

The Policing of Self and Others: Foucault, Political Reason & a Critical Ontology of police

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Abstract of the Dissertation

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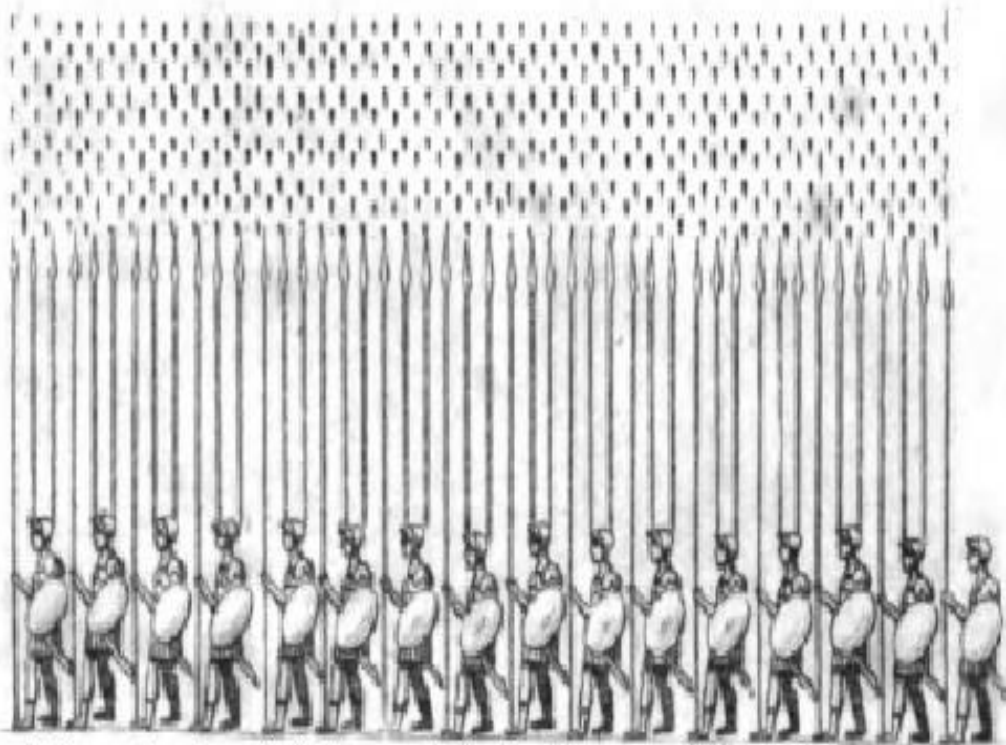
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Situating Foucault as a philosopher of actuality, I interpret and extend Foucault's critique of police as part of a broader philosophical reflection on subjectivity, and the practices of freedom (*parrhesia*) and revolt that constitute our actuality as free beings. In the first chapter, I situate Foucault as a philosopher of actuality, understood as the thinking of the continuity of ourselves ("we") as free beings involved in struggles against authority. In the second chapter, I draw out the fundamental antagonism in Foucault's later work between pastoral modes of subjectivity and Cynic modes of subjectivity, setting up an opposition in Foucault's account between police and the practices of *parrhesia*. In the third chapter, tracing the critique of police power to Hegel's analysis of *polizei*, I uncover the ancient roots of police in the notion of *politeia*. Through an analysis of *politeia* as origin of police, I uncover a military-pastoral technology of power, one which produces certain forms of authority and subjectivity. In the fourth chapter, I show how this political technology, developed most famously in ancient Sparta, can be traced to the formation of the American *politeia* in the early republic. By tracing this political technology to the early Republic, I seek to show how the warlike or military relations of a military-pastoral technologies are redeployed in the early American *politeia*. In the fifth chapter, I spell out how these various forms of police power converge in neoliberal governmentality in the context of policing the conduct of urban life. In conclusion, I argue that the apparatus of police in American government should be understood as a set of military-pastoral technologies that seek to establish hierarchical relations of authority-obedience. These military-pastoral technologies, I argue, should be understood in their current context as preserving the neoliberal "rule" of an American *politeia*.

Frontispiece

Epagoge, or Right Induction.



