

Foucault Studies

The 2015 Baltimore Protests: Human Capital and the War on Drugs¹

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Abstract: In order to show how what Michel Foucault described as Chicago School neoliberalism in *The Birth of Biopolitics* devalues human life while masking that devaluation, I examine the 2015 death of Freddie Gray in Baltimore, Maryland, and the following civil unrest. Through an exploration of the concept of human capital, I argue that this concept, while seeming to answer a question regarding labor in economics, exacerbates the devaluation of human life in the U.S. generally and in the case of Freddie Gray more specifically. Foucault's *Birth of Biopolitics* lectures illustrates why the devaluation of life has gone largely unrecognized. As the concept of human capital, along with other 'market values,' proliferated beyond the realm of economics into daily life, human beings have come to be characterized as 'enterprise units.' I will argue that the prosecution of the War on Drugs provides a paradigmatic case of characterizing human beings as enterprise units, some useful and others surplus, looking to Baltimore to provide concrete examples.

Keywords: Michel Foucault, Freddie Gray, Baltimore, human capital, *homo oeconomicus*, *The Order of Things*, *The Birth of Biopolitics*, Wendy Brown, war on drugs, David Simon.

At 8:46 am on April 12, 2015, Freddie Carlos Gray Jr. was arrested by Baltimore police. When officers on bicycles arrived on a block they deemed a known area of drug dealing, the alarm when up: "Ay, yo, here comes Time Out!"² Like many people facing police scrutiny in communities central to the drug war, and knowing that police regularly violate people's rights in his neighborhood, Gray ran. This sufficing for probable cause in Baltimore, three police officers chased him for several blocks, finally tackling him to the ground.

¹ An earlier version of this paper was presented at the Foucault Circle, June 2015, Sydney, Australia. My thanks to Dianna Taylor and Chloe Taylor for their comments and suggestions.

² Kevin Rector, "The 45-minute mystery of Freddie Gray's death," *Baltimore Sun*, April 12, 8:39 a.m. [Http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-gray-ticker-20150425-story.html](http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-gray-ticker-20150425-story.html)

Freddie Gray was no stranger to Baltimore City police. Over a nine-year period, he had been arrested twelve times.³ Seven of those arrests were not prosecuted and one was closed because of Gray's death. Four arrests were prosecuted and Gray pled guilty to unlawful possession of drugs and/or possession with intent to sell or manufacture, i.e., non-violent drug offenses.

On April 12, officers found an illegal switch blade when they searched Gray.⁴

A police van was called, Gray was dragged to it, calling out in pain and seeming unable to walk of his own accord. Once in the van, Gray was not buckled in, as per police regulations. During the first thirteen minutes of his ride, the van stopped three times, once to add leg shackles to Gray's handcuffs and then to check on Gray, who complained of pain, and who the van driver described as 'acting irate,'⁵ before picking up another suspect. The van arrived at the Western District Police Station at 9:24 am, upon which Gray was deemed to be in 'serious medical distress,' paramedics were called, and he was transported to Maryland Shock Trauma.⁶

On April 19, 2015, Freddie Gray Jr. died from "a single 'high-energy injury' to his neck and spine" sustained during his arrest and transportation that, according to the medical examiner, was similar "to those seen in shallow-water diving incidents."⁷ The Gray family received a \$6.4 million settlement from the city,⁸ bringing the total paid out by the city for similar incidences of 'rough rides' in police vans to \$12.7 million over five years.⁹

³ Maryland Judiciary Case Search. <http://casesearch.courts.state.md.us/casesearch/inquiry-results.jsp?middleName=&partyType=&lastName=GRAY&filingEnd=&site=00&filingDate=&exactMatchLn=Y&filingStart=&d-16544-p=1&countyName=&action=Search&courtSystem=B&firstName=FREDDIE&company=N>. Accessed October 23, 2016.

⁴ Rector, "The 45-minute mystery of Freddie Gray's death."

⁵ Ibid.

⁶ Adam Marton and Emma Patti Harris, "Freddie Gray arrest timeline," *Baltimore Sun*, April 21, 2015. <http://www.baltimoresun.com/news/maryland/baltimore-city/bal-map-freddie-gray-arrest-timeline-20150421-htmlstory.html>.

⁷ Justin Fenton, "Autopsy of Freddie Gray shows 'high-energy' impact," *Baltimore Sun*, June 24, 2015. <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-freddie-gray-autopsy-20150623-story.html>.

⁸ Yvonne Wenger and Mark Puente, "Baltimore to pay Freddie Gray's family \$6.4 million to settle civil claims," *Baltimore Sun*, September 8, 2015. <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-boe-20150908-story.html>.

⁹ Yvonne Wenger and Mark Puente, "Baltimore to settle lawsuit alleging 'rough ride' by police," *Baltimore Sun*, October 6, 2015. <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-settlements-20151006-story.html>. Doug Donovan and Mark Puente, "Freddie Gray not the first to come out of Baltimore police van with serious injuries," *Baltimore Sun*, April 23, 2015. <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-gray-rough-rides-20150423-story.html>.

The death of Freddie Gray at the hands of police sparked protest in the city not seen since 1968, when Martin Luther King, Jr. was assassinated. The uprising, like others around the country following the deaths of African Americans at the hands of police, may astonish people unfamiliar with policing in minority neighborhoods. In a city such as Baltimore where there is no shortage of violent death or death at the hands of the police, why did this particular death spark such a reaction? Considering the history of Baltimore, one might better ask why it took so long.

After two weeks of mostly peaceful protests, tensions mounted as the police could not or would not release the details of Gray's arrest. Violence first broke out on the evening of April 25th when peaceful protests ended with some demonstrators who "scuffled with officers in riot gear outside Camden Yards, the baseball park."¹⁰ On April 27th, Gray's funeral was held. While the family made public statements urging protesters to remain peaceful,¹¹ violence broke out in several parts of the city.

One area that received a great deal of media attention was West Baltimore. A little over a mile away from where Gray was arrested sits Frederick Douglass High School, which, in 2015, enrolled almost 1100 students, 98% of whom were of African descent.¹² The surrounding neighborhood is an area of concentrated poverty, drug dealing, and homes with high levels of lead paint.¹³

On April 27, memes on social media indicated that a half hour before school let out, somewhere between 30 and 100 Douglass High students intended to 'purge.' City officials, having seen the social media posts the night before, cordoned off the area

¹⁰ Sheryl Gay Stolberg, "Baltimore Enlists National Guard and a Curfew to Fight Riots and Looting," *New York Times*, April 27, 2015 <https://www.nytimes.com/2015/04/28/us/baltimore-freddie-gray.html>.

¹¹ Jean Marbella, "The day the Baltimore riots erupted: New details of Baltimore riots after Freddie Gray's death," *Baltimore Sun*, <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-freddie-gray-april27-20151022-story.html>. Accessed October 28, 2016.

¹² Frederick Douglass High, School #450, School Profile. <http://www.baltimore-cityschools.org/cms/lib/MD01001351/Centricity/domain/8783/schoolprofiles/450-FrederickDouglass-Profile.pdf>

¹³ Baltimore "has nearly three times the national rate of lead poisoning among children. This burden weighs heaviest on poor, African-American communities....According to the Center for Disease Control, even low levels of lead are associated with learning and behavioral problems, including decreased cognitive performance." U. S. Department of Justice, 15. The neighborhood where Gray grew up and faced his final arrest, Sandtown-Winchester, reports the highest percentage of children with elevated blood lead levels as 7.4%. Gray and his sisters received a settlement from a 2008 lead paint lawsuit. Terrence McCoy, "Freddie Gray's life a study on the effects of lead paint on poor blacks," *Washington Post*, April 29, 2015. https://www.washingtonpost.com/local/freddie-grays-life-a-study-in-the-sad-effects-of-lead-paint-on-poor-blacks/2015/04/29/0be898e6-eea8-11e4-8abc-d6aa3bad79dd_story.html?utm_term=.868036b4f163

around Mondawmin Mall, the stated meeting place directly across the street from the high school. -Because of the meme, several nearby schools cancelled classes for the day, including Coppin State University and Baltimore City Community College, and the mall shops closed at 2:30pm. The Maryland Transport Authority (MTA) shut down the Mondawmin Mall transportation hub that serves over 5,000 students daily, thus stopping others from arriving at the meeting area.¹⁴ Unfortunately, this also prevented students from leaving the area and the MTA neglected to inform the school system of its actions. Police also stopped and unloaded busses arriving at the hub, thereby compounding the situation. With trains stopped and buses emptied, the police, in full riot gear, herded into the area of the mall several hundred stranded teenagers, the vast majority of whom had no intention to participate in the 'purge.'¹⁵ As tensions rose, students began to throw water bottles and rocks at police. The police ordered them to disperse. The destruction that followed was the product of years, decades, even generations of oppression, neglect, and abuse.

The Freddie Gray case is illustrative of how life is devalued within the city of Baltimore, as well as the masking of that devaluation. Through an exploration of the concept of human capital and its function in what Michel Foucault described as Chicago School neoliberalism, in what follows I will argue that this concept, while seeming to answer a question regarding labor in economics, has led to a kind of devaluation of human life in the U.S. generally and in the case of Freddie Gray more specifically. Foucault's *Birth of Biopolitics* lectures also illustrate why the devaluation of life has gone largely unrecognized. As the concept of human capital, along with other 'market values,' proliferated beyond the realm of economics into daily life, human beings have come to be characterized as 'enterprise units.' I will argue that the prosecution of the War on Drugs provides a paradigmatic case of characterizing human beings as enterprise units, some useful and others surplus, looking to Baltimore to provide concrete examples. While Foucault could not have predicted neoliberalism's path of

¹⁴ MTA official say they were acting according to Baltimore City Police requests, however, police have referred all requests for information about the shut down to the MTA. Erica Green, "How Baltimore schools became aware of 'purge' threat on day of unrest", *Baltimore Sun*, June 20, 2015. <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-school-emails-20150720-story.html>

¹⁵ Paul Duggan, DeNeen L. Brown and Peter Hermann, "After social-media alert to a 'purge,' police officers stood waiting," *Washington Post*, April 28, 2015. https://www.washingtonpost.com/local/social-media-helped-baltimore-police-plan-for-mayhem-but-taunts-escalated/2015/04/28/f87ab532-edbc-11e4-a55f-38924fca94f9_story.html, accessed October 23, 2016. Sam Brodey and Jenna McLaughlin, "Eye-witnesses: The Baltimore Riots Didn't Start the Way You Think," *Mother Jones*, April 28, 2015. <http://www.motherjones.com/politics/2015/04/how-baltimore-riots-began-mondawmin-purge>. Accessed October 28, 2016.

development, neither does he question the turn towards individual responsibility for success or failure implicit in the compulsion to develop one's human capital.

Foucault and Human Capital

Biopolitics addresses the organization and politicization of populations. It uncovers the way political policies insert themselves into lives, putting to use demographical information to manage populations. We could say that discipline deploys knowledge, where biopolitics manages the products of knowledge. The question then arises, in service of what? In *The Birth of Biopolitics*, Foucault argues that, in the twentieth century, much of the biopolitical project functioned in service of neoliberalism.

One cannot begin an analysis neoliberal economics or 'human capital' contained within *The Birth of Biopower* without considering the archeology of economics laid out in *The Order of Things*. There, Foucault writes that, apart from Adam Smith's account of the division of labor, "classical political economy has never analyzed labor itself, or rather it has constantly striven to neutralize it, and to do this by reducing it exclusively to the factor of time."¹⁶ For Smith, labor served as a constant, quantitative measure of value only if one ignored the distinction between labor as a quantity of hours and as a qualitative activity that transformed material from uselessness to usefulness.¹⁷ What the focus on time does not address, according to Foucault, is the workers' own perspectives on their reasons for working. Ricardo provides the link between the two, according to Foucault, when he argues that

the quantity of labour makes it possible to determine the value of a thing, not only because the thing is representable in units of work, but first and foremost because labour as a producing activity is 'the source of all value'.¹⁸

If value has its origin in labor, then the variable cost of labor does not affect the value of a product as does the quantity of labor required to produce it. This production cost, as a history of the product, is its value.¹⁹ Marx takes this a step further, detaching labor from labor power, which workers alienate for a wage.²⁰

In the March 14th lecture of *The Birth of Biopolitics*, Foucault traces the history of human capital to neoliberalism's focus on human labor, which he characterizes as a

¹⁶ Michel Foucault, *The Birth of Biopolitics; Lectures at the Collège de France, 1978-79*, translated by Graham Burchell (New York: Palgrave Macmillan, 2008), 220.

¹⁷ Michel Foucault, *The Order of Things: An Archeology of the Human Sciences*, (New York: Pantheon, 1973), 252.

¹⁸ Foucault, *The Order of Things*, 253.

¹⁹ Ibid., 256.

²⁰ Foucault, *Birth of Biopolitics*, 221.

neglected third of the economy that produces goods.²¹ The other two factors, land and capital, were the focus of classical economic analysis, whereas labor and the laborer were treated as tangential, if not erased.²² In the U.S., the Chicago School neoliberal, according to Foucault, turns to labor, finally seeing it as more than simply time. Thus, at long last, economics looks to the person who labors. The concept of human capital emerges from the imperative to examine not merely the price of labor but “the value added by labor.”²³ Foucault says, “we must put ourselves into the position of the person who works: we will have to study work as economic conduct practiced, implemented, rationalized, and calculated by the person who works.”²⁴ Taking this perspective transforms the worker from an economic object into a subject. As subjects, workers see themselves as gaining an income from their work, rather than simply selling their time. If all income is the product or return on a capital, then the capital in question for workers is themselves; workers build their capital by investing in their attributes and training in order to acquire skills, knowledge, and experiences that they can then put to work in the market.

Foucault argues that human capital “is inseparable from the person who possesses it.”²⁵ Instead of workers alienating their productive labor, workers themselves are complex, productive processes, leading Foucault to observe:

This is not a conception of labor power; it is a conception of capital-ability, which ... receives a certain income that is a wage ... so that the worker himself appears as a sort of enterprise for himself ... An economy made up of enterprise-units, a society made up of enterprise-units, is at once the principle of decipherment linked to liberalism and its programming for the rationalization of a society and an economy.²⁶

On its face, this is a far cry from an indictment of either neoliberalism or the concept of human capital. The people who labor had been left out of classical liberal economic analysis, reduced to time spent laboring, with little concern for why they labor or the capacities they bring to their work. The concept of human capital redirects our focus to the enterprise of gaining and deploying knowledge and skills. Rather than merely an object of economic activity, laboring individuals becomes subjects, able to invest in and capitalize upon themselves.

²¹ Ibid., 219.

²² Ibid., 220.

²³ Ibid., 223.

²⁴ Ibid., 223.

²⁵ Ibid., 224.

²⁶ Ibid.

While the introduction of human capital might seem like an improvement over what came before, we know that such appearances in Foucault's work, like confinement replacing public torture, 'progress' always comes with its own costs. Examining economics from this perspective opens new ways of thinking about workers that appear to empower them, but also introduces new forms of subjectification, which then require normalization within a grid of neoliberal economic truths allowing for "programming a rationalization for society." As I will argue in the following section, an unintended consequence of moving from equating labor and time to a concept of human capital has resulted in a devaluation of human life. There may have been greater possibilities within neoliberal governmentally; however, they have been co-opted and used against the vast majority of people for the benefit of the few.

Losing the Human in Human Capital

In *Undoing the Demos: Neoliberalism's Stealth Revolution*, Wendy Brown argues that biopolitics is Foucault's way of saying that our real problem is neoliberalism:

Competition as the central principle of market rationality also means political subjects lose guarantees of protection by the liberal state. Competition yields winners and losers; capital succeeds by destroying or cannibalizing other capitals. Hence, when market competition becomes generalized as a social and political principle, some will triumph and some will die... as a matter of social and political principle.²⁷

The rules of capital are not suspended for human capital: value is situated externally to the object, i.e., the worth of your shares in an enterprise, be it human or corporate, is based on what another will pay you for them. Those shares are not inherently valuable. The value of a human life, then, must be demonstrated through its success in competition, its ability to grow its capital, and its return on investment, not on the inherent dignity of human life. One may successfully build human capital; however, without the liberal state, there are no guarantees that capital will not suffer from competition against other 'capitals.'²⁸

While Brown recognizes the remarkable ability of Foucault to pull together disparate streams of political and economic events as early as 1978, she is not without criticism of his account. He did not predict the financialization of the investment sector of the economy, nor did he predict how the spread of neoliberal policies beyond the market would affect an institution like education or undermine democracy. His analysis of neoliberalism remains ambiguous; Foucault sees the possibility for a liberatory moment beyond the constraints of discipline:

²⁷ Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution*, (New York: Zone, 2015), 65.

²⁸ By making human beings into capital, the groundwork is set to make corporations into people.

You can see that what appears on the horizon of this kind of analysis is not at all the ideal of a project of an exhaustively disciplinary society in which the legal network hemming in individuals is taken over and extended internally by, let's say, normative mechanisms ... On the horizon of this analysis we see instead ... a society in which there is an optimization of systems of difference, in which the field is left open to fluctuating processes, in which minority individuals and practices are tolerated, in which action is brought to bear on the rules of the game rather than on the players, and finally, in which there is an environmental type of intervention instead of the internal subjugation of individuals.²⁹

Here we see a clear distaste for normativity and its ability to 'hem in' individuals, normalizing some and excluding others. Practicing freedom within this disciplinary discourse is fraught with difficulty. Foucault identifies five ways in which society could improve: first, optimizing difference, as opposed to attempting its erasure; second, fluctuating processes; third, 'tolerating,' (today we might say 'embracing' or 'celebrating') minority groups and practices; fourth, working towards structural change of rules rather than normalizing players; and fifth, intervention at the level of environment rather than subjugating individuals. At this point, apparently, he thought neoliberalism might accomplish these tasks.

Foucault makes counterintuitive conclusions through his seeming acceptance of nascent rational choice theory (RCT) as a sufficient explanation of human action. For example, criminal offenses are intelligible as rational choices, or at least as non-random choice, and are those actions sanctioned by a criminal penalty, not actions committed by criminals.³⁰ Foucault explains:

The subject is considered only as *homo œconomicus*, which does not mean that the whole subject is considered as *homo œconomicus*. In other words, considering the subject as *homo œconomicus* does not imply an anthropological identification of any behavior whatsoever with economic behavior. It simply means that economic behavior is the grid of intelligibility one will adopt on the behavior of a new individual.³¹

This kind of knowledge about individuals, then, would turn away from anthropology psychology, thus avoiding the identification and categorization of a person as Man, normal or abnormal, disciplined or deviant, and instead look only at economic behavior graphed out on an economic network of intelligibility. This self-beyond-the-need-of-diagnosis, this economic subject, who "seeks in any case to maximize his profit, to

²⁹ BOB, pp. 259-60.

³⁰ Ibid., 251.

³¹ Ibid., 252

optimize the gain/loss relationship; in the broad sense: the person whose conduct is influenced by the gains and losses associated with it,"³² is a subject who makes choices in order to apply limited means to achieving specific ends: a rational, transactional subject, free of disciplinary and normalizing forces.

Foucault identifies the proper object of economic analysis as

any purposeful conduct which involves, broadly speaking, a strategic choice of means, ways, and instruments: in short, the identification of the object of economic analysis with any rational conduct.³³

Because even constructing an argument can be seen as deploying scarce resources, (premises), to determine an end, (a conclusion), he wonders "why we should not define any rational conduct or behavior whatsoever as the possible object of economic analysis."³⁴ Recognizing that he is not the first to suggest this, Foucault acknowledges the work of Gary Becker in extending the analysis not just beyond purely economic decisions, but beyond RCT, per se: "economic laws and economic analysis can perfectly well be applied to non-rational conduct," i.e., "conduct which responds systematically to modifications in the variables of the environment," conduct which "accepts reality."³⁵ It seems remarkable that Foucault, who so often criticizes the elevation of reason and rationality, sees such possibility in the behavioralism of RCT.³⁶

Brown characterizes Foucault's turn to RCT as locating in the economic arena the site of truth, explaining:

The verification of the market has two dimensions in neoliberal reason: the market is itself true and also represents the true form of all activity. Rational actors accept these truths, thus accept "reality; conversely, those who act according to other principles are not simply irrational, but refuse "reality."³⁷

Of course, refusing reality will have consequences in reality, consequences that affect one's success or failure, one's position as a winner or a loser, in the market and beyond. Brown observes that the relation between market, truth, and an actor's response to

³² Ibid., 259.

³³ Ibid., 269.

³⁴ Ibid.

³⁵ Ibid.

³⁶ I would not conclude that he endorses a reduction of human choice to mere behavioralism, as he locates this responsiveness to stimuli as the seat of the governability and manageability of homo oeconomicus; in fact, he posits a paradox of the simultaneous openness to governability and "essentially and unconditionally irreducible element against any possible government. (271)"

³⁷ Brown, 67.

'reality' is expressed in RCT, and that this theory has been put to use far beyond the discipline of economics so successfully that it has become "the hegemonic model for social science knowledge."³⁸ The effectiveness of this extension elevates economic rationality and closes off alternative explanations, which Brown sees as delegitimizing political explanations, political discourse, and thus, democracy.

What is the consequence for human capital when businesses replace laborers with robots, as has happened throughout the auto industry, or when the demand for the capital a person has acquired, like the skills and knowledge to mine coal, falls? What happens to the people who lose competitions? Surplus goods can be discounted and remaindered. Neoliberalism demands we treat surplus human beings in the same way.

Surplus Life

Craig Willse, in *The Value of Homelessness: Managing Surplus Life in the U.S.*, contends:

Neoliberal reforms shift responsibility for managing the dangers of living in capitalism away from the state and once again directly onto reprivatized individuals, who must figure out for themselves how to survive low wages and endemic underemployment.³⁹

Homeless people, those living in poverty, those unemployed and unemployable, constitute surplus life. They have failed to build and deploy their capital successfully; in fact, because they require public assistance, they draw down the capital of others. It is they who populate what Michael Harrington called 'The Other America.'

In Harrington's groundbreaking work on poverty in the U. S., he identified a vicious cycle keeping people in poverty:

The poor get sick more than anyone else in the society. That is because they live...under unhygienic conditions; they have inadequate diets, and cannot get decent medical care. When they become sick, they are sick longer than any other group in society. Because they are sick more often and longer than anyone else, they lose wages and work, and find it difficult to hold a steady job. And because of this, they cannot pay for good housing, for a nutritious diet, for doctors.⁴⁰

According to Harrington, the cycle of poor living conditions leading to poor health, poor health leading to losing work, and losing work leading back to poor living conditions, characterized a 'culture of poverty.' This phrase was taken up by

³⁸ Ibid.

³⁹ Craig Willse, *The Value of Homelessness: Managing Surplus Life in the United States*, (Minneapolis: University of Minnesota Press, 2015), 44.

⁴⁰ Michael Harrington, *The Other America: Poverty in the United States*, (New York: Touchstone, 1997), 15.

neoconservatives to blame people in poverty for their own plight.⁴¹ Instead of choices, however, we can see the mechanisms of liberalism, classical and neo-, capitalism, and biopower overlapping to create an underclass. If we see citizens of The Other America, as do those who blame the victims, as capital expenditures rather than human capital capable of income or future earnings, as takers rather than givers, then there is no reason to treat them any differently than one would surplus goods. Drawing down the capital of those who possess it, the surplus inhibit the ability of those with human capital to compete. Unless one is lucky enough to be eligible for Family Medical Leave or sabbatical, there is no interval during which one can rest up and reestablish one's position. In neoliberalism, competition never ends. Inefficiency, in the form of business practices or a people who costs more than they return, is a drain on the economy that must be minimized. Neoliberalism provides a new double-speak to distract from human suffering and allow us to justify it by appealing to 'market forces.'

Instead of 'every life mattering,' the concept of human capital tasks individuals with the responsibility of raising their own personal 'capital,' or being 'entrepreneurs of the self.' When individuals fail, the fault is theirs alone. When a business fires employees in order to cut costs and raise profits, an economically rational thing to do, the extended effect on the families of those employees or the community that supported and was supported by those jobs is not, and in fact, cannot be considered in making that decision. In economic terms, employees are costs to be minimized. Forty years after the *Birth of Biopolitics* lectures, it is not that capital has been humanized, but that humanity, under the rubric of neoliberalism, has undergone a kind of SWOT analysis, and has been found wanting.

David Simon, former police beat reporter at the *Baltimore Sun* from the early 1980s to the early 1990s,⁴² author of *Homicide: A Year on the Killing Streets*, *The Corner: A Year in the Life of an Inner City Neighborhood*, and the co-creator of *The Wire*, puts it succinctly, "We are in a post-industrial age. We don't need as many of us as we once did."⁴³ It is not simply those living in affected areas whose lives are diminished but also those of us who are desensitized to what has happened in The Other America, to those who have lost their community, purpose, and means of support. Those of us not

⁴¹ C.f. Lamont, Michele, Mario Luis Small, and David J Harding. 2010. "Introduction. Reconsidering Culture and Poverty. Special Issue." *The ANNALS of the American Academy of Political and Social Science* 629(1): 6-27.

⁴² Bill Keller, "David Simon on Baltimore's Anguish: Freddie Gray, the drug war, and the decline of 'real policing'." <https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish#.83J1sr4sT>

⁴³ Margaret Talbot, "Stealing Life: The crusader behind 'The Wire,'" *The New Yorker*, October 22, 2007. <http://www.newyorker.com/magazine/2007/10/22/stealing-life>.

affected by poverty are encouraged to see those who are as lazy, immoral, or otherwise lacking in character. Our humanity is hardened, and thus, lessened. As Simon says, "It's about the very simple idea that, in this Postmodern world of ours, human beings - all of us - are worth less. We're worth less every day."⁴⁴

In an interview with Bill Moyers, David Simon, frankly and ironically, summarizes the neoliberal position:

The American economy doesn't need [poor black and brown people]. So, as long as they stay in their ghettos, and they only kill each other, we're willing to pay a police presence to keep them out of our America.... I think we're going to follow market-based logic, right to the bitter end. If you don't need 'em, why extend yourself? Why seriously assess what you're doing to your poorest and most vulnerable citizens? There's no profit to be had in doing anything other than marginalizing them and discarding them.⁴⁵

Simon, in an attempt to shock and awaken, pulls back the curtain of economic doublespeak to illustrate how human capital moves value from the human side to capital. He also points out the purpose of the police: to keep the underclass, the black and brown people, from troubling 'our' America - mostly white, middle and upper class, hard-working, entrepreneurs of the self. Neoliberalism, beyond bringing market values to all aspects of life, provides cover for racism and white supremacy.

The human side, though, according to Willse, can open new avenues for social and economic production. When considering surplus life, he writes:

But rather than a category of labor, we have a category of raw material to be labored on—by the knowledge and service industries that constitute a homeless management nexus, and which include federal, state, county, and municipal government agencies; nonprofit service providers and advocacy organizations; and social science research centers.⁴⁶

Here, we see the application of market rationality to build a system around, and allow some to profit from, a situation we should all be working to eliminate. Surplus life provides neoliberal capitalist economies with a method of suppressing labor costs, as well as creating service industries to treat that population. While many of these

⁴⁴ Meghan O'Rourke, "Behind The Wire: David Simon on where the show goes next," *Slate*, December 1, 2006, http://www.slate.com/id/2154694/pagenum/all/#page_start.

⁴⁵ Bill Moyers interview with David Simon, April 17, 2009. Transcript at <http://www.pbs.org/moyers/journal/04172009/transcript1.html>.

⁴⁶ Craig Willse, "Surplus Life: Biopower and Neoliberalism," *The Scholar and Feminist Online*, Barnard Center for Research on Women. <http://sfoonline.barnard.edu/gender-justice-and-neoliberal-transformations/surplus-life-biopower-and-neoliberalism/>

industries work to improve the lives of those of us deemed surplus life, and stimulate the economy through job growth, not all parts of this management nexus are positive. One of those industries is The War on Drugs.

The War on Drugs and Baltimore

Had neoliberalism worked as Foucault thought it might, drug policy would have taken a very different form, which he explains in *The Birth of Biopolitics*' March 21st essay. Here, Foucault provides an "economics of criminality" surrounding the drug trade. The policy of reducing the drug supply and, thus, 'drug delinquency,'⁴⁷ via dismantling refining and distribution networks meant an increase in the street price of drugs.⁴⁸ Foucault points out that prices increased beyond what competition would have dictated by creating monopolies, what we now think of as drug cartels. The factor that makes many illegal drugs different from other consumer goods is their addictive nature, thus making the demand for them inelastic. Such a commodity a consumer will go to great lengths to find, and, for which, a consumer will be willing to pay any price even to the point of criminality.⁴⁹ Thus, the drug war, in an attempt to stop the illegal production, importation, and sale of drugs, created greater illegality on the part of the producer to make the drug, the distributor to secure a supply and sell, and the user to purchase the drug; a predictable end if one considers the implications of inelastic demand of a product, regardless of one's normative position regarding whether we should all "just say no." Foucault concludes "the style of law enforcement which was developed in the sixties proved to be a sensational failure."⁵⁰ An evaluation we can be sure he would have continued to hold as those policies transformed the drug war in the late 20th century, including the zero tolerance policing policies that attended it.

Based on an economic evaluation, Foucault suggests a different model. There are two kinds of markets to be served, those who are addicted to drugs and those who are experimenting or trying them out for the first time, and those two groups have different demands, the first inelastic and the second elastic. If we want to discourage drug use, the price for those with elastic demand should be set high. If the price is dear, a person

⁴⁷ In *Naissance del la biopolitique*, the phrase Foucault uses is "de délinquance de drogue," (262).

⁴⁸ He does not name the specific drug, but from the time frame and the kinds of interdiction Foucault discusses, we can assume he is talking about heroin and cocaine. We can extend the argument to crack, meth, and various prescribed opioids.

⁴⁹ *Birth of Biopolitics*, 257. Another inelastic commodity is gasoline, which, for those of us who remember the shortages in the U. S. in the 1970s, will also remember the locks put on gasoline tanks to prevent siphoning. Criminality, however, is not a necessary part of an inelastic good. It is something people are willing to pay for, even when the price rises. There is little change in demand relative to an increase in price.

⁵⁰ Ibid.

is less likely to use the drug, and thus less likely to become addicted. For those with inelastic demand, i.e., those already addicted who are more likely to pay any price, they should pay the lowest possible price. Such a policy would discourage additional crime to secure one's purchase at a high price point, rather than the purchase of the drug, itself.⁵¹ Foucault concludes,

From this stems a policy of law enforcement directed towards new and potential consumers, small dealers, and the small trade that takes place on street corners; a policy of law enforcement according to an economic rationality of the market.⁵²

Seen from an economic perspective, producer, distributor, nor consumer need be seen as a criminal; in fact, their criminality and the normative judgments on which it is based, are erased. *Homo economicus*, then, opens the possibility of avoiding the problem of normative judgement; if actions are reduced to economic exchange, we can evaluate them on economic factors, like competition and return on investment, rather than mechanisms of normalization, diagnosis, and exclusion.

Instead of a law-abiding or well-disciplined subject, Foucault sees in neoliberalism a self that can work on itself, building human capital and making economically rational choices. Experimenting with illegal drugs, were that to be very expensive, would not be economically rational, and thus fewer people would do it. What Foucault assumes, however, is a game within which all actors are seen as rational. It is a fact that there are people addicted to drugs; however, the fact of drug dependence does not lead Foucault to judge their situation, their will power, or their character. Addiction does not lead him to value a person as less than human, and here, perhaps, we can see where he located the promise of neoliberalism. The point is not to dehumanize addicts as delinquent, but to implement economically rational policies that will limit others becoming addicted to drugs. However, what Foucault does not explain is how neoliberalism, considering that it employs market values as the basis for a normative framework, can regard people addicted to drugs as building human capital and adding value to the economy. In economic terms, capital is either growing or falling behind; there is no standing still. While Foucault offers us a nonjudgmental and economically rational way to address drug addiction, his solution does not preclude an evaluation of addicts as an economic drain.

This is a juncture at which we can see the interplay between discourses creating tension. In Baltimore, as in most urban centers, force, discipline, juridical power, and

⁵¹ Ibid., 258.

⁵² Ibid. Here, Foucault seems to be suggesting a policy of clearing corners, a policy, as we will see, which led to many of the problems in Baltimore.

bio-power are all present, competing, overlapping, and intensifying one another. Urban centers, particularly where the drug war has been waged, exemplify the interplay between varied techniques of power exercised and deployed. None of these discourses exhaust or replace the others in the kind of paradigm change Kuhn argued for in *The Structure of Scientific Revolutions*. Rather, as Foucault asserts in *Security, Territory, Population*:

to describe things ... as the archaic, ancient, modern, and contemporary misses the most important thing ... because, of course, the ancient modalities I spoke about involve those that appear as newer. It is absolutely clear that in the juridico-legal system ... the disciplinary side was far from being absent ... [I]f we take the mechanisms of security[,] ... it is quite clear that this does not constitute any bracketing off or cancellation of juridico-legal structures or disciplinary mechanisms.⁵³

Discourses overlap; one does not replace the other in a chronological order, nor is each attributable to a specific 'age.'

Mechanisms of security do not replace disciplinary mechanisms, which would have replaced juridico-legal mechanisms. In reality there is a series of complex edifices that change, transform, are perfected, become more complicated, but most importantly are correlated to one another.⁵⁴

We should not take instances of discipline or juridical power as proof that mechanisms of biopower or neoliberalism are not also at play.

In Baltimore, sovereign, disciplinary, and bio-power intersect. Each discourse illuminates a section of Baltimore's troubles, but none accounts for all. In August of 2016, the U.S. Department of Justice Civil Rights Division (DOJ) released its findings after investigating the Baltimore City Police Department (BCPD) in the wake of the Freddie Gray protests. The report paints a bleak picture of 'The Other' Baltimore, not the white or even mixed-race middle-class and affluent neighborhoods, but those areas of the city affected by decades of systemic oppression, including lower incomes, higher poverty rates, elevated unemployment, and poor education.⁵⁵

⁵³ Michel Foucault, *Security, Territory, Population: Lectures at the College De France 1977-1978*, translated by Graham Burchell (New York: Palgrave Macmillan, 2007) 6-7. My thanks to Kevin Jobe for pointing me to this argument.

⁵⁴ Ibid., 8.

⁵⁵ U. S. Department of Justice, Civil Rights Division, "Investigation of the Baltimore city Police Department," August 10, 2016, 12.

While systemic racism in the city predates the drug war,⁵⁶ the drug war brings market values to racism. Neoliberalism's focus on competition and building individual capital leads to Uber, Etsy, and the 'gig' economy and away from unionizing or other forms of workers banding together to demand fair treatment from employers. If one fails in the market, instead of it being a problem of the market (e.g., unjust employment practices) and/or the society (e.g., white supremacy, misogyny, or a failure of democracy), the individual is blamed (people are lazy, or should 'just get a job'). Whether that failure results in underemployment, homelessness, or incarceration, we can excuse such results as the price of failure.

In Baltimore, dehumanization comes most dramatically through interactions with police. The city's ordinances increased the penalties for selling drugs in designated areas, as do most drug-free zone laws; however, Baltimore included more extensive anti-loitering language that led to people, the vast majority people of color, being arrested for sitting in front of their own houses. While there was concern over the law as early as 1993, by the late 1990s, judges routinely dismissed cases of those arrested in drug-free zones, and although the city council considered repealing or revising the laws, in 2016 the loitering prohibitions persisted. The DOJ found that people were targeted not because they were engaged in or suspected of drug-related activity, but simply because they were 'in the area,' i.e., where they lived, concluding that "BPD officers exercis[e] nearly unfettered discretion to criminalize the act of standing on public sidewalks."

Citizens in Baltimore, mostly people of color and living in neighborhoods affected by poverty, wanted the city and the police to stop the drug dealers, but what they got was a criminalization of their neighborhoods. Under Baltimore's prosecution of the drug war, certain streets and corners were 'indicted', prohibiting all loitering, which meant that residents could not sit on their steps in the evening. Interactions included pre-arrest public strip searches.⁵⁷ 'Drug sweeps' meant that, if you were in the wrong place at the wrong time, you could be swept up in mass arrests that jailed 15-20% of the city's population each year. The mayor, Martin O'Malley, briefly a presidential candidate in 2016, exacerbated tensions during his administration:

⁵⁶ "Indeed, when asked when community distrust of Baltimore law enforcement began, a former top city official deadpanned to Justice Department officials, "1729" – the year of the City's founding." *Ibid.*, 18.

⁵⁷ U. S. Department of Justice: "in the last five years BPD has faced multiple lawsuits and more than 60 complaints alleging unlawful strip searches. In one of these incidents— memorialized in a complaint that the Department sustained— officers in BPD's Eastern District publicly strip-searched a woman following a routine traffic stop for a missing headlight. (33)"

by emphasizing an aggressive, “zero tolerance” policing strategy that prioritized making large numbers of stops, searches, and arrests—often for misdemeanor street offenses like loitering and disorderly conduct...[I]n 2005, BPD made more than 108,000 arrests, most for nonviolent offenses.⁵⁸

One third of the African-American population of the city was arrested during 2005, although, as the DOJ report indicates, many people were arrested more than once. Even considering multiple arrests of individuals, the numbers would indicate that more than half of the African-American men in the city of Baltimore have records, which limit their ability to get jobs, housing, and student loans.

Of the arrests made during the zero tolerance program, most were not even prosecuted. The DOJ reports:

Officials dismissed charges against African Americans for trespassing at a rate 52 percent higher than the rate at which they dismissed other trespassing arrests; dismissed African American resisting arrest charges at a 57 percent higher rate; failure to obey charges at a 33 percent higher rate; false statement charges at a 231 percent higher rate; disorderly conduct charges at a 17 percent higher rate; and disturbing the peace charges at a 370 percent higher rate.⁵⁹

Stop-and-frisk policies land innocent people in jail and are justified with a rhetoric of trying to eliminate crime, however the war on drugs has proven spectacularly ineffective at doing so. In *Punishment and Inclusion*, Andrew Dilts argues that neoliberal penal policy doesn't look to eliminate crime. Rather, a certain level of crime can be tolerated. He argues that,

under neoliberalism, we are no longer concerned about the eradication of crime, nor are we concerned about individual criminals. The only relevant questions are those that operate at the general level of the population: the crime rate.⁶⁰

Zero-tolerance policies may sound like a contradiction of this point; however, they are paradigmatic of neoliberalism.

On the one hand, such policies direct patrol officers to make arrests for minor offenses, under the assumption that a decrease in major crime will follow. Foucault's account of a drug policy that would discourage experimentation and assist addicts

⁵⁸ Ibid., 18.

⁵⁹ U. S. Department of Justice, 58

⁶⁰ Andrew Dilts, *Punishment and Inclusion: Race, Membership, and the Limits of American Liberalism*, (New York: Fordham, 2014), 73. O'Malley was elected on the promise to bring the murder rate below 175 deaths in a single year. It's rate of 350 in 1999 would have been on the order of 5,000 murders a year in NYC. That same year, NYC had 671 murders.

presupposes the desire to eliminate the problem, however, this would also eliminate the industry that has grown up around the persecution of the drug war. If the drug war succeeded, DEA agents, police, guards, bail bondsmen, construction workers, and the industries that service prisons would lose work.

All of this work creates an economic machine, a pipeline that ends in the prison industrial complex. As Angela Davis points out in *Are Prisons Obsolete*, this fails to explain why the explosion of prison construction occurs at the same time the overall crime rate is falling. Interdiction, enforcement, trial, incarceration: they create jobs and industries to support those jobs. Davis argues,

The notion of a prison industrial complex insists on understandings of the punishment process that take into account economic and political structures and ideologies, rather than focusing myopically on individual criminal conduct and efforts to 'curb crime.'⁶¹

Corporations have come to depend upon prison labor to increase profits without having to address the myriad concerns that otherwise accompany a workforce.

On the other hand, Dilts points to the increased dependence upon numbers, which in Baltimore led to a metric of good policing, as well as provide motivation to circumvent the metric:

While the neoliberal regime says we cannot refer to any form of deep subjectivity of...individuals, it still allows and encourages the prediction of harm and the assessment of risk on the basis of past actions and descriptive characteristics.... [T]he neoliberal position...embraces an actuarial assessment of dangerousness.⁶²

This kind of policing relies on the use of crime statistics to prove that a person's presence is reasonably suspicious to justify detention or arrest. In Baltimore, this led to the interesting result of having murders increase without a corresponding increase in attempted murders or aggravated assaults. As Simon points out, you cannot hide a body, but other sorts of crimes can be reclassified in order to change the statistics.⁶³ If

⁶¹ Angela Davis, *Are Prisons Obsolete*, (Toronto: Seven Stories Press), 2003, 85.

⁶² Dilts, *Punishment and Inclusion*, 80.

⁶³ Bill Keller, "David Simon on Baltimore's Anguish: Freddie Gray, the drug war, and the decline of 'real policing.'" *The Marshall Project*, 4/29/2015. <https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish>. "How does the homicide rate decline by 15 percent, while the agg assault rate falls by more than double that rate. Are all of Baltimore's felons going to gun ranges in the county? Are they becoming better shots? ...It makes no sense statistically until you realize that you can't hide a murder, but you can make an attempted murder disappear in a heartbeat, no problem." The Department of Justice found numerous cases of misclassification of rape charges and complaints of officer

crime numbers drop, then we assume that crimes do not occur as often, that the city is less dangerous, and thus, more amenable to business. If we can just make the economy grow, then everything will be okay.

Conclusion

Like other cities that have lost their manufacturing base of employment, a portion of the economic activity and industry of Baltimore's people has turned to the selling or taking of illegal drugs and the official attempt to thwart those activities. The drug war, as a race war and a war on an underclass, has changed the way policing is done in the city. I am not making the facile claim that 'good policing has gone bad.' Investigating crime, however, is different from an attempt to arrest everyone who might be involved with drugs. Policing is not a problem to be solved by body cameras and greater external oversight; rather, policing, as a normalizing institutional force, is already part of the problem, one that has been exacerbated by the war on drugs and the excuses it provides to dehumanize those of us who live in the Other America.

By encouraging us to narrowly focus on individuals and their ability to tailor skills and knowledge to the needs of a market, human capital places responsibility on individuals for their success or failure. Where unions brought workers together to more effectively negotiate with management, neoliberalism uses competition to divide workers, setting them against one another. Technology and innovation allow fewer workers to accomplish the same amount in less time, but rather than this leading to greater leisure time for all, it has created a surplus of humanity who are then accused of being lazy for not finding work. People are derided for turning to drugs to ease their pain or the drug trade to find gainful employment; when faced with the options, this can be seen as, if not a rational choice, then at least a choice that accepts a particular reality.

Baltimore is one of the few places that has charged the officers involved with crimes related to Mr. Gray's death. Because the city's policies have so poisoned the jury pool, several of the officers requested bench trials, not trusting a jury to follow the law. This resulted in two acquittals and the remaining charges being dropped.⁶⁴ Simon, on his blog "The Audacity of Despair" writes:

Fair-minded people can argue about whether sufficient intent was proven to justify a manslaughter conviction, or whether this particular officer was more or less complicit in

misconduct (pp. 63, 123). While this does not substantiate Simon's claims, it points to a cultural practice within the department of misclassification.

⁶⁴ Kevin Rector, "Charges dropped, Freddie Gray case concludes with zero convictions against officers," *Baltimore Sun*, July 27, 2016. <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-miller-pretrial-motions-20160727-story.html>.

what happened to Mr. Gray. But if, over the ensuing trials, our justice system determines that a prone, unresponsive human being can be legally ignored for nearly an hour by the authorities who have taken custody of him, well then, what exactly is the law saying to us as citizens?⁶⁵

And, of course, this is exactly what has happened; no officers were found either guilty of, or even responsible for, Freddie Gray's death. We have witnessed similar disregard for human life across the country since the death of Michael Brown in 2014. Since 2011, the City of Baltimore alone has paid over \$18 million in settlements to victims of police misconduct.⁶⁶ The legal system missteps and no one is held accountable.

Neoliberalism, prior to Reagan and Thatcher, may have held the promise of a system of normalization outside of either sovereignty or discipline. However, instead of following through with what he lays out in *The Birth of Biopolitics*, in the following year's lecture Foucault doesn't mention human capital, entrepreneurs of the self, or market veridiction. Dilts has remarked upon Foucault's move from biopolitics and governmentality in the late seventies to the care of the self in the early eighties, arguing that the shift in focus from a sovereign self to a self for itself, (or the value of labor from the perspective of the one who labors), provides Foucault with a framework from which he can imagine a self that works on itself not to build human capital, but to create an aesthetics of existence.⁶⁷ Foucault transforms investments in human capital into the care of the self, and makes a connection between these activities and the formation of an ethical subject. Dilts argues

because all practices are experienced as choices, and therefore are already taken as practices of freedom, neoliberals never take account that this is the moment where they are a part of an ethical project.⁶⁸

Foucault's work in *The Birth of Biopolitics*, Dilts concludes, is what makes possible the non-sovereign self, and his examination of human capital makes possible care of the self. What concerns me, though, is that this remains at the level of the individual, the self working on itself, for itself. There is nothing necessitated in the care of the self

⁶⁵ David Simon, "Ain't no justice. It's just us," *The Audacity of Despair*, December 18, 2016. <https://davidsimon.com/aint-no-justice-its-just-us/>.

⁶⁶ Mark Puente, "Undue Force," *Baltimore Sun*, September 8, 2014. <http://data.baltimoresun.com/news/police-settlements/>. Yvonne Wenger and Mark Puente, "Baltimore to settle lawsuit alleging 'rough ride' by police." Doug Donovan and Mark Puente, "Freddie Gray not the first to come out of Baltimore police van with serious injuries."

⁶⁷ Andrew Dilts, "From 'Entrepreneur of the Self' to 'Care of the Self': Neo-liberal Governmentality and Foucault's Ethics." *Foucault Studies*, [S.l.], p. 130-146, Sep. 2011.

⁶⁸ Dilts, "From 'Entrepreneur of the Self' to 'Care of the Self,'" 145.

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DOI: <https://doi.org/10.22439/fs.v0i24.5524>

ISSN: 1832-5203

Foucault Studies, No. 24, pp. 34-57, June 2018

entailing care for others. As a person with white skin, tenured employment, and employer-provided health care, I can make my life a work of art. How does doing so help extend that privilege to people living in the Other America?

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