

ARTICLE

The War on Terror and Ontopolitics: Concerns with Foucault's Account of Race, Power Sovereignty

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ABSTRACT: In this article, I explore several of Foucault's claims in relation to race, biopolitics, and power in order to illuminate some concerns in the wake of the post-9.11.01 political regime of population management. First, what is the relationship between sovereignty and power? Foucault's writings on the relation between sovereignty and power seem to differ across his writings, such that it is not clear whether he had definitively circumscribed the role of sovereignty in relation to "power." Second, while central sovereign authority, at least in "*Society Must Be Defended*"¹ has been displaced by Foucault's analysis of power, the question still remains as to what drives or instantiates the exercise of power. I lay out an account of what I will call "ontopolitics," as one that foregrounds the role of sovereign authority in ascribing racial divisions. Moreover, these divisions are driven by cultural, social, and moral criteria that complement—or circumscribe—biopolitics and are inscribed at the level of the ontological, or onto-ethical.

Keywords: Foucault, race, race war, power, sovereignty, biopolitics, ontopolitics, War on Terror, Muslims, governmentality.

I. Introduction

Even in an epoch whose secrets can be illuminated by Michel Foucault's insights about power, race, and sovereignty, it is necessary to identify the limits of those insights so as to be able to assess other forms that racial divisions take. September 11, 2001, which marked several attacks against the symbols of United States financial and political hegemony, drew a series of responses from the United States government in the name of a "War on Terror." The new millennium ushered in an enormous terror-management industry, which included disciplinary and regulatory power among its technologies. Aimed to preempt terrorist acts and apprehend potential terrorists, the United States government² instantiated a series of laws, policies, and practices that constituted a "refreshed" political and legal paradigm of pre-emptive policing,

¹ Michel Foucault, "*Society Must Be Defended*": *Lectures at the Collège de France 1975-76*, translated by David Macey (New York: Picador Press, 2003).

² And to a lesser degree by various national governments in Europe and Asia.

violation of political and psychic protections and bodily sanctity.³ These included torture, incarceration, rendition, and juridical racial profiling. Many of the regulations governing these practices have successfully divided society along the lines of a new race of “Muslims” v. “Non-Muslims,” at once obvious and yet ambiguously defined. There was the near immediate creation, under the auspices of the Bush Presidential Administration, of the Guantanamo Bay Detention Facilities to hold newly labeled “enemy combatants.”⁴ Enemy combatants were to be considered distinct from prisoners of war, and correspondingly, would be treated outside of the norms of the Geneva Conventions. Over the next ten years, this camp would hold nearly 800 men of different nationalities,⁵ predominantly from “Middle Eastern” countries, primarily joined together by the single fact that they were Muslim, but considered to have in common that they were suspected of working in some capacity for an amorphous, widespread terrorist organization, Al Qaeda. Shortly before the creation of this camp, the United States Congress passed the USA PATRIOT Act,⁶ a bill authorizing one of the most sweeping set of surveillance and detention policies, ostensibly pertaining to “potential terrorists,” but in fact applied to Muslim men and women, to political dissenters of various stripes, and to the general population in anticipation of disrupting the state in some form. Some time thereafter, the US military invaded Iraq, and the global populace heard about tortures and other crimes committed in Abu Ghraib and Baghram prisons, and numerous countries around the world at the behest of the United States Government. The era constituted by these practices, notably marked by the “War on Terror,” connotes an epoch of fear and juridical and state-led violence against predominantly Muslim nations and politicized individual Muslims.

In what follows, I want to make some of the familiar events of the previous decade unfamiliar by considering the racialization of a number of the victims of the War on Terror. I explore several of Foucault’s claims in relation to race, biopolitics, and power in order to illuminate some concerns in the wake of the post-9.11.01 political regime of population management. In particular, I want to ask some questions regarding Foucault’s writings, and then make some related claims: First, what is the relationship between sovereignty and power? Foucault’s writings on the relation between sovereignty and power seem to differ across his writings, such that it is not clear whether he had definitively circumscribed the role of sovereignty in relation to “power.” Second, while central sovereign authority, at least in “*Society Must Be Defended*”⁷ has been displaced by Foucault’s analysis of power, the question still remains as to what drives or instantiates the exercise of power. Even if they are self-circulating, disciplinary and regulatory power still emerge or are instantiated by some source of authority. It seems imperative to augment the lens of sovereignty onto analyses of biopower in order to assess properly those forms of racism that occur alongside those inscribed through biopolitics, but on a different moral or ontological plane.

³ These policies were echoed in various ways by other European and Asian governments.

⁴ Later augmented by the distinction between “lawful” and “unlawful” enemy combatants in the Military Commissions Act of 2006 (S. 3930,) in an effort to circumvent *Hamdi v. Rumsfeld* (2004), a decision by the US Supreme Court to make the detention of enemy combatants unlawful.

⁵ Anon., *The Detainees*, *NYT: The Guantánamo Docket*. <http://projects.nytimes.com/guantanamo/detainees>

⁶ Public Law 107-56.

⁷ Michel Foucault, “*Society Must Be Defended*.”

It is my hope that the questions I ask with regard to Foucault's thoughts on power, sovereignty, and biopolitics will illuminate the need for a framework that can complement biopolitics, in order to highlight new forms of race and power that have emerged in the last decade. Finally, I will lay out an account of what I will call "ontopolitics," as one that foregrounds the role of sovereign authority in ascribing racial divisions. Moreover, these divisions are driven by cultural, political, moral—nonbiopolitical—criteria. They complement—or circumscribe—biopolitics and are inscribed at the level of the ontological, or onto-ethical.

II. The War on Terror: Race and Biopolitics?

Biopolitics⁸ is clearly an urgent lens by which to assess the political management that has taken place in the 20th century. As a regulatory technology,⁹ biopower's scope pertains to human beings as a species, and is deployed to divide populations along the lines of life and death. Biopower replaces the old sovereign right to "take life and let live" with a new capacity, "the right to make live and to let die."¹⁰ Biopolitics engages policies and processes pertaining to reproduction, fertility, health, and medical care,¹¹ as well as geography and climate,¹² using the mechanisms of statistics, forecasts, estimates, to organize—rather than discipline—men as species.¹³ Biopower functions as a

technology which brings together the mass effects characteristic of a population, which tries to control the series of random events that can occur in a living mass, a technology which tries to predict the probability of those events... This is a technology which aims to establish a sort of homeostasis, not by training individuals, but by achieving an overall equilibrium that protects the security of the whole from internal dangers.¹⁴

Whereas disciplinary power is a non-sovereign power,¹⁵ biopower goes beyond sovereign right.¹⁶ Together, disciplinary and regulatory power establish a link between the body and population, and correspondingly between knowledge and power.¹⁷

Even though biopower goes beyond sovereign right, it retains its effectiveness through the exercise of the capacity to kill. Death, once meted out by the sovereign, is now regulated through the mechanism of racism. As Foucault states, "racism is inscribed as the basic mecha-

⁸ I use "biopolitics" to refer to Foucault's framework of analysis, and "biopower" as a reference to the regulatory power that Foucault emphasizes. Foucault appears to discuss biopolitics and biopower interchangeably initially: Cf. "What does this new technology of power, this biopolitics, this biopower that is beginning to establish itself, involve?" (Foucault, *Society Must Be Defended*, 243) However, subsequent uses of biopower appear consistent with my use.

⁹ Foucault, *Society Must be Defended*, 250.

¹⁰ *Ibid.*, 241.

¹¹ *Ibid.*, 243.

¹² *Ibid.*, 245.

¹³ *Ibid.*, 246-47.

¹⁴ *Ibid.*, 249.

¹⁵ *Ibid.*, 36.

¹⁶ *Ibid.*, 254.

¹⁷ *Ibid.*, 252.

nism of power, as it is exercised in modern States."¹⁸ For Foucault, racism is the tendency or the drive to fragment or divide the "biological continuum of the human race."¹⁹

As he says, racism "is primarily a way of introducing a break into the domain of life that is power's control: the break between what must live and what must die." But as Foucault describes it, racism operates *within* the framework of biopolitics:

The appearances within the biological continuum of the human race of races, the distinction among races, the hierarchy of race, the fact that certain races are described as good and that others, in contrast, are described as inferior: all this is a way of fragmenting the field of the biological that power controls. It is a way of separating the groups that exist within a population. It is, in short, a way of establishing a biological-type caesura within a population that appears to be a biological domain.²⁰

The racism of the state lies in the ability to *produce races* of subjects by dividing that continuum, using any number and quality of characteristics, in order to create divisions between the living and the dying. Foucault frames this racism through the framework of biopolitics, which involves managing men-as-species through the control and regulation of the health and life of the population. However, Foucault insists that racism functions through "not a military or warlike relationship of confrontation, but a biological-type relationship"²¹ in order to produce a purer species. Thus, the criteria along which racism operates could include the physical, biological, sexual, health, or medical, as we see in his analyses of madness, incarceration, and psychiatric power. Foucault gives the examples of sexuality as a site where body and population meet, and of medicine as a technique that establishes a link "between scientific knowledge of both biological and organic processes. Medicine thus, can be an effective 'political intervention technique' which will have 'both disciplinary and regulatory' effects."²² Race itself is neither biological nor phenotypical in Foucault's reading, although it can be inscribed through biological vehicles and measures, as manifested through health policies, pension plans, etc. These practices operate at the level of life, and yet they can collude to create "good" and bad races.²³

It is possible to see how Muslims could eventually be construed as a threat to the general population at the level of biopolitics, especially as seen through the various policies implemented in detention and immigrant centers, access to public schools and health care. These reflect the antipathy or ambivalence of the "Western" world toward this population. And yet, the biopolitical fails to fully capture the impetus and the path of the racism that has surfaced in the decade since September 11, 2001.

The strong presence (or resurgence) of sovereign authority in the United States (especially post-9-11-01) and global politics, appears to be inscribing new variants of racial divisions

¹⁸ Ibid., 254.

¹⁹ Ibid., 255.

²⁰ Ibid., 254-55.

²¹ Ibid., 255.

²² Ibid., 252

²³ Ibid., 255.

through the “War on Terror,” among other campaigns. “Muslims” and “Arabs” have been constituted as a new “evil” race. Yet the criteria by which they are evaluated go beyond biopolitical criteria. These are augmented by religion, (“terroristic”) ideology, and culture and political commitments, which, on Foucault’s above description, still appear distinct from biopolitics. Muslim men are depicted as suspected terrorists along the lines of Usama bin Laden, Ayman Al-Zawahiri, Anwar Al-Awlaki, and Khalid Sheik Mohammed, with an innate commitment to fanaticism and violence. They are gynocidal and genocidal in their tendencies. Muslim women have a similar profile, albeit with slightly different details. Their threat to the United States and others in the non-Muslim world is detected through the inhabiting of the hijab; they are thought to harbor a hatred of sexuality and feminist liberation. Both Muslim men and women are political vampires in their aversion to secularism and democracy and other populations’ religious freedoms, and in their lust for suicide bombings and explosive attacks.

The events of 9.11.01, and the epoch that followed it, have led to certain racialized categories such as “terrorist,” or “illegal immigrant,” or “enemy combatant,” that are deployed along similar lines as biopolitical categories, but which do not operate as biological categories on numerous levels. It is certainly true that localized populations, clerical institutions, various media, and political organizations have contributed to the instantiation of these categories. Still, at a basic level, there is also a state-driven “War on Terror” which, if ignored through the lens of biopolitics, does a disservice to our ability to understand some of the newer variants of racism that have emerged.

The resurgence of sovereign authority as manifested in the war on terror and the emergence of new racialized categories raise the question of how to situate Foucault’s illuminating analysis of power and racism against that backdrop. Could it be that Foucault’s late twentieth century interest in displacing the emphasis upon sovereign authority in favor of analyzing the capillaries of power—especially in relation to racial divisions and political management of subject-populations—underestimates the important role that sovereignty plays in modern analyses of power? Especially in light of the new forms of racism that have been evident over the past decade, I suggest that we need to scrutinize Foucault’s claims about sovereignty in relation to his various descriptions of power.

We need to refocus and expand our investigation to include an analysis of how (sovereign) power collaborates with regulatory power to produce ontological divides and resorts to a moral plane²⁴ to legitimate those divides. This is another inscription of race and racism, which I will call ontopower, and the framework in which it is located—ontopolitics. Ontopolitics can consistently operate alongside biopolitics; however, its scope of (political) management refers to non-biological, indeed moral, cultural, social, ontological categories that are recalled by Foucault in *Abnormal*, among other writings. Moreover, ontopower—as a mode of inscribing racism, parallels a Foucauldian dialectic between sovereignty, (disciplinary/regulatory) power, and population. The framework of ontopolitics—like biopolitics—requires a simultaneous analysis of discourse and power, as well as juridical sovereignty (through the forms of criminal, migration, anti-terrorist laws), in addition to sequestering

²⁴ Rather than to medicine/science/biologism.

practices such as detention centers, public safety hearings, anti-mosque/Islam regulations or zoning, etc.,—in order to trace ontopolitical racism.

III. Muslims and the War on Terror

The events of the last decade have occurred as part of a centrally coordinated War on Terror. To be sure, in part they are the results of the decentralized disciplinary and regulatory regimes of power. At the level of regulatory power, we can account for these events, at once singular and common, by turning to the USA PATRIOT Act, passed in October 2001, but also a spate of immigration and anti-terrorism laws enacted long before September 2001,²⁵ and others that have long been on the American law books. These laws enable federal agents to circumvent long-standing safeguards in favor of privacy and against arbitrary search and seizure. They criminalize associations with certain organizations post-facto, i.e., they will name certain interactions that were legal one or even two decades before as now “terroristic” and therefore illegal. They name certain kinds of communications “obscene,” and illegal. They legitimate the indefinite detention of individuals without writs of *habeas corpus*. They legitimate torture in the name of national security. As importantly, these regulatory modes work in conjunction with disciplinary power to restrain, mold, and distinguish certain segments of the population as wrongdoers, in contrast to “innocent Americans.” In combination with a repeal of mandatory judicial review in the case of many immigration violations, it is readily evident how various individuals in the post-9.11.01 regime can be targets of persecution through regulatory and even disciplinary measures.

It is clear that these laws are connected to the politics of biopolitical racialization. However, there is more at work than the simple biopolitical inscription of a racial division between the guilty and the innocent, between “Muslims” and non-Muslims, or terrorists and the law-abiding. While all populations are implicated in disciplinary and regulatory regimes, they are not implicated in the same way, to the same degree, nor at the same time. There are innumerable stories that precipitate the need to re-consider the lens of Foucaultian biopolitics or his displacement of an emphasis on sovereign authority.

Let me briefly recount three such stories: In September 2002, Maher Arar, a Canadian citizen of Syrian descent, was stopped at John F. Kennedy Airport in NYC. Arar, an engineer who had lived and been educated in Canada since his family immigrated when he was 17 years old, was on his way back to Canada after visiting his wife’s family in Tunis. Returning early for company business, he was interrogated about his connections to another Syrian friend, and threatened with deportation to Syria despite his protests that he would be tortured there because he had not fulfilled his military service and because he was a Sunni Muslim. His interrogators read to him from the section of the Geneva Convention, which affirmed that the INS has no jurisdiction regarding torture. After several weeks in solitary confinement, he was flown back to Syria anyway by the U.S. as part of a practice that is called infamously

²⁵ Such as the 1996 Welfare and Immigration Act, the Telecommunications Act of 1996, the 1996 Anti-Terrorism and Effective Death Penalty Act, the 1908 Conspiracy Law, the Espionage Act of 1917, the 1918 Sedition Law, etc.

“extraordinary rendition.”²⁶ He was interrogated further, tortured, and forced to sign a confession that he had moved to Afghanistan to live in a training camp.²⁷ For ten months, Arar lived in a windowless, lightless room about 3 feet wide by 7 feet deep by 9 feet high, until he was finally released after active protests by his wife and human rights advocates. He was never charged or tried for a crime. Some time later, the Canadian government formally apologized for allowing the U.S. to torture him. However, he is still—despite the absence of any evidence of wrongdoing—not allowed entry into the United States.

In 2006, a United States citizen and recent graduate of Brooklyn College, Syed Fahad Hashmi, was arrested in London based on a US Federal grand jury indictment charging him with providing material support to Al-Qaeda. After spending over eight months in a high security prison in England while he fought extradition to the United States, he was relocated to a New York detention facility, where he spent four years in solitary confinement. His detention was regulated through special administrative measures (SAMs), which were ordinarily administered to those whose ability to communicate with individuals outside prisons risked potential bodily damage or deaths to other members of the populace. SAMs are typically imposed on crime bosses and leaders of gangs. However, as Jeanne Theoharis explains, “After September 11, the Justice Department began using SAMs pretrial, with wide latitude to wall off terrorism suspects before they had been convicted of anything.”²⁸

Hashmi was not allowed to know of the evidence against him; although his lawyers could review it confidentially. “Fahad’s lawyers went through intensive security clearances to view it—but were not allowed to discuss it with him.”²⁹ Hashmi’s crime was in fact lending his couch to a friend who carried “military gear” in his luggage for Al Qaeda. It seems apparent that the friend’s association with Al Qaeda was unknown to Hashmi at the time; the “military gear” consisted of ponchos and raincoats, and waterproof socks. In 2010, Hashmi pleaded guilty to a single charge of terrorism, and was sentenced to 15 years in federal prison.

In March 2005, the FBI detained two female Muslim teenagers from Queens, NY, on suspicion of being potential “suicide bombers.”³⁰ Initially detained for different reasons, the girls encountered each other for the first time while separately being escorted to immigration facilities in Manhattan.³¹ After an initial interrogation, and on the false pretext of an immigration violation—her mother’s—the FBI detained Tashnuba Hayder at the United States

²⁶ Extraordinary rendition was deployed by the U.S. Presidential Administration of George W. Bush and continued under the Obama Administration. It is a practice of abducting and extrajudicial transfer of a person (‘suspected terrorist’) from one country to another, for the purposes of interrogation and torture.

²⁷ Maher Arar, “Maher Arar: This is What They Did to Me” *Counterpunch*, (November 6, 2003): <http://www.counterpunch.org/arar11062003.html>. It is unclear whether the “training camp” was a reference to Al-Qaeda or something else.

²⁸ Jeanne Theoharis, “My Student, the ‘Terrorist,’” *The Chronicle Review: The Chronicle of Higher Education* (April 3, 2011): <http://chronicle.com/article/My-Student-the-Terrorist/126937/>.

²⁹ *Ibid.*; The law that enabled this restriction of Hashmi’s due process protections is the 1980 Classified Information Procedures Act.

³⁰ I have discussed this example in more detail elsewhere. See Falguni Sheth, *Toward a Political Philosophy of Race* (Albany: SUNY Press, 2009), Chapter 4.

³¹ For full details, see Nina Bernstein, “Questions, Bitterness and Exile For Queens Girl in Terror Case,” *New York Times*, 2005.

Citizenship and Immigration Services (USCIS) offices in Manhattan. They were concerned by her religious fervor, apparent in her propensity to listen to sermons by fundamentalist imams over the Internet, her chat room comments about those sermons, class notes from a discussion on the religious ethics of suicide, and perhaps most symbolically, her decision to observe full *purdah* “full Islamic veil.” Their suspicions increased when Tashnuba and her government escorts encountered Adamah Bah in front of the BCIS building at 26 Federal Plaza. Adamah, who wore the hijab, was originally detained because she missed a USCIS appointment in order to go on a high school field trip to see Christos’ “Gates” exhibit in Central Park. During their encounter, Tashnuba Hayder and Adamah Bah reportedly acknowledged each other with an unspecified “traditional Muslim greeting.”³² That greeting, combined with their orthodox dress, were the basis of the FBI’s concern that the teenagers might be collaborators as “potential” suicide bombers in a terrorist conspiracy.³³ Both teens were sent to a detainment facility in Pennsylvania without access to lawyers or parents, where they were subjected to constant interrogation for seven weeks.

At the level of the biopolitical, we can see how Arar, Hashmi, and Hayder and Bah were caught up in the dragnet of the War on Terror: they are Muslim, and are juridically, politically, and socially constituted as threats on the basis of their national backgrounds and religious commitments—as antagonistic to the security of the population of the United States. Still that is where the commonalities end. They are of varying nationalities, sexes, and occupations. They have as much in common with each other as they do with other subjects who are suspected terrorists. What do a Canadian engineer of Syrian descent, an American graduate student in the UK, and female Guinean and Pakistani teens living in New York have in common with Puerto Rican and young white male converts to Islam,³⁴ along with thousands of Saudi, Iraqi, and Afghan men in Guantanamo Bay Prison, Abu Ghraib, and elsewhere around the world? How have they all become entangled in a web of terrorism and interpellated as suspected terrorists? National security is one part of the answer; but it is not a sufficient one.

These individuals, distinct in national origin, skin color, and gender, were met with hostility, suspicion, and extreme harassment because they transgressed a prevailing cultural and political regime that might be best described as “Western” secular liberalism.³⁵ Their treatments can certainly be understood in disciplinary terms, as these work in conjunction with certain laws and regulations. Their “crimes” beyond the ones for which they were detained or arrested—may be partially framed through biopolitical criteria as might be their association between race or nationality and religious affiliation—as threats to a non-Muslim population. Still, biopolitics does not adequately capture the range of racial/ethnic/national

³² Nina Bernstein, “Girl Called Would-Be Bomber Was Drawn to Islam,” *New York Times*, 2005; It is difficult to discern the exact greeting, but it was most likely “salaam aleikum.”

³³ Nina Bernstein, “Teachers and Classmates Express Outrage at Arrest of Girl, 16, as a Terrorist Threat.” *New York Times*, 2005.

³⁴ Jose Padilla and John Walker Lindh, respectively. See Sheth, *Toward a Political Philosophy of Race*, Chapter 4 for a brief discussion.

³⁵ My use of the terms “West” or “Western,” indicates a geographical region, i.e. North American and (mostly Northern) Europe, as well as a cultural signifier of modernity and progress.

backgrounds in association with Islam, as we can see through the various national and racial backgrounds of the names listed above. Nor does biopolitics adequately capture the phenomenon of culture, ideology, or political dissent.

Instead, I want to suggest that one of the grounds by which this range of subjects can be commonly understood is their “unruliness.”³⁶ Their unruliness can be expressed through a spiritual turn to Islam,³⁷ or to take up guns to fight alongside a militia that was once backed by the United States as in the case of John Walker Lindh,³⁸ or through a politicized dissent, as in the case of Jose Padilla and Fahad Hashmi. Similarly, many adherents of Islam, especially those who are neither upper-class nor “westernized,”³⁹ violent or non-violent, are indiscriminately labeled as “threatening” and dangerous. Their comportments form the basis of their public representation as a threat or potential insurgence to a dominant discourse or regime. In turn, this threat prompts a disciplinary framework that will manage, suppress, or force out the potential threat so that it does not upset or overturn the existing regime.

Biopower is at work here, through disciplinary and regulatory mechanisms. But so are other important forces: sovereign authority is hardly obsolete. There is a centrally coordinated sovereign presence that has driven the War on Terror and its innumerable associated regulatory and disciplinary practices in the last decade. It is evident in the stories of numerous others and proven by systematic regimes of torture in Guantanamo Bay, Abu Ghraib and other unnamed sites in Syria, Poland, Saudi Arabia and elsewhere. It is alive and well in the personas of presidents, legislators, and judges. And ontological regimes, cast in terms of procedural classifications, seem to work alongside biopower in the casting of certain groups in racial terms. The race war, too, is alive and well, and exercised in a myriad of ways that can no longer be framed as biological, but rather exist on the level of the onto-juridical.

Moreover, while biopolitics may account for regulation and delineation of certain aspects of this population, it does not capture what else is at stake in the widespread sovereign campaign to capture terrorists, namely the categorization of their status as—not only moral monsters⁴⁰—but as ontologically distinct creatures: In this case, they can be assessed through the ontological category of “terrorist,” as a status unto itself.

Foucault’s framework does not appear to account for divisions and breaks in the population that are non-medico-juridical. Nor can it account for *how, why and which* portions of a population become targeted for discipline and regulation. To be sure, by circumscribing the scope of analysis through biopower, something insightful is gained—namely a keen understanding about the latent operation of power that underlies all social relations. But something

³⁶ Falguni Sheth, “The Technology of Race: Enframing, Violence, and Taming the Unruly,” *Radical Philosophy Review*, Vol. 7, No. 1 (2004) 77-98. Also see Sheth, *Towards a Political Philosophy of Race* for a more extensive discussion of unruliness and race.

³⁷ As expressed through one’s decision to wear the hijab and beard, or through one’s association with a religious community, etc.

³⁸ Jane Mayer, “Lost in the Jihad,” *New Yorker*, 2003.

³⁹ And thus, publicly presenting as “secular.”

⁴⁰ As Foucault describes in his Jan. 29 1975 Lectures: Michel Foucault, *Abnormal: Lectures at the Collège de France 1974-1975*, translated by Graham Burchell (New York: Picador Press, 2003)—I will return to this concept later.

important is lost as well: an understanding of who will and won't be subject to certain kinds of power, and why this is the case. We also lose the opportunity to ask who decides who will be placed on one side of a "racial" division and who will be placed on the other. And finally, it does not account for the empirical evidence that such racialization is produced through a centralized sovereign power—a source that has not become obsolete since Hobbes, but has rather persisted, albeit in a masquerade of liberal representation. These questions must be answered in order to fill out his account.

IV. Biopolitics, Sovereignty, and Governmentality

Since I have suggested some objections to biopolitics as the appropriate frame by which to understand the above stories, it seems relevant here to explore Foucault's conflicting claims about sovereign power in relation to the limits of biopolitics.

Foucault's argument about centralized sovereignty is applicable to early modern societies—namely to those where sovereign right is understood as the authority of the king in relation to his subjects. In his February 1, 1978 lecture,⁴¹ he offers a distinction between the art of government and the "reason of state," in order to illustrate an important transition between the sixteenth and eighteenth centuries. He suggests that the function of government is to "manage things" in order to preserve a certain order in society. The function of sovereignty, on the other hand, is itself—to maintain itself, to keep itself in power, and to ensure that the sovereign can keep its holdings and subjects.⁴² Because the notion of sovereignty—as the internal rationality of the state—remained the primary paradigm throughout the seventeenth century, it served as the primary obstacle to the development of the art of government.⁴³ But as the framework of an economy became the central foundation for the "science of government,"⁴⁴ the art of government as that of management replaced the juridical model of sovereignty beginning in the eighteenth century. This is not to say the *force* of sovereignty disappears, as Foucault points out, but rather it remains as "acute as ever."⁴⁵ Foucault locates sovereignty in a triadic form of modern society, in a relationship with discipline and government, all of which are concerned with the management of populations.⁴⁶ The aim of sovereignty is refocused on the "choices of government."⁴⁷

⁴¹ Otherwise known as the "Governmentality" lecture.

⁴² Foucault says of sovereign power, "whereas the end of sovereignty is internal to itself and gets its instruments from itself in the form of law, the end of government is internal to the things it directs (*diriger*); it is to be sought in the perfection, maximization, or intensification of the processes it directs, and the instruments of government will become diverse tactics rather than laws. Consequently, law recedes; or rather, law is certainly not the major instrument in the perspective of what government should be... the ends of government cannot be effectively achieved by means of the law." (Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977-1978* (New York: Picador Press, 2007), 99)

⁴³ Michel Foucault, "Governmentality," in Michel Foucault, *Power* (New York: New Press, 1978), 213; Michel Foucault, *Security, Territory, Population*, 101.

⁴⁴ Foucault, "Governmentality," 215; Foucault, *Security, Territory, Population*, 104.

⁴⁵ Foucault, *Security, Territory, Population*, 107.

⁴⁶ *Ibid.*, 107-08.

⁴⁷ *Ibid.*, 108.

This position appears to be consistent with Foucault's discussions of power in a number of other texts: In the "*Society Must be Defended*" Lectures, he suggests that the old sovereign "right to take life or let live" was "complemented by a new right which *does not erase* the old right but which *does penetrate it, permeate it,*" namely the *political right* "to make live and to let die."⁴⁸ This right appears to have a certain sovereign force even if it is not manifested monarchically. The characteristic that changes between the old and the new right is the instantiation and vehicle of that authority.⁴⁹ Foucault refers to this right as a new technology of power,⁵⁰ which is regulatory and applies to a "multiplicity of men... a global mass that is affected by overall processes characteristic of birth, death, production, illness."⁵¹ It is a power that is "massifying," namely biopower or biopolitics. As mentioned at the beginning of Section II, biopower is non-disciplinary, regulatory, and its domain pertains to processes pertaining to the securing and management of life.⁵² Moreover, as the ground of modern racism,⁵³ biopower transcribes the break between life and death through the domain of the biological. And it does so through the power of normalization, through regulation, and ultimately through a "*power of sovereignty.*"⁵⁴ By contrast, disciplinary power is a non-sovereign power: it is "foreign" to sovereignty, and it cannot be justified in terms of sovereignty.⁵⁵ As Foucault reiterates, the question of the foundation—the source—of sovereignty remains urgent in the face of "the idea of a government as government of population."⁵⁶

As we know, biopower (regulatory power) and disciplinary power work together, albeit at different levels.⁵⁷ Yet, whether we read biopower as a "form" of sovereignty and disciplinary power as non-sovereign, or whether we read biopower as regulatory and disciplinary power as working upon the body, it is still difficult to articulate what the relation is between a) power and sovereignty or b) regulatory and disciplinary power, c) biopower and sovereignty (in its old form), or d) governmentality and sovereignty. Is power permeated with the force of sovereignty, albeit in a more diffuse form? Is power, as he discusses it generally in the beginning of "*Society Must be Defended*," about the circulation of non-sovereign power? From where does power receive its "force"? Foucault views disciplinary power as non-sovereign,⁵⁸ but a similar question arises: where does disciplinary power receive its force?

⁴⁸ Foucault, "*Society Must be Defended*," 241.

⁴⁹ Whereas in the Hobbesian model of the state, the *Leviathan* decided from whom it would "take life and let die," the contemporary state uses a power of "regularization" or "normalization" to decide whom it will "make live and let live." (Foucault, "*Society Must be Defended*," 247)

⁵⁰ *Ibid.*, 242.

⁵¹ *Ibid.*, 242-43.

⁵² "[B]irth, death,... the rate of reproduction, the fertility of a population." It also pertains to hygiene, medical care, infirmities, "geographical, climatic, or hydrographic environments," i.e. pertaining to epidemics that affect populations. (Foucault, "*Society Must be Defended*," 243-45)

⁵³ "It is indeed the emergence of this biopower that inscribes it in the mechanisms of the State." (Foucault "*Society Must be Defended*," 254)

⁵⁴ *Ibid.*, 256.

⁵⁵ *Ibid.*, 36

⁵⁶ Foucault, *Security, Territory, Population*, 107.

⁵⁷ Foucault, "*Society Must be Defended*," 250.

⁵⁸ *Ibid.*, 36.

These questions appear crucial to the scope of inscriptions of racism in the contemporary state. As such, I want to turn briefly to some of Foucault's earlier thoughts on sovereignty in order to understand the relation between sovereignty and power.

In Foucault's *Psychiatric Power* lectures, he refers to sovereignty in its centralized form. He makes an analogy between sovereign power and the complete subordination of the king, as told through the story of the treatment of the madness of King George III of England.⁵⁹ The king is "reduced to impotence," and is treated through the disciplinary power of his royal pages, who have been given the "authority" of

looking after his needs and providing him with all the services his condition requires, but also with convincing him that he is entirely subordinate to them and must now obey them. They keep watch over him in calm silence, but take every opportunity to make him aware of how much stronger than him they are.⁶⁰

Foucault draws heavily on this example in order to illustrate the mode by which psychiatric power resorts to regulatory and disciplinary *dispositifs* to treat insanity. However, it is not coincidental that Foucault engages extensively with the case of King George's treatment. For Foucault, this example symbolizes the mode by which sovereignty is figuratively "beheaded," only to be reborn as an

anonymous, nameless and faceless power that is distributed between different persons. Above all, it is a power that is expressed through an implacable regulation that is not even formulated, since, basically, nothing is said, and the text [by Pinel] actually says that all the agents of this power remain silent. The silence of regulation takes over, as it were, the empty place left by the king's dethronement.⁶¹

Ironically, Foucault analyzes this scene as the transformation of sovereignty into the "regulation" of the beheaded king through disciplinary power. One wonders whether sovereignty has been truly transformed or whether it has disappeared completely in the subtle emergence of "regulation" as well as disciplinary power. Foucault develops this analogy, focusing on the new power as a disciplinary power that is discreet, distributed, invisible except for those upon whom the power is imposed. In the analogy, he brings attention back to the doctors who organize the treatment, and the pages who are the conveyors of the treatment.

As early as 1973, it is not clear that Foucault had sufficiently distinguished in his own thoughts the difference between disciplinary and regulatory power. However, it seems that the metaphor of the psychiatric beheading of King George III heralds the beginning of his belief that political power in the contemporary world has been transformed from a central sovereign authority to a diffuse⁶² power that is exercised through a range of institutions,

⁵⁹ Michel Foucault, *Psychiatric Power: Lectures at the Collège de France 1973-1974* (New York: Palgrave MacMillan, 2006). The story is found in Pinel's *Traite medico-philosophique* of 1800.

⁶⁰ *Ibid.*, 21.

⁶¹ *Ibid.*, 21.

⁶² And discursive as well. See Michel Foucault, "Incitement to Discourse" in Robert Hurley (trans.), *History of Sexuality* (New York: Random House, 1978), Part 2, Chapter 1.

forces, and individuals. He spends some time circumscribing the initial parameters of sovereign power before moving on to characterize the nature of disciplinary power.

His notion of sovereign power, as found in the *Psychiatric Power* Lectures, bears three distinct features: There is 1) a relation of “levy or deduction on one side, and expenditure on the other”; 2) “a founding precedence,” on the order of a “divine right, or conquest, a victory, an act of submission, an oath of loyalty...”, etc.; and 3) the convoluted nature of sovereign relationships, which are “not isotopic” but “intertwined and tangled up in such a way that we cannot establish a system of planned hierarchy between them.”⁶³ The first feature of sovereign power—a system of levy and expenditure—appears to evoke the notion that the mark of sovereign power is that it can demand, impose, or otherwise extract a certain obligation or price from the subject over whom it reigns. The second feature is fairly self-explanatory: it suggests an act of power that must be recognized and continually observed by both the king and the subject. The third feature, perhaps the most enigmatic, appears to pave the way to discussing the transformation of a kind of central power to the diverse, diffuse nature of disciplinary power. Foucault says of this feature,

...[I]n a relationship of sovereignty, what I call the subject-function moves around and circulates above and below somatic singularities, and conversely bodies circulate, move around, rest on something here, and take flight. In these relationships there is therefore a never ending game of movements and disputes in which... individuals are moved around in relation to each other.⁶⁴

In so describing sovereign power in this way, he seems to point to the configuration of power such that power is exercised, reflected, deflected, refracted through the individual and his body. This is a hallmark of his notion of disciplinary power as it appears in *Discipline and Punish*, where he develops Jeremy Bentham’s notion of the Panopticon.

Several years later, Foucault augments his notion of disciplinary power with the notion of regulatory power and bio-politics, found most famously in the “*Society Must be Defended*” lectures. Having argued against the relevance of sovereign power several years earlier and later in his “Governmentality” essay, in the *SMBD* lectures Foucault summarily reviews the displacement—indeed the “complete disappearance of the great juridical edifice”⁶⁵ of centralized sovereign power through the “expenditure of power” in terms of goods and wealth.⁶⁶ But the central crux of the marginalization of sovereign power in the “*Society Must be Defended*” lectures is its intricate link to the instantiation of racial divisions, and Foucault’s genealogical tracing of racial divisions from the old, Hobbesian form of sovereign authority (to take life or let live) to the new, diffused biopolitical form of regulatory power (to make live and let die).⁶⁷

⁶³ Foucault, *Psychiatric Power*, 43.

⁶⁴ *Ibid.*, 44.

⁶⁵ “...of the theory of sovereignty.” (Foucault, “*Society Must be Defended*,” 36)

⁶⁶ *Ibid.*, 36.

⁶⁷ *Ibid.*, 241.

V. Some Questions About Power and Sovereignty

Still, Foucault's account doesn't quite map onto contemporary events based on governmentality. Foucault's notion of bio-politics, because it is decentralized and disseminated through various nodes in contemporary society, cannot account for two distinct relationships: One, between sovereignty and biopower, and two (maybe this is the same question), between those who are the personification of the state and those populations who are subject to its authority and caprices. As we know, for Foucault, the question of who has power over another is not the right question to ask, because the exercise of power operates beneath the level of sovereign power, and because disciplinary and regulatory power, as these operate via biopower, operate beyond sovereign right, that is to say, not at the juridical or constitutional-democratic level.

This excess of biopower appears when it becomes technologically and politically possible for man not only to manage life but make it proliferate, to create living matter, to build the monster, and ultimately, to build viruses that cannot be controlled and that are universally destructive. This formidable extension of biopower, unlike what I was just saying about atomic power, will put it beyond all human sovereignty.

As he warns at the beginning of "*Society Must Be Defended*," he approaches power with several "precautions": First, explore how power is embedded in "local, regional, and material institutions." Second, consider power not at the level of intentions, but at the point where intentions meet live practices. Third, think of power as something that circulates, not hegemonizes or dominates.⁶⁸ The upshot of these precautions is that he considers how power is exercised through bodies, individuals, masses, rather than how power is something one has over another at the level of practices, not at the level of intentions.

Still, not all elements of the population are subject to power in the same way and not all subjects are equally vulnerable to the dictates of the state.⁶⁹ Ultimately, someone (or some few) can still direct the trajectory of power—disciplinary and regulatory. Foucault's discussion of disciplinary mechanisms and prisons, which insists on the reflexivity of power, does not attend to the decision to institute this form of surveillance as made by a prison warden or legislators or other representatives of State power.⁷⁰ For example, in his November 28, 1973 lecture, Foucault discusses the Panopticon, and points to the "immateriality" of power, in which "[power] has no need of all that symbolic and real armature of sovereign power; it does not need to hold the scepter in its hand or wield the sword to punish; it does not need to intervene like a bolt of lightning in the manner of a sovereign..."⁷¹

At the same time, it is interesting to note that in *Discipline and Punish*, the photographs of the

⁶⁸ Foucault, "*Society Must be Defended*," 28-30. There is also a fourth precaution: begin with the mechanisms of power and see how they are "invested, colonized, used, inflected, transformed, displaced, extended..."

⁶⁹ See Carole Smith, "The Sovereign State V. Foucault: Law and Disciplinary Power," *Sociological Review*, Vol. 48, No. 2, (May 2000); Smith cites Morrison (1997), Davies (1996), and Mansell *et al.* on this dynamic in jurisprudence and law.

⁷⁰ Michel Foucault, *Discipline and Punish* (New York: Vintage Books, 1979), 306.

⁷¹ Foucault, *Psychiatric Power*, 77.

medal commemorating Louis XVI's first revue in 1688,⁷² the lecture on the evils of alcoholism at Fresnes prison,⁷³ and of bedtime at the Mettray reformatory,⁷⁴ each show at least one individual whose subject position is distinct from the others in the room.⁷⁵ It is unclear whether the isolated figure in Mettray is another pupil or a chief; however, in the description of Mettray, Foucault points out that

The chiefs and their deputies at Mettray had to be not exactly judges, or teachers, or foremen, or noncommissioned officers, or 'parents', but something of all these things in a quiet specific mode of intervention. They were in a sense technicians of behaviour: engineers of conduct, orthopaedists of individuality. Their task was to produce bodies that were both docile and capable; they supervised the nine or ten working hours of every day... they directed the orderly movements of groups of inmates, physical exercises, military exercises, rising in the morning, going to bed at night, walks to the accompaniment of bugle and whistle.⁷⁶

Foucault notes that Mettray cannot be identified absolutely with supervision or administration; however, he takes care to point out the 'heads,' or deputy-heads who lived near the inmates, and that they "practically never left their side, observing them day and night; they constituted among them a network of permanent observation."⁷⁷ It may be objected that supervision is distinct from sovereign authority, namely the decision-maker; yet, it is unclear in the above examples, whether these are actually and always distinct.

Elsewhere, Foucault seems to be distracted or oblivious to the question of who makes the decision that will be carried out. Using the passive tense, Foucault says, "Even if a collective order *is given* through a megaphone, addressed to everyone at the same time and obeyed by everyone at the same time..."⁷⁸ Despite his acknowledgment of the necessity of "supervision," he does not ask the question of who will direct individuals to carry out certain orders. Power is imposed upon, received, exercised by individuals, but it is often necessary for some authority to set it in motion, or to direct it. Only if the source of sovereign power is recognized (even if tacitly) does the rest of his construction of the "beheading" of sovereign power make sense, namely that

[the body of the king] must not die along with the king's somatic singularity. The monarchy must remain when the monarch no longer exists; the king's body, which holds together all these relationships of sovereignty, must not disappear with the death of this individual X or Y. [It]... must have a kind of permanence; more than just his somatic singularity, it must be the solidity of his realm, of his crown."⁷⁹

⁷² Foucault, *Discipline and Punish*, Plate 1.

⁷³ *Ibid.*, Plate 8.

⁷⁴ *Ibid.*, Plate 7.

⁷⁵ Foucault, *Discipline and Punish*, 1.

⁷⁶ *Ibid.*, 294.

⁷⁷ *Ibid.*, 295.

⁷⁸ Foucault, *Psychiatric Power*, 75.

⁷⁹ *Ibid.*, 45.

Sovereign power, then, must remain intact in some way, even if only in the form of symbolic recognition.

Returning to the contemporary moment, we see a similarity in the disparity between decision-makers and subjects, in any number of examples—prisons, schools, Guantanamo Bay and Immigration (ICE) detention facilities—which suggests that sovereign power does not disappear altogether in contemporary politics, even when engaging with the mechanisms and networks of regulatory and disciplinary power.⁸⁰ Foucault acknowledges this point even as he implies a distinction between any citizen who supervises and those who are supervised:

The director has no body... [t]here is a de-individualization and disembodiment of power, which no longer has a body or individuality, and which can be anyone whomsoever. Furthermore, one of the essential point of the Panopticon is that within the central tower, not only may anyone be there—surveillance may be exercised by the director, but also by his wife, his children, or his servants, etcetera...⁸¹

As Foucault agrees, anyone can exercise surveillance, but again the question of the delegation of orders, of power arises: when do the director's children, or wife, or servants exercise power? One may object that the purpose of Foucault's analysis is to understand the exercise of power upon bodies, subjects, through networks and in relation to populations, and therefore the question of directing becomes moot. Yet, as we have seen throughout various historical narratives, most notably in the last decade, with the creation of self-surveilling *dispositifs* such as Guantanamo Bay Prison Facility, Abu Ghraib, and other such structures, the issue of directing and of obedience is precisely not moot: There is a role that Presidents Bush and Obama and Attorney Generals John Ashcroft, Alberto Gonzalez, and Eric Holder have played in influencing and pushing the trajectory of power.

Here let me suggest that expressions of a more centralized sovereignty are crucial to Foucauldian analyses of power in modern politics. While it is certainly true that phenomena such as Guantanamo detention facilities, Abu Ghraib Prison, etc. create a certain "power-topographical"⁸² map of the world through the exercise of disciplinary and regulatory power, it is clear that the repositioning of various "racial" groups, countries, and projects of colonialism are often spearheaded through direct exercises in political power, i.e. the direct sovereign authority that Foucault claims has been displaced—but not disappeared. The practices of waterboarding, extraordinary rendition, the detention of thousands of Muslims in prisons around

⁸⁰ In the literature, several others have noticed the same need for attention to sovereign authority(ies). See Carole Smith, "The Sovereign State V. Foucault: Law and Disciplinary Power"; Katia Genel, "The Question of Biopower: Foucault and Agamben," *Rethinking Marxism*, Vol. 18, No. 1 (January 2006); and Brian Singer, and Lorna Weir "Politics and Sovereign Power: Considerations on Foucault," *European Journal of Social Theory*, Vol. 9, No. 4 (2006). Singer and Weir seem to argue for the retention of a "symbolic" sovereign authority as a way of giving form to collective representation. (453-456) They appear to subscribe to the myth that in democratic society, there is no actual, empirical, sovereign authority except in times of "revolutions or elections." (Ibid., 454)

⁸¹ Foucault, *Psychiatric Power*, 76.

⁸² I coined this word prior to reading Stephen Collier's article, "Topologies of Power"; however, he appears to have a similar meaning in mind.

the world were not exercises in local power; they were directives from several primary sovereign institutions. The creation of the Department of Homeland Security (DHS), the office of Immigration and Citizenship Enforcement (ICE), the hunt for terrorists in our midst by the FBI are not grassroots or populist decisions but direct exercises in sovereign power, although they may certainly be supported by significant portions of the population who may ascend in hierarchy or benefit in other ways from the creation of these policies or offices. At some level, however, the question remains about how to expand our scope of inquiry in regard to the War on Terror? The above suggests that we need to consider not only the circulation of power, not only power in its "aleatory" forms—but *in relation to the direct exercise of sovereignty*. In other words, as we explore the newly inscribed racial divisions that divide Muslims from non-Muslims and "suspected terrorists" from "the innocent," we need to probe the sovereign agenda in managing its populations to take up this war throughout the various levels and arenas and institutions in society.

The expressions of sovereignty seen in the prior paragraphs are working contrary to the discourses emanating from other institutions (media, unions, activists, even the membership of various nations), and therefore appear to be especially vivid in their distinction to regulatory/normalizing power. In the case of the "war on terror/Muslims" certain normalizing discourses have been harnessed by various sovereign architects, such as President George W. Bush, Attorney General Alberto Gonzalez, U.S. Justice Department Legal Counsel John Yoo, in order to push a regulatory regime in which the slightest hint of "Muslimism" is sufficient to justify the exercises of disciplinary power (torture, detention, rendition, privation of civil procedures, etc.). But this does not appear, at least on the face, to be a biopolitical regime, but rather an ontological regime, in which terrorism is a presumptive moral category linked to "religion" and "culture" most predominantly among other non-biopolitical discourses. As the final draft of this article was being prepared, a myriad of news analyses had emerged about the massacre of 90 teenagers in Oslo, Norway on July 22, 2011. Media and politicians alike suspected that the massacre had to do with Al-Qaeda, Muslim terrorists, Arabs, etc. even in the *face* of eyewitness reports that the murderer was Norwegian.⁸³ We *must* ask the question, then, about whether and how the analyses have been shaped by the War on Terror as driven by the United States and other sovereign governments.⁸⁴

Foucault's linking of bio-politics and the inscription of racism is a crucial inroad to understanding politico-racial fragmentation in contemporary society. This view is path-breaking, since it disarticulates the scientific objectivity of race in favor of a discursive production of race, namely where race is transcribed through the language of biology rather than being

⁸³ For a tragi-comic analysis, see pundit/comedian Stephen Colbert's commentary, aptly entitled, "Norwegian Muslish Gunman's Islam-Esque Atrocity," *The Colbert Report* (Aired on Comedy Central 2011-25-07). Video Clip available at: <http://www.colbertnation.com/the-colbert-report-videos/393042/july-25-2011/norwegian-muslish-gunman-s-islam-esque-atrocity>.

⁸⁴ See also Lauren Collin's analysis of the English Defense League (EDL), which has emerged in response to the Europe-wide repeal of multiculturalist immigration and social policy. Lauren Collins, "England, Their England: The failure of British multiculturalism and the rise of the Islamophobic Right," *The New Yorker*, July 4 2011. Anders Behring Breivik, the Norwegian gunman, had asserted that he attended several of the EDL's rallies.

grounded in biology. Foucault's concern, to be fair, is to illustrate one modern mode of racism, namely either the domination of one population by another, or the elimination of heterogeneous elements from a monistic State racism (as in the case of 1930's Germany). Still, this analysis of biopower seems to pave the way for a reified biological transcription of race—one in which the race literature is dominated by medical/health/biological discussions of race.

VI. Ontopolitics and Ontopower

In an effort to address some of my concerns about Foucault's account of biopower and race, I would like to sketch out a framework of ontopolitics. Ontopolitics works in conjunction with Foucault's rich framework of power, race, and governmentality in upholding the race war underlying contemporary society. However, an ontopolitical analysis occurs on an orthogonal plane, with a number of distinctions and changes in focus between this framework and that of Foucault:

First, ontopolitics augment Foucault's arguments with a return to focus on the role of *sovereignty in instantiating a shift or new moment in the race war*. The attention to and *analysis of* sovereign power that has become displaced over the last two centuries, corresponds to a "preferred" new model of political organization, one that we can provisionally call liberal democracy. As a rhetorically popular model of power for the last two centuries, it has replaced monarchy as the prevailing model among many nation-states, by purporting to redistribute the disproportionate hold over power held by the sovereign in the old monarchic model. In the same way that the monarchic model, as represented by Hobbes' *Leviathan*, shifts into a contemporary Lockean model of popular representation, so does Foucault's suggestion that we displace our focus on the sovereign in order to see its effects in local, regional, and material institutions. But even in the shift from the *Leviathan* to the *Second Treatise*, the question of how power is secured, distributed, represented is not easily or clearly answered. Locke's constitutionally elected magistrate, like the *Leviathan*, still secures the right of punishment and death. The magistrate still decides when to mete out punishment. Moreover, the power represented by the monarch does not necessarily reflect the consensus of the represented, even as it purports to represent its will.⁸⁵ As such, we can conceive the maneuverings of the sovereign (whether a monarch or a constitutionally elected president and his administration) to implement a certain regime even in the face of unwillingness on the part of its subjects. Those subjects may reflect the regime (such as the War on Terror) that has been introduced through the circulatory effects of sovereign power, but that is still distinct from the instantiation of that regime.

There is a drive to instantiate a certain regime, before that regime is taken up and circulates seemingly beyond the sovereign right. As such, governmentality and Foucault's analysis of biopower does not necessarily reflect a realistic or complete analysis of political power. Accordingly, the framework of ontopower is predicated on a marked disparity between sub-

⁸⁵ Foucault identifies the same problem—the problem of the representation of the will in the *Birth of Biopolitics*, although I am not sure that there is a satisfactory resolution in terms of biopolitics or governmentality. Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France 1978-1979*, Translated by Graham Burchell (New York: Palgrave MacMillan, 2008), 41.

ject and sovereign, although perhaps this disparity becomes less noticed as the rubric of representative democracy has become ubiquitous in the last century, i.e., that power is evenly distributed across and between subjects, that political power is held in proxy for political subjects through “political representatives.” The counterpart of this rubric is Foucault’s analysis of the local and regional exercises of disciplinary and regulatory power.

And so, the first premise of ontopolitics is that sovereign power exists as a direct force. Its function is to engineer political divisions as required to ensure its own preservation, or it may function as successfully by exploiting the gaps that already exist between sovereign and subject populations. Similar to Foucault’s notion of biopower, ontopower is a regulatory power that inscribes racial division, and as in Foucault’s theory, it takes as its operating premise that a race war underlies society. However, this “race war” is inscribed through social fragmentations that can be exploited to divide populations. Political or social fissures can be mapped in terms parallel to those of biopolitics, through ethnic-, class-, or caste-, or religious-, or political/ideological-, or cultural- divisions among others, or any combination of the above.

We have seen a number of examples of this regulatory power at the beginning of this article. A closer look at the criteria of “pre-emptive policing” of “terrorists” as embedded in the USA PATRIOT Act, suggests a range of regulatory power that enables close surveillance, absence of warrants and writs of *habeas corpus*, suspicion of espionage, material support to suspected terrorists in the absence of concrete evidence, among a myriad of other juridical measures in the post 9.11.01 “War on Terror” epoch. These regulatory processes exploit an onto-moral continuum that is taken up and engaged through the self-referring circulatory of sovereign power: suspicious subjects can be reported to local, regional, federal police, or to airport authorities. A host of governmental institutions, from the Department of Homeland Security (DHS), Immigration and Citizenship Enforcement (ICE), the Transportation Security Administration (TSA), the CIA, to the FBI hover through local monitoring agencies to continually re-inscribe, reinforce, and uphold the racial divisions that have been instantiated through social criteria such as “Islamic fundamentalists,” “left-wing extremists,” or more amorphous criteria such as a hatred of secularism or democracy, or the separation of church and state, and the ubiquitous “threats to national security.” As the decade has worn on, “threats to national security” have been expanded to include Iranian, Palestinian, and Turkish groups once deemed “revolutionary,” as well as political and ethical dissenters such as Army Private Bradley Manning, and super-criminal Julian Assange, as well as illegal immigrants.

From these examples, we can see that ontopolitics is predicated on the onto-moral continuum of political existence, which are grounded on religious, ideological, political, cultural, and ethical grounds. Sovereign power has an urgent interest in deciphering and managing threats—threats not to life, first and foremost, but threats to its own existence, its own survival. On the level of ontopolitics then, sovereign power must decide how to discipline and regulate those parts of the population whose existence or comportment threatens itself. In distinction to bio-politics, the categories utilized by sovereign authority are not medicalized or scientific, but rather politico-juridical. They indicate where a population stands in relation to other populations and in relation to the state.

As importantly, the function of sovereign power then, is not only to preserve the right to kill, as in the case of war, but also to preserve the right to make live, as Foucault ascribes to

modern sovereign power. That right to live is manifested in a range of disciplinary technologies that torture, incarcerate, and restrain subjects—not in an individualizing way—but to massify, to render anonymous, to make unknown as an empty mass threat, akin to Giorgio Agamben’s notion of “bare life.”⁸⁶ However, unlike “bare life,” which Agamben defines as “life devoid of value,” or “Life unworthy of being lived,” and thus a life which “ceases to be politically relevant... and can as such be eliminated without punishment,”⁸⁷ the threat in ontopolitics is crucial to the management of society. Sovereign management would not succeed without the “terrorist,” or the “enemy combatant,” or the “illegal immigrant,” as a stark contrast to the useful, innocent, valuable population. Unlike bare life, the ontopolitical threat must be enabled to survive at the barest level in order to have its presence in the barely perceptible background of a collective social consciousness. Thus, ontopolitics focuses on the management of a population that is a threat to sovereignty and to a superior population, not necessarily to eradicate it but to govern it as a way of governing the rest of the population.

The function of these categories is to indicate the ontological, moral, and hence political status of a certain group whose behavior has come to the attention of the state. These categories are not developed *ex nihilo*; rather, they emerge from several sources: 1) from the state’s excavation of a prior discourse in which similar categories exist; 2) from the exploitation of a set of norms and fears that pertain to a dominant population, i.e., a population whose cultural standards prevail over those of other minority cultures; 3) from the existence of already existing protections/lack of protections that are manifested in a society’s juridical foundations.

Those dangers emerge from the inside and outside of a society and exist at the level of a fundamental danger—in their very existence, much like the extraterrestrial aliens of the 1950’s movies such as *Invasion of the Body Snatchers*.⁸⁸ They are moral monsters. In his 1974-5 lectures at the Collège de France, Foucault discusses the nature of the abnormal, which he maps along biological lines. However, in his January 29 lecture, Foucault mentions the moral monster, emerging at the end of the nineteenth century until the beginning of the twentieth century. The moral monster’s initial existence takes an abrupt departure from the biological map on which he grounds other pathological categories, that is, until he enters the juridico-medical of legal medicine in the late nineteenth century.⁸⁹ Prior to that, the moral monster emerges in an economy of power, whereby his existence is a challenge to the power of the sovereign. The breach of the moral monster is his criminality, and the criminal, says Foucault, “is someone who breaks the pact to which he has subscribed and prefers his own interest to the laws governing the society to which he belongs.”⁹⁰ Moreover, the criminal and the sovereign resemble each other—as despots—“greet[ing] each other like two individuals who reject, disregard, or break the fundamental pact and make their interest the arbitrary law that they seek to impose on others.”⁹¹ They are both outlaws—“the sovereign above the law and the cri-

⁸⁶ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998).

⁸⁷ *Ibid.*, 139.

⁸⁸ 1956. Notice that similar movies have been resuscitated over the last decade by director M. Night Shyamalan, among others.

⁸⁹ Foucault, *Abnormal*, 101.

⁹⁰ *Ibid.*, 92.

⁹¹ *Ibid.*, 93.

iminal beneath it"⁹²—whose status emerges in relationship to law, whether breaking, overturning, suspending (for the criminal) or promoting, enforcing, applying, or suspending them (for the sovereign).

Foucault's description of the moral monster at times resonates with Walter Benjamin's description of the great criminal, whose existence is secretly admired by the masses in his challenge to the power of the state.⁹³ However, for Foucault, the criminal—as the moral monster—not only mirrors the sovereign in his relationship to law and power, but eventually is recognized as the sovereign:

The first juridical monster to emerge in the new regime of the economy of punitive power, the first monster to appear, to be identified and defined, is not the murderer, the transgressor, or the person who breaks the laws of nature, but the person who breaks the fundamental social pact. The first monster is the king.⁹⁴

For Foucault, the king—or queen—enters the discourse of juridico-medical theme of criminal psychiatry because of the association between the figure of the sovereign to incest and cannibalism.⁹⁵ However, the category of the moral monster—prior to its affiliation with medicine (and hence, the transcription of the biological)—is important and salient for contemporary discourses precisely because of its relation to law, sovereignty, and power. The moral monster is a criminal—or its reverse—the criminal is a moral monster because it skirts and flirts with the law out of its own particular interests. The dynamism of the interests of the criminal in relation to law—mirroring the sovereign at times, challenging the sovereign at other times, suggests a layer of power that does not need to be mapped on to bio-power, but rather presents the possibility of expansion on a different plane of power. The fluidity of the interests of the “moral monster,” suggests that the monstrosity of the criminal is that it dares to challenge the legitimacy of the sovereign, to resist and push against the “righteousness” of right. Then, if not mapped onto the biological, another way to consider the challenge to sovereignty is the ontologization of the sheer hubris of the “criminal.”

Thus, for example, the category of “undocumented workers” or “aliens” or “terrorists,” which are among the most recent categories deployed by the United States in its decade-long wars (on terror, on illegal immigrants), indicate populations that are to be kept at arm's length, or suspect, or confined in order to secure the polity's safety. It is important to note that the juridico-objective nature of these categories can be institutionalized, and therefore entrenched, through the repeated instantiation of these categories through different media: television news, legislation, and various local political consultants, but they are dispersed through the several offices of sovereign power: the Attorney General's office, the Congress, the Executive Branch, and they are confirmed, legitimated, through the judicial branch. The importance of the onto-political is that it does not require the “taking of life,” but rather the “forcing to live”

⁹² *Ibid.*, 93.

⁹³ Walter Benjamin, “The Critique of Violence,” in *Reflections: Essays, Aphorisms, Autobiographical Writings* (New York and London: Harcourt Brace Jovanovich, 1978), 281.

⁹⁴ Foucault, *Abnormal*, 94.

⁹⁵ *Ibid.*, 102.

of various populations, and operating at the level of “freedom,” or the lack thereof, i.e. through the regime of carcerality.

The theme of carcerality is intrinsic to Foucault’s work; however, he locates it as a form of disciplinary management that emerges in intersection with regulatory mechanisms that help to circumscribe and ostracize a population on the level of “living and dying.” He is particularly interested in the disciplinary functions of carcerality and the production of delinquency, and the self-management of surveillance through carcerality.⁹⁶ The framework that I’m suggesting needs to be considered at the level of politics: mass carcerality as a response to the overthrow of a political regime.⁹⁷ This distinction is very similar to the distinction between freedom and carcerality, but the motivating criteria are different:⁹⁸ for biopolitics, the criterion is medico-juridical, whereas in ontopolitics, the criterion is moral-juridical.⁹⁹ Unlike the medico-juridicalization of the various categories of madness, monstrosity, and abnormality, the onto-political relationship is formed through the creation of categories that are intrinsic to the distinction between legal and potentially extra-legal subjects. From the very instantiation of a polity, “escape” avenues are built into the very legal fabric that links the sovereign and subject. Both frameworks, the bio-political and the ontopolitical, can operate consistently and simultaneously with similar mechanisms. But the bio-political works at the level of diffuse sovereign power, whereas the ontopolitical repeatedly returns us to the immediate and dynamic relationship between centralized sovereign authority and its subjects.¹⁰⁰

The regime of carcerality is consistent with Foucault’s understanding of disciplinary power, in that it operates on the malleability of bodies as well as the restriction of physical movement. However, I want to consider this regime as it operates on groups, rather than individuals. As Angela Davis argues with regard to prisons in the United States, they are designed to continue the mechanics of slavery and punishment at the politico-juridical level.¹⁰¹ The effectiveness of carcerality emerges from the widespread fear of possible incarceration. This fear is internalized at the collective or societal level when different groups understand that

⁹⁶ Foucault, *Discipline and Punish*, Part 3, “Panopticism.”

⁹⁷ Carcerality can take several forms. The most well-known form, if not also the most common, is that of using prisons to “contain criminals.” Cf. Angela Davis, “Racialized Punishment and Prison Abolition,” in Tommy Lott and John P. Pittman (eds.), *A Companion to African-American Philosophy* (Malden, MA: Blackwell, 2003); Dylan Rodriguez, *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime* (Minneapolis: University of Minnesota Press, 2006). Some examples of these include the use of Immigration detention centers to contain “illegal aliens,” prisoner of war camps with uncertain sovereign jurisdictions, such as Guantanamo Bay, and concentration camps, such as those which held Americans of Japanese descent and Japanese immigrants during the second World War on the grounds of containing potentially disloyal denizens. There are other forms of carcerality as well: There is what I will call “geographic carcerality” which restricts geographic movement for “onto-criminals.” Moral carcerality, which restricts and regulates one’s social behavior according to distinctions between good subjects and “bad” traitorous citizens. Military Zones which restricted movement among Japanese Americans and immigrants.

⁹⁸ For the purposes of disciplinary power, to oversimplify, the function is the molding, and self-circulating individualizing and management of bodies.

⁹⁹ The concept of “moral-juridical” speaks to the moral character or status of the individual or population.

¹⁰⁰ Still, it should be noted that the two—the biopolitical and the ontopolitical—can work in conjunction

¹⁰¹ Davis, “Racialized Punishment and Prison Abolition,” 363.

they are potential targets of the whim of sovereign power to criminalize them. Two impulses, in turn, are spurred: first, the rush to find oneself on the “right” or “correct” side of law.¹⁰² The second is any given group’s rush (to collaborate/cooperate) to find another group to criminalize in its own stead.

Both of these impulses, as they emerge from the fear of carcerality, not only confirm the onto-political decisions of the sovereign as “objective”;¹⁰³ they also shed the stigma and suspicion necessary to drive and reinforce its “onto-juridical” judgments. After all, if one has been placed in prison, then one must have done something wrong, unlike those of us who are free.¹⁰⁴ And so in order to remain free, we must help find those who must be placed in prison—and legitimate their imprisonment by showing what they have done wrong—showing why it was right to criminalize *them* instead of *us*.

Perhaps this point will shed some light on the name of this framework: Ontopolitics depends on the creation of categories—categories that appear to have an objective foundation—to create “ontological” divisions among populations, i.e. to distinguish different subsets of the population morally, politically, socially, and of course legally. These categories are “ontological” in that they denote some subjects as possessing some objective moral or political essence—always an essence that is in dialectical opposition to another, e.g., aliens vs. citizens, terrorists vs. law-abiding residents, insane vs. rational, criminal vs. innocent, undocumented immigrants vs. legal residents, etc. These categories in turn warrant that they should be placed into a special political or legal category, and receive some particular “special” or “exceptional”—usually negative—treatment based on this status.

These essences are ascribed based on the level of threat that some subjects/populations are perceived as posing to sovereign power. In this light, we could, as Carl Schmitt does in his incisive critique of the liberal state, understand the same mission to divide as the expression of the secularized divine omnipotence of the state. “The juridic formulas of the omnipotence of the state are, in fact, only superficial secularizations of theological formulas of the omnipotence of God.”¹⁰⁵ In this secular role then, the state is driven to maintain its power and its coherence by making and shaping its subjects, i.e., its populace, by rendering itself forcefully “political.” In other words, the coherence and strength of the state requires a prior element, namely something that *already* renders it unified politically. For Schmitt, writing on the verge of the Second World War, this mission was satisfied through the identification of an external enemy which would enable a people to understand itself as allied, coherent, and wholly united. This external enemy could not simply be identified as an economic competitor or private antagonist, but rather as one who was fundamentally opposed to the state in a “concrete

¹⁰² Mahmood Mamdani, *Good Muslim, Bad Muslim: America, the Cold War and the Roots of Terrorism* (New York: Pantheon Books, 2004); Karen Engle, “Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism),” *University of Colorado Law Review* (Winter 2004).

¹⁰³ Davis, “Racialized Punishment and Prison Abolition”; Rodriguez, *Forced Passages*; Mamdani, *Good Muslim, Bad Muslim*.

¹⁰⁴ As Engle and Mamdani argue. Cf. Engle, “Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism)”;

¹⁰⁵ Carl Schmitt, *The concept of the political* (Chicago: University of Chicago Press, 1996), 42.

and existential” sense.¹⁰⁶ And so, how is an enemy identified? Schmitt’s response: “...the context of a concrete antagonism is still expressed in everyday language, even where the awareness of the extreme case has been entirely lost...”¹⁰⁷ He explains that seemingly mundane terms can be polemicized only when they are articulated in close connection to a concrete situation and a specific conflict. “Words such as state, republic, society, class... are incomprehensible when one does not know exactly *who is to be affected, combated, refuted, or negated by such a term.*”¹⁰⁸ In other words, the polity must already know or have an idea of who the enemy is.

In the framework of ontopolitics, various groups can be targeted for racialization/criminalization at various times. (Ontologically) racial categories are neither static nor exclusive, although again they must always have a dialectical counterpart. How then are populations selected for racialization identified? They can be identified not only, as Schmitt says, in terms of a concrete situation, but in terms of their existence as a perceived threat. That threat is perceived *even as it is something barely perceptible*. Elsewhere, I identify the target of race, namely the taming of an “unruly” character.¹⁰⁹ The unruly is the element—often intangible, but possibly represented as physical or biological—which constitutes a threat to the coherence of a polity, and needs to be domesticated or at least managed in order for the state to maintain control of its population. The “unruly” is picked up as the ground of classifying, distinguishing, separating, dividing. To return to Foucault’s formulation of the state as fundamentally racist, where race is the bio-political expression of division, I would modify his understanding of race as follows: The state is fundamentally racist, where bio-power is *one* expression of that division; there can be other expressions of racial division. But in any case of racial division, bio-political or otherwise, there must be some element that “drives” the *character* and the *criteria*, and the *lines* by which the division is instantiated.

As such, race, or racialization, is the transformation of a threat into a set of categories by which to divide populations against themselves—bio-politically, culturally, socially, etc. It is one method by which sovereign power can fulfill its mandate to control and manage its populace, maintain its hold over them. Then, it would seem that the state’s mission to divide is not dictated by random biological or material characteristics, but rather by locating that which is potentially pernicious to sovereign power and managing it through the technology of race: the production of a classification (medical, political, legal, cultural, moral—or some combination thereof) in which the unruly is embedded; its subsequent naturalization or reification as an objective category; and finally, its concealment as the expression of the relationship between sovereign power and its populace as one of potential violence. Any or all of these technological dimensions may be augmented or informed through bio-politics; however, there must be an “unruly” threat that drives the Foucauldian manifestation of race. We could understand the threat at level of “onto-political.” That is to say, the threat might manifest

¹⁰⁶ Ibid., 27-8.

¹⁰⁷ Ibid., 30.

¹⁰⁸ Ibid., 30-1; my emphasis.

¹⁰⁹ Sheth, *Toward a Political Philosophy of Race*, Ch. 1.

itself along the surface of ontological distinctions that are infused in the political and cultural discourse of enemies and friends.

Ontopower would still target bodies, and utilize bio-politics to create decisions about who will be forced to live and who will be allowed to die, but it manifests itself alongside the biological, in seeking out the target of race through an ontological taxonomy, which names the essence of the targeted population through a set of ethical/cultural norms that fall outside of rationality—norms that uphold—regardless of the absence of evidence—religious fundamentalists, members of “Islamic” terrorist cells, suicide bombers, hijab-wearing women, etc. Ontopolitics identifies the threat through ontopower, i.e., through regulatory regimes that manage “homeland security,” against the threat of the Islamic extremist, or political radical, or violent nihilist. These norms enable central sovereigns or sovereign administrations how to decide who fits into “man-as-species,” and who fits into a different, “sub-”species.

VII. Conclusion

The political regime that has emerged after the events of September 11, 2001 requires a framework that can analyze new variants of racism in relation to sovereignty and power. Foucault’s analyses of governmentality, biopolitics, and racism are extremely helpful in understanding a range of recent and contemporary political moments; however, Foucault’s emphasis on displacing our attention to sovereignty in favor of the aleatory paths of power may eclipse our ability to understand and analyze forms of racism that have emerged as in the case of the War on Terror, and a subsequent war on Muslims. It is my hope that ontopolitics can augment Foucault’s discussion of governmentality and biopolitics.

Ontopolitics returns our attention to the agendas and directives of centralized sovereignty and examines them in relation to the aleatory exercises of power. Like biopolitics, it engages disciplinary and regulatory power to harness racism in the service of dividing populations. However, it does so at the level of the onto-moral, that is, at the level of the cultural, religious, ideological, in order to identify populations who serve as threats to the existence of the prevailing sovereign regime. While taking up the modern sovereign right to make live or let die, ontopolitics is concerned with the “*making live*” of the ontopolitical threat through the regime of carcerality. It fastens onto certain populations who appear unruly against a certain prevailing politico-juridical regime, and upholds them as dangerous in their fundamental existence—through cultural practices, political outlooks, ideological commitments and values. Ontopower, then, is the vehicle that attempts to investigate, circumscribe, detain—to manage—these populations. Through ontopolitics, we see that it is in the interest of sovereignty to ensure the “bare survival” of the threat. It requires the living of the threat in order to manage the rest of the “threatened” population. Ontopolitics, finally, often manages in conjunction with the mechanisms of biopolitics, in order to secure the threat against a society, and as importantly, against its sovereign authority.

The War on Terror is one site that could be usefully explored through the framework of ontopolitics in addition to that of biopolitics. Ontopolitics helps us to better understand the nature of the “Muslim threat” to the “Western” secular regime, and perhaps will offer us ways to combat the regulatory and disciplinary regime that creates ontopolitical enemies out of

ordinary citizens, engineers, teenaged girls, political dissenters, and others who are unduly deemed unruly threats to the prevailing politico-juridical regime.¹¹⁰

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