Aelianus, Tacticus (2nd Century AD). *The Tactics of Aelian, Comprising the Military System of the Grecians* (London: Cox and Baylis, 1814), Pl. 26, Ch. 35, p. 180

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INTRODUCTION

In a lecture given at UC Berkeley in 1954 at the height of the Cold War, Hannah Arendt ends her lecture by lamenting the fact that the meaning of contemporary politics had been realized in the reversal of Clausewitz's principle, namely that "...politics as nothing other than war continued by other means."¹ Exactly twenty years later, Michel Foucault, who visited UC Berkeley in the Spring of 1974, used precisely the same formulation in his College de France lectures to describe the internal politics of the modern biopolitical State, or what he would later call police, as "...the continuation of war by other means."² This observation becomes even more relevant in our current situation where, as one cultural theorist has recently said, even the quotidian of everyday urban life has become more and more perceived through the lens of war, so much so that an increasingly dominant paradigm of urban life understands life itself as war.³ Indeed, a fundamental question raised by contemporary political philosophers, cultural theorists and geographers is how exactly we arrived in a time and place such that everyday life itself can be perceived so easily and readily through the lens of war?

For Hannah Arendt, the relation between life, war and politics in Ancient Greece was clearly demarcated. According to Arendt, life was exposed to war only to the extent that politics was excluded: this was the domain of foreign policy, the only moment when the *polis* acted "unpolitically", conceiving of others not as free and equal political partners but as 'bare life' subject to the force of war.⁴ Thus for Arendt, there has in fact always been a close relation

¹ Hannah Arendt. *The Promise of Politics*. (New York: Schocken Books, 2003) 199-200

² Michel Foucault, *Society Must Be Defended: lectures at the College de France, 1975-76* (New York: Palgrave Macmillan, 2003) 15, 48

³ Stephen Graham, *Cities Under Siege: the New Military Urbanism* (New York: Verso Books, 2011) 24, 348

⁴ Hannah Arendt. *The Promise of Politics*. (New York: Schocken Books, 2003) 166-67

between life and war, but only to the extent that this relation excludes politics as a realm of free and equal partners. For Arendt, the corruption of this view of politics would lead to a complete reorganization of the relations between life and war in modern life. For the Greeks, there was a separation between a realm of war and its subjects of bare life on the one hand, and the realm of politics and its subjects of freedom and equality on the other. With the corruption of politics in the modern nation-state into both a theory of political “rule” and a theory of economic household management, modern politics substitutes the “unpolitical” arts of war and administration of bare life for a properly “political” sphere of free and equal partners. Thus life and war, once considered linked as *unpolitical*, are today considered linked as *inescapably political*.

Michel Foucault makes a very similar argument regarding the changing relation between life, politics and war. Foucault argues that until the eighteenth century, life and its processes remained what they were for Aristotle: bare life with the additional capacity for political existence.⁵ However in the eighteenth century, life soon became the object of political calculation, a long process by which life and its processes were reconceived as ‘natural elements’ of governmental reflection. For Foucault, this process began with the emergence of liberal government and the birth of political economy.⁶ In this way, according to Foucault, life and its processes become an intimate part of political reflection and calculation. Thus, for Foucault this process – what he termed biopolitics – was the necessary condition for the emergence of the modern State which would eventually take “population” as an object of administration, regulation, and protection. The development of the biopolitical State would thus also lead to the

⁵ Michel Foucault, *The History of Sexuality, Vol. 1: an Introduction* (New York: Random House, 1990) 143

⁶ Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978-79* (New York: Palgrave Macmillan, 2008)

development of certain state rationalities which sought to wage war against internal threats to its own security, a phenomena he called State Racism. Therefore one could conclude that for Foucault, in order for the administration of life to be perceived as a kind of internal war, life itself first had to be perceived in political, that is biopolitical, terms. In this way one could conclude that, because life itself was reconceived as the object of politics and State administration, and politics in the modern state is perceived as “a continuation of war by other means”, the administration of life itself was in this sense also destined to be reconceived as a kind of war.

However, this all too neat thesis – that life becomes war in modern politics - glosses over a simple fact. Indeed before the emergence of liberalism or biopower in the 18th century, life itself was already conceived as a kind of war in the form of a spiritual and pastoral war. Already in the sixteenth century, we read Desiderius Erasmus’ *Apostles Creed*, where the earthly toil for bread and spiritual work for salvation are described in terms of a battle, a war between God the commander, the spiritual-pastoral laborer as the follower, and the Devil the enemy. Indeed life itself is described as a kind of war: “(T)he saying is true that our life on earth is like that of a soldier who has a never ending conflict with evil spirits, with the flesh, with the world, with the many evils that life itself or human wickedness brings... Whether we like it or not, this life is a warfare; we must do battle on the side of God or Satan.”⁷ In this war, the everyday life and conduct of individuals is reconceived as a kind of war, with commanders, followers and enemies. This spiritual-pastoral form of war that one lives throughout one’s mortal coil seems to disturb

⁷ Desiderius Erasmus. ‘An Explanation of the Apostles Creed *Explanatio symboli apostolorum sive catechismus*’ in *Collected Works of Erasmus* (Toronto: University of Toronto Press, 1998) 227, 245

our easy story about how life became conceived as a kind of war, beginning with its politicization and then its militarization vis-à-vis politics.

However, on closer inspection of Foucault's later work, we find an interesting continuity. It turns out that for Foucault, what allows life itself to become the object of politics (and thus a continuation of war) is precisely through a technology he identifies as the Christian pastorate.⁸ For Foucault, it is the techniques of pastoral guidance, observation and taking charge of the life of the individual, and the concern for the salvation of each and all, that allows the conduct of everyday life to become intelligible as an object of "government". For Foucault, the characteristic feature of spiritual-pastoral forms of life was the relation of 'obedience' that it introduced into the art of government.⁹ In particular, it will be Christian asceticism, in contrast to the anti-pastoral models of Cynicism, that will emerge as decisive in fusing the notion of obedience to the idea of "the government of self and others".¹⁰

For Foucault then, one can say that life itself became the object of politics (and thus war continued by other means) *only by first* becoming integrated into a pastoral technology of obedience that conceives of life as a kind of spiritual-pastoral war. Thus, we can modify our story: if life itself can be perceived as a kind of war, this is because life was first perceived as a spiritual and pastoral form of war. And if everyday contemporary life is more and more

⁸ Michel Foucault. *Security, Territory, Population: lectures at the College de France, 1977-78* (New York: Palgrave Macmillan, 2007)

⁹ Michel Foucault. *The Courage of Truth: the Government of Self and Others II: Lectures at the College de France, 1983-84* (New York: Palgrave Macmillan, 2011) 319-320

¹⁰ Michel Foucault. *The Government of Self and Others: Lectures at the College de France, 1982-83* (New York: Palgrave Macmillan, 2008)

subsumed into the discourse of a “new military urbanism”¹¹, this is precisely because everyday life was first subsumed into the discourse of a perpetual and eternal spiritual battle.

Yet, once again, our story about how life came to be so intelligible as a kind of war becomes even more complicated when we consider that Aristotle, when choosing an analogy for how the universal concepts of experience come to be instantiated in the soul, uses the analogy of war. In the *Posterior Analytics*, Aristotle confronts the philosophical problem of how we arrive at the first premises of demonstration which make scientific knowledge possible. Citing *Meno's* paradox, Aristotle wonders how these first principles of demonstration could be inborn within us (in which case why don't we already know them) and likewise how they could be acquired through experience (in which case they would have to be acquired by pre-existing knowledge, the very thing we're inquiring about). In order to avoid these pitfalls, Aristotle proposes the faculty of perception. For Aristotle, we arrive at the first principles of demonstration from perception “...as in a battle when a rout occurs, if one man makes a stand another does and then another, until a position of strength is reached. And the soul is such as to be capable of undergoing this.”¹² Ross paraphrases Aristotle's explanation of induction thusly: “(T)he passage from particulars to universals is like the rallying of a routed army through the stand made by one man after another till the whole army has returned to a state of discipline.”¹³ The process of induction, Ross reiterates, must be the work of a “...faculty higher than science, and this can only be intuitive reason [*nous*]”.¹⁴

¹¹ Stephen Graham, *Cities Under Siege: the New Military Urbanism* (New York: Verso Books, 2011)

¹² Aristotle, *Posterior Analytics*, *Book A II*, Ch. 19, 100a10

¹³ Sir David Ross, *Aristotle* (New York: Routledge, 2004) 53

¹⁴ Sir David Ross, *Aristotle* (New York: Routledge, 2004) 53

Thus for Aristotle, our experience of the world can be understood through the analogy of a battle, where the mind intuits universal concepts much like a retreating soldier ‘intuits’ a brave and noble soldier who takes a stand in battle against the enemy as a point of resistance. And Plato, using a similar analogy, describes the method of dialectic, whereby the soul comes to know the universal Forms, in terms of a battle. Thus for Aristotle and Plato, the very act of intuitive reason by which we form concepts of experience is intelligible as a kind of war. As Ross renders it, intuitive reason is thus modeled on military discipline.

This raises some extremely thorny and philosophically perplexing questions about our original story about how life itself became conceived as a kind of war. For if, at least since Ancient Greek conceptions of intuitive reason, our experience of the world has always been to some degree so easily and readily intelligible as a kind of war or battle, then isn’t it true that human experience, perception, and everyday life were in some sense destined, sooner or later, to be interpreted as *more* than simply an analogy of war, and rather as a kind of war itself? In more simple and provocative terms: if the model of war (and its masculine citizen-soldier ideal) has always been such a useful way of interpreting and making sense of human experience, then perhaps we should conclude (as some have) that life *should* be understood as a kind of warzone, a battlefield between friends and enemies, strong armies and weak, conquering forces and subjects.

The conclusion that human experience, and life itself, can and *should* be understood as a kind of war has a long history, one which might begin with Aristotle’s appropriation of the military term *epagoge*. Part of this history begins with an observation about the overwhelming role and dominance of military-style thinking in Ancient Greece in general. For Aristotle and Plato, it was of course true that military-style thinking was indispensable for how they thought

about politics and virtue (the highest noble virtue was [male] courage in battle for one's city). But it was equally true that military-style thinking influenced many other aspects of their thought, including when it came to using examples to illuminate non-military topics like inductive reasoning. And while it is true that Aristotle models intuitive reason on the *analogy* of a battle, and in no way argues that human experience *is* or *should be understood* as a kind of war, nevertheless we cannot and should not ignore the fact that the analogy he did use for a supposedly universal act of the human mind, was war.

My dissertation is thus motivated by a fundamental philosophical and historical reflection on the following questions: What are the consequences of modeling the universality of intuitive reason and human experience on the model of war? If life itself is more and more today understood as a kind of war, it is not only because life was conceived as a spiritual battle, but because human reason and perception were themselves understood first as a military-pastoral war. And, if life is today conceived more and more as a kind of war, it is in part because reason itself was first conceived in masculine, military-pastoral terms. In this way I seek to trace the history of how life itself became, through a series of transitions, intelligible through the relations of war. Such a history seeks to examine the ways that life and its processes are mobilized for military-political objectives. In this way, the history examined here seeks to trace the mobilization of life and its processes for the military-political objectives of the city, nation or state.

The techniques and technologies that link the individual to the military-political objectives of the city, nation or State are what Foucault calls the political technologies of police. Therefore police is therefore understood as a set of political technologies by which we recognize ourselves as part of a city, nation or state. In this way, my dissertation will develop the concept

of police as a set of political technologies which operate through networks of continuous obedience that Foucault identifies as the domain of pastoral power and subjectivity. Police, understood as a set of political technologies by which we recognize ourselves as part of a city, nation or state, will thus function by producing and maintaining specific forms of knowledge, power and subjectivity founded on relations of obedience. The authority of police, based on the notions of obedience and subordination, will thus be opposed to the notions of autonomy and insubordination. The history of *politeia* as origin of police will therefore develop a central antagonism between the technologies of police and the practices of critique, revolt and insubordination we find in Foucault's late work on freedom, revolt and *parrhesia*.

By developing the central antagonism in Foucault's own work between the political technologies of police and the practices of freedom, revolt and *parrhesia*, my dissertation thus seeks to make a major intervention in the study of Foucault's late work in particular and his *oeuvre* in general. The rather unorthodox idea introduced here into the understanding of Foucault's late work is the notion that for Foucault there is in fact a central antagonism in his late work between police as a mode of subjectification and Cynic *parrhesia* as mode of freedom and practice of critique. Indeed while Foucault abandoned the analysis of power in terms of an analytic of war for an analytic of governmentality, one of the main theses of the dissertation is that the grid of war remains in the background of Foucault's analysis. Foucault's shift from an analysis of power based on the grid of war during the early to mid 1970s to the analysis of power based on governmentality in the late 1970s will thus provide the context for an analysis of how his later work on freedom, revolt and *parrhesia* relates to the analysis of power in terms of a military or warlike relationship. Therefore, in order to develop such an unorthodox interpretation of Foucault, it is first necessary to show how the problems of authority and obedience so

fundamental to the notion of pastoral power and police became in fact central concerns for Foucault in his late work.

To this end, I attempt to show in Chapter One how Foucault's understanding of actuality matured in the late 1970s, leading him to the analysis of actuality as a reflection upon ourselves as individuals involved in struggles against authority. Here, I show how Foucault's method of genealogy as *wirkliche historie* gave way to an ontology of *actualite*, indicating a shift in his understanding of *wirklichkeit* from effectivity to his own analysis of actualite. Examining Foucault's late lectures, interviews and statements, I argue that Foucault did in fact develop a much more comprehensive critique of authority through his engagement with the notion of actuality, linking the reflection upon ourselves to the practice of freedom, revolt and *parrhesia*. This late work on freedom, revolt and *parrhesia*, I argue, constitutes what he will call a theoretic ethics, linking the reflection upon our actuality to the analysis of revolt and the practice of freedom and critique.

Chapter Two interrogates the issue of subjectivity and power in debates over Foucault's late work, and attempts to develop the antagonism in Foucault's work between pastoral modes of subjectivity based on relations of obedience and Cynic modes of subjectivity based on self-sovereignty and insubordination. By examining Foucault's lectures on The Courage of Truth, I show how Foucault juxtaposed pastoral modes of subjectivity based on the notion of obedience to Cynic modes of subjectivity based on principles of self-sovereignty, insubordination and universality. After developing this antagonism, I turn to discussions over subjectivity and subordination in the work of Amy Allen, Judith Butler, Hannah Arendt and Claire Snyder. From an analysis of these discussions, I attempt to illuminate in further detail the antagonism between subordinating and non-subordinating modes of subjectivity, and claim that the former can be

analyzed in terms of what Foucault calls the political technologies of police. Placing Foucault's analysis of police as political technology in conversation with Althusser, I argue that police technologies, understood as modes of recognizing ourselves and others as members of a polity, should be analyzed in terms of a critical ontology of police. Such a critical ontology, I argue, will investigate the ways that we police ourselves and others, while at the same time engaging in practices of freedom, revolt and insubordination against certain forms of authority. In this way, I connect the critical ontology of police back to the ontology of actuality as a reflection upon ourselves as individuals engaged in struggles against authority. The critical ontology of police, therefore, is at the same time a reflection upon our actuality as individuals engaged in struggles against the authority of police.

Chapter Three extends the analysis of police to Foucault's history of governmentality in Ancient Greece. By interrogating Foucault's claims about the lack of a political pastorate in Ancient Greece (police/biopower), I challenge the idea that there did not exist a form of police or biopower in Ancient Greece. Tracing the analysis of ancient police to Hegel's analysis of *politeia*, I conduct a genealogy of *politeia* in Ancient Greek political and military texts, illuminating the idea of *politeia* as a form of republican domination based in the notion of *bios kai andros politikon*, or the life of the political man. By developing the idea of *politeia* through a military-pastoral technology in Ancient Sparta, I argue that we can in fact speak of an ancient form of police or biopower in Ancient Greece.

Chapter Four traces the military-pastoral technology of *politeia* developed in Ancient Greece to the early American Republic, beginning with an analysis of "the Lycurgus of the New Sparta" Benjamin Franklin. By examining the papers and letters of Benjamin Franklin, I argue contrary to Foucault's history in the The Birth of Biopolitics that Franklin was in fact a theorist

and practitioner of police, understood as a military-pastoral technology of republican domination. Extending the history of police as *politeia* to the early Republic, I then examine the role of military and warlike relations in the administration and organization of the penitentiary at Auburn. Through an examination of the role of prison warden Captain Elam Lynds at Auburn penitentiary I show, contrary to Foucault's later assertion, that the analysis of military or warlike relations is essential to the analysis of power and governmentality.

Chapter Five traces Foucault's analysis of the prison as disciplinary mechanism to the city as the milieu of intervention for biopower. In doing so, I explore how the biopolitics of the prison intersect with the biopolitics of police, in turn illuminating the relationship between police and biopolitics in the late Foucault. First I show how Foucault's analysis of the prison has been applied in the social sciences to describe the emergence of neoliberal cityscapes as a "prison-in-reverse". Combining this analysis with Amster's conception of an ecology of social control, I examine two case studies of neoliberal policing. In Section Two, I link new a new legal order of ecological social control to the neoliberal "prison-in-reverse". There, I analyze recently implemented anti-feeding ordinances brought about by a new land development regime and linked this to the *militarization-privatization* strategy of neoliberal enclosures. In the Section Three, I examine the 2011 ruling in *Waller v. City of New York*, emphasizing the role of a new juridical order that demands citizens "demonstrate" their rights to public space. There, I emphasize the historically anti-democratic role of police power jurisprudence, and showed how the discourse of rule of law is utilized in concert with that of public health and safety as a mechanism of security against democratic elements of the city as a *politeia*.

Since for Foucault "the politics of police must be a biopolitics", I conclude that the politics of *neoliberal* police must be both an ecological and juridical biopolitics, relying on both

a sort of ecological state racism and an economic-juridical order that stresses rule of law. I argue that the motto of neoliberal police can be understood as *To Protect Life By Waging War*, at once a mandate with legal, juridical and biopolitical components. In doing so, I seek to show how neoliberal logics of rule utilize elements of a biopolitical police of population, an economic policing of dangerous masses, and an anti-democratic police power jurisprudence. Understanding these technologies of police in context of neoliberal rule, I argue, is essential in revealing their connection to a history of military-pastoral technologies that may be traced to the idea of the Ancient *politeia* and the art of male-dominated military-political life. In this way, I seek to draw out the similarities and subtle differences between ancient and modern forms of rule that are still very much embedded within our conceptions of American government and the maintenance of order that is essential to an American *politeia*.

CHAPTER ONE: *Foucault and the Philosophy of the Actual*

In the first chapter, I attempt to situate Foucault, against many common interpretations, as a philosopher of actuality. Tracing both genealogy [*wirkliche historie*] and the ontology of actuality to the notion of *wirklichkeit/actualité*, I show how Foucault's work can be interpreted as a philosophical reflection on our actuality as free subjects engaged not merely in effective self-transformation but as subjects engaged in struggles against authority. Drawing upon Badiou's argument regarding Foucault's turn' to philosophy proper, I argue that Foucault's late work should be seen as part of the maturation of his understanding of *wirklichkeit* from the phenomenological *l'effectivité* to the philosophical category of *l'actualité*. On this account, I argue that the reflection upon actuality developed by Foucault involves a much more comprehensive critical project than genealogy, entailing both a critique of authority and a theoretic ethics grounded on the standpoint of the principles of freedom or *parrhesia*. In turn, the critical project Foucault was developing at the end of his life, I argue, licenses the wholesale critique of certain forms of authority that he identified as pastoral. In the Second Chapter, I draw out the fundamental opposition in Foucault's later work between pastoral modes of subjectivity and Cynic modes of subjectivity, setting up an opposition in Foucault's account between police and the practices of *parrhesia*. In the Third Chapter, I analyze police through the notion of *politeia*, and uncover in Ancient Greece a military-pastoral technology grounded in the relation between leaders [*hegemon*] and followers [*epistatae*]. In Chapter Four, I trace this military-pastoral technology to the early American Republic and show how ideas about American government were linked to ideas about discipline, obedience and subjection. In the fifth Chapter, I spell out the ways that these various forms of police power converge within neoliberal

governmentality in the context of policing the conduct of urban life. In conclusion, I propose that police in American government be understood as a set of military-pastoral technologies which seek to establish hierarchical relations of authority-obedience, but which are increasing stratified across a network of regulatory, administrative and judicial power. I conclude that the different forms of police and the hierarchical forms of authority and subjectivity they seek to produce should be understood in light of their contribution to an American *politeia*.

Foucault, Badiou & the Philosophy of the Actual

It is fair to say that Foucault's late (re)turn to Kant has become the dominant lens through which to view and evaluate the final Foucault. Indeed for some commentators, it is as if Foucault's late critical reception of Kant constituted the culmination of Foucault's entire intellectual history, the truth of which was revealed in his last years and hours by the Owl of Minerva. The reference to Hegel here is of course intentional, even though one could very well select any number of figures that Foucault returned to during his late period (Heidegger, Nietzsche, Merleau-Ponty, Althusser to name a few). However very recently, a number of scholars and intellectuals have taken care to look more closely at Foucault's relationship to the French Hegelian tradition. These scholars locate Foucault within the specific intellectual history of 20th century French philosophy, which they characterize as a reaction against, or perhaps a rejoinder to, Hegel and his French interpreters, namely Kojève and Foucault's mentor, Jean Hyppolite.

For Foucault, Hyppolite's rendering of Hegel would influence his thought in ways that we are still coming to terms with, in particular his work at the College de France, where Foucault replaced Hyppolite as Chair of the History of Systems of Thought in 1970. As Badiou (2011) notes, Hyppolite's Chair was named History of Philosophical Thought, whereas Foucault's Chair

dropped the words “history” and “philosophical”, adding “systems”, while keeping “thought”. Here is what Badiou says about the significance of this change, “(I)n doing so he [Foucault] assumes a properly non-philosophical, or even antiphilosophical, position, which consists in the promise that one is going to think philosophy starting from something other than philosophy itself.”¹⁵

For Badiou, Foucault *as archaeologist* cannot be properly described as an historian nor a philosopher in the traditional sense. Whereas philosophy thinks wisdom through time, and history is a thinking of time itself, what the “classical” Foucault proposes is a “...linguistic or discursive anthropology”, based on the philosophy of nominalism. In short, for the “classical” understanding of Foucault, there are no unifying moments of history, no standard or measurement of discourse by which one may evaluate or draw out the significance or pertinence of any singular discursive event. Foucaultian archaeology, for Badiou, cannot be (as the name of his Chair reveals) philosophical, and neither properly “historical”.

However, for Badiou, this all begins to change for Foucault, beginning with his turn to genealogy. With genealogy, Badiou argues, Foucault began to return to “philosophy” proper, and to the thinking of “the concept” in more properly historical, (French) Hegelian terms. Indeed

...little by little it turns out that this ‘classical’ Foucault, the great builder of closed epistemic configurations delivered over to their purely textual coherence, is haunted by something else...while maintaining his ironic independence and subjecting himself, even in the most intense commitments (for he could be violent) to a kind of duty of reserve. This ‘something’ is the question of real struggles, the question of the present, if its division and its potential or impotence. What good does the archivist’s work of constructing *epistemes* or the archaeology of knowledge do, when one accepts the urgency of collective action?¹⁶

¹⁵ Badiou, Alain. ‘Continuity and Discontinuity’ in *The Adventure of French Philosophy*, Bruno Bosteels Ed. (New York: Verso Books, 2012), 86

¹⁶ Badiou, ‘Continuity and Discontinuity’, 88

For Badiou, genealogy represents Foucault's application of the analysis of discursive singularities (archaeology) to the immediate concerns of the present: May 1968 in Paris, the repression of the student movement in Tunisia where Foucault was teaching at the time, the Black Power movement in the US, his work with the Prison Information Group, etc. For Badiou, genealogy was for Foucault a "...finer determination of what holds *potential* in today's struggles. Put otherwise, the archaeological finesse can be articulated upon a genealogy of its tactical efficacy."¹⁷

According to Badiou, the tension inherent to Foucault's genealogies is a sign of his move towards the vicinity of philosophy proper, a reflection on wisdom and the good life. This tension, Badiou writes, "...will only increase and will lead Foucault in a direction from which it seems that his positive endeavor should have cleared him, namely, in the vicinity of philosophy and, what is more, of philosophy in its generic sense: philosophy as wisdom, as leading 'the good life'."¹⁸ Genealogy then represents the attempt to locate not merely singularities within a discursive field, but an attempt to generate a *continuity* between singularities and our relation to the present. For Badiou, the first real sign that Foucault was more and more thinking like a historian of continuity, and thus also doing "philosophy in the generic sense", can be seen in his 1976 lectures at the College de France, 'Society Must Be Defended'. For Badiou, these lectures demonstrate how genealogical inquiry can think certain forms of continuity between disparate historical forms of power and knowledge. Thus, for example, "...in the modern world, the sequence is identified by biopower, but the continuity is assured by the new forms of war, which

¹⁷ Badiou, 'Continuity and Discontinuity', 89

¹⁸ *ibid*

is always intricately linked to the old *dispositive* of sovereignty.”¹⁹ Thus, in short, according to Badiou, “...we can involve ourselves in long-term genealogies, *because we have what it takes to think the mediation between those closed historical segments that are epistemic sequences.*”²⁰ Thus, Badiou concludes, Foucault’s genealogies “...will progressively bring him back to the concept and to philosophy”.²¹

Despite Foucault’s movement towards thinking the universality contained in moments of singularity, Badiou concludes that “...it is impossible to find in Foucault an affirmative doctrine of politics.”²² This is because, for Badiou, genealogy not only fails to delimit or identify the “invariants” that bring together the continuity of discursive practices, but more specifically it fails to identify or speak of “...the successive forms of the politics of emancipation.”²³ However it is precisely for this reason, Badiou concludes, that Foucault “...turned towards forms of life and wisdom”, in order to seek out the invariants that allow one to identify the continuities and cleavages that contribute towards an affirmative doctrine of politics.²⁴ Thus one can say that Badiou reinterprets Foucault’s late turn to Kant as in fact a return to Hegel, the thinking of the concept, and the thinking of universality within the present moment, what Foucault will refer to as the thinking of our own actuality (*actualité*).

Modifying Badiou’s account somewhat, I wish to argue that Foucault’s new orientation towards questions of actuality, universality and philosophy proper was not so new and that, in

¹⁹ *ibid*

²⁰ *ibid*

²¹ Badiou, ‘Continuity and Discontinuity’, 89

²² Badiou, ‘Continuity and Discontinuity’, 99

²³ *ibid*

²⁴ Badiou, ‘Continuity and Discontinuity’, 99-100

fact, Foucault can be seen grappling with these questions from the very beginning of his genealogical work. In the first section, I show how Foucault's situated himself within a conception of philosophy that he inherited from Hyppolite, namely, a philosophical problematization of the universal within the actual. This philosophical problematization, I argue, will inform Foucault's work at the College de France and contribute to the development of genealogy as *wirkliche historie* as an effective history. What I wish to show, however, is that Foucault's understanding of *wirkliche historie* as effective history is based on the phenomenological concept of *l'effectivité* as opposed to the category of *Wirklichkeit/Actualité* that he will turn to in his later work. My main argument is therefore the following: it is Foucault's turn to the question of *actualité*, understood as a reflection upon ourselves as free beings engaged in struggles against authority, that will inform his late work of freedom, ethics and *parrhesia*.

In the second section, I turn to Foucault's late interviews and his lecture course on *The Government of Self and Others*, and seek to show how Foucault's return to Kant should be seen a reflection on our actuality (*actualité*) as free beings, as part of a "we" involved in the continuity of struggles against forms of authority. Here I seek to show how Foucault's return to Kant can be in fact be read as a return to the Hegelian problematization of universality within actuality begun at his Chair at the College de France in 1970. It is hoped that, in the process, Foucault's conception of actuality will be distinguished from *effectivité* as an ethical, political and phenomenological self-reflection as free beings (a "we") involved in the continuity of struggles against forms of authority. In the third and final section, I address debates over the question of an implicit normative conception of human power relations in Foucault, and seek to illuminate some normative sources of this such a conception in the principles of *parrhesiastic* rationality.

Foucault's late turn to philosophy as a sort of critical, "metahistorical" attitude of modernity²⁵ has forced a re-evaluation of his status as a "philosopher" in the general sense, as well as a re-evaluation of his previous work. This interpretation seeks to read Foucault's ethical work *and* his genealogies as a reflection on *das wirkliche* and *wirklichkeit*. In doing so, I aim to situate Foucault as a philosopher in his own right, a philosopher actuality. In what follows, I rehearse how Foucault situated himself at the College de France within a conception of philosophy inherited from Hyppolite's problematization of Hegel, one which focuses on the philosophical problematization of the universal within 'the actual'. However, I argue that Foucault's genealogies of *wirkliche histoire* operate through the phenomenological concept of *l'effectivité* (effective history) instead of the philosophical concept of *actualité*. Drawing upon Badiou's argument about Foucault's turn to 'philosophy proper', I attempt to show how Foucault's turn to Kant and reflected his turn from *l'effectivité* to *l'pure actualité*. Foucault's use of the notion of actuality [*actualité*] illuminates his later ethical-political writings as a philosophical reflection on the continuity revealed by practices of revolt, resistance and practices of freedom [*parrhesia*]. I argue that whereas genealogy will seek to introduce discontinuity in our mode of relating to history, an ontology of actuality, conducted as a theoretic ethics, will seek to introduce continuity in our mode of relating to ourselves and specifically others, predicated on the ensemble of "we". One will have reference to an actual *history*, and one will have reference to an actual *ethics*. One will refer to an interpretation of history, and one will refer to a standpoint of freedom as a philosophical practice.

²⁵ Frédéric Gros, 'Course Context' in *The Government of Self and Others: lectures at the College de France, 1982-83* (New York: Palgrave Macmillan, 2008) p. 379

Foucault's critical reception of Kant in his late writings is often cited as the central figure through which to understand Foucault's late critical thought. However, as Foucault said in his inaugural lecture at the College de France, it is Hegel who would continue to haunt his work as Chair of the History of Systems of Thought. In what follows, I explore the role of actuality [*wirklichkeit*] and universality in Foucault's late work [1979-1984], showing how they function within an ontology of actuality and a theoretic ethics developed during that period. I argue that Foucault's theoretic-ethics – as a phenomenological, ethical, and reflexive attitude - should be understood as a return to the Hegelian problematic of universality and actuality within which he situated his own work at the College de France. I conclude by drawing out the far-reaching implications of re-evaluating Foucault's work through his engagement with the Hegelian tradition.

On December 2, 1970, Foucault delivered his inaugural lecture as Chair of the History of Systems of Thought at the College de France, taking the place of his mentor Jean Hyppolite. In that lecture, published later as *L'ordre du discours*²⁶, Foucault recognized his lasting debt to his mentor, saying that,

A large part of my indebtedness, however, is to Jean Hyppolite. I know that, for many, his work is associated with that of Hegel, and that our age, whether through logic or epistemology, whether through Marx or through Nietzsche, is attempting to flee Hegel... But to truly escape Hegel involves an exact appreciation of the price we have to pay to detach ourselves from him. It assumes that we are aware of the extent to which Hegel, insidiously perhaps, is close to us; it implies a knowledge, in that which permits us to think against Hegel, of that which remains Hegelian. We have to determine the extent to which our anti-Hegelianism is possibly one of his tricks directed against us, at the end of which he stands, motionless, waiting for us.²⁷

²⁶ Michel Foucault, *L'ordre du discours* (Paris: Gallimard, 1971)

²⁷ Michel Foucault. 'The Discourse on Language' in *The Archaeology of Knowledge & the Discourse on Language* (New York: Pantheon Books, 1972) 235

For Foucault, Hyppolite had attempted to explore "...the path along which we may escape Hegel, keep our distance, and along which we shall find ourselves brought back to him, only, only from a different angle, and then, finally, