hope of compensation without derogating from the principles of self-ownership and contractual freedom. With the scale-up of industry in the early twentieth century, however, and with the rise of a doctrine of scientific management, a new generation of managers resorted to the technique of collective workplace insurance as the most efficient means of dealing with the problem. This capitalist-welfare regime of social insurance moved from the shop floor to entire industrial sectors before it was enshrined in workmen's compensation statutes across multiple American states. With the passage of the Social Security Act in 1935, the workmen's compensation model was extended to old age and unemployment, and social insurance became the guiding principle of the New Deal welfare state. As noted by Witt, not only had many of the architects of the Social Security Act, including Franklin Roosevelt, cut their teeth on workmen's compensation, the actuaries who were hired to flesh out its details "had introduced their techniques to American audiences largely through descriptions of the seemingly inevitable onslaught of industrial accidents."[29]

What the English-language literature nevertheless brings to the table—and what is entirely absent from Ewald's account—is a sense of the selective nature of risk protection under the early social insurance state. The question of how to prevent, redistribute, and compensate social risks was from the very beginning predicated on the conception of the white workingman as full-time breadwinner and "contributor"—hence deserving recipient of risk protection. The insurance protections offered to other workers were typically much more partial and conditional, if not entirely absent. Some four decades after the publication of Ewald's monograph, we now possess a vast literature on the gendered and racial boundaries of the mid-twentieth-century British, American, and French welfare states.[30] Importantly also, this literature helps us to

understand how the expansion of social protections that took place in the 1960s and '70s, often under the impetus of new social movements, was a central focus of the subsequent backlash against *welfare in general*.

After Social Insurance?

Ewald's *History of the Welfare State* has had an unusual reception in the English-speaking world. It is the only significant monograph produced by Foucault's students to have frontally addressed the role of labor in the formation of the welfare state, and it is one of the few outputs of this circle to have remained without translation.[31] Arguably, however, it is Ewald who has inspired some of the most nuanced and fruitful English-language investigations into the relations between risk, law, and governmentality.[32]

Today, many will be interested in Ewald's work precisely because of the intervening history of sustained assault on the welfare state. Ewald's *History of the Welfare State* was published at a time when the right was intensifying its ideological attack on the welfare state, in France as in the United States, although the actual erosion of postwar social rights would arrive somewhat later in France.[33] What has become then of the project of social insurance? There are few clues to this question in Ewald's subsequent oeuvre. Although Ewald has consistently explored the rise of new understandings of risk and new techniques of risk management, particularly in relation to environmental disaster, there is no hint in his later work as to the evolution of the welfare state after the publication of his magnum opus. From the very first edition of *L'État providence*, Ewald observed that the project of social security had perhaps reached its limits with the rise of new postindustrial and environmental disasters such as Chernobyl and global warming. Reprinted in English translation as "Two Infinities of Risk," this chapter (not included here) warned that the new generation of ecological risks could not be managed in the same way as the industrial and social risks of the mid-twentieth century.[34] By virtue of their diffuse, cross-border, and often self-replicating qualities, such risks were radically unknowable, resistant to the probabilistic logic of prediction, and thereby uninsurable. The framework of (national) social insurance appeared to have reached a natural and technological limit. But what does Ewald make of the parallel claim that the welfare state itself has exhausted its usefulness, a claim that was becoming hegemonic at the time Ewald was completing his book?[35]

To understand this latest chapter in the history of social risk we need to look to other theorists. In his *Great Risk Shift*, the American sociologist Jacob

Hacker attributes the growing insecurity of the American worker to several decades of neoliberal reform intent on undoing the multiple social protections built up since the New Deal. The assault on social insurance, Hacker tells us, was inspired by the neoliberal critique of "moral hazard"—the idea that too much social security would encourage irresponsible behavior and generate "perverse effects" among its beneficiaries.[36] First popularized by the Virginia school public choice theorist Mark Pauly, the "moral hazard" argument resuscitates the classical liberal idea that we should all assume personal responsibility for the multiple hazards of everyday life, from workplace accidents to unemployment and illness, and assigns a new value to the private law of tort and contract.[37] Drawing on Hacker's general insights, a number of scholars have traced the specific impact of the Chicago school "law and economics" tradition on both the discipline and practice of law. Pat O'Malley, in particular, who has done much to extend Ewald's project in English, traces the rise and fall of social insurance principles in administrative law and the recent return to fault-based principles of personal responsibility.[38] Thomas McGarity explores the political implications of this shift, pointing to the multiple ways in which neoliberal policy actors have managed to undermine the consumer and environmental protections built up after World War II.[39] These are just some of the most pertinent studies to have taken up Ewald's project at the point where it tapers off.

The intellectual inspiration behind this attack on social insurance would have been familiar to Ewald.[40] In France in 1978, Henri Lepage published his *Demain le capitalisme*, a book that methodically introduced French readers to the various schools and intellectual currents within American neoliberalism. In the Collège de France seminar series that he delivered in 1978 and 1979, Foucault drew extensively on Lepage's exegesis of the new American liberalism to present what he saw as a new diagram of power. Foucault was in no doubt that the arrival of a neoliberal mode of government, seemingly confirmed by the election of Margaret Thatcher in 1979, represented a watershed moment in the history of postwar liberalism and a turning point in his own thinking. Faced with an articulation of power that was more concerned with the expression of difference and the incentivization of choice, he observed that the concept of the "norm" and the practice of "normalization" were perhaps no longer as pertinent or as all-encompassing as they had once been.[41] The point was reiterated by Ewald in a retrospective essay on Foucault's late work.[42] If risk had become "uninsurable," the concept of the social norm was itself in decline.

Today, the question of Foucault's political and epistemological relationship to neoliberalism is the subject of intense controversy.[43] Ewald's own trajectory from Maoist militant to Foucauldian scholar and finally to state bureaucrat has been well documented.[44] After failing to receive a post at the École des hautes études en sciences sociales, Ewald moved out of academia into the French Federation of Insurance Companies, where he became close to such figures as Claude Bébéar, the founder of AXA, and Denis Kessler, former vice-chairman of the MEDEF (Mouvement des entreprises de France), France's premier federation of employers. In the early 2000s, Ewald, with his intimate understanding of welfare state history, served as adviser to the MEDEF during its campaign to roll back French social protections.[45] It was during these years that Ewald revised his own perspective on the politics of risk: having meticulously demonstrated the failure of the classical liberal politics of the accident in his doctoral thesis, Ewald could now be found exalting the romance of uninsured risk and the limits of social solidarity. In a 2000 interview reflecting the state of his thinking on the question of welfare, Ewald remarked that "with salaried employment, we created a general status of dependence. Today, we are faced with the question of whether we have gone too far in this direction. For in practice, people try to maximize the protection they've been given; they arrange their situation and status so that they can make most use of the assistance they receive. Protective institutions have created forms of existence in which the weight of what insurers call 'moral hazard' can become preponderant. For example, is Social Security only a form of sickness insurance or rather an incitement to turn a myriad of life events into sicknesses?"[46] Here, Ewald's unselfconscious reference to the "moral hazard" argument marks a 180-degree turn from his earlier critique of liberalism.[47]

But whatever Ewald's later retractions and volte-faces, the value of his history of the welfare state remains undiminished. Here Ewald does not shy away from the power struggles that pitted workers against employers. Nor does he hide the fact that the politics of social insurance could be multivalent, sometimes harboring the threat of worker revolt, sometimes reclaimed by employers as a shock-absorber of conflict. Insofar as the neoliberal agenda takes "social insurance" as its primary target of attack, Ewald's history constitutes an invaluable lens into our present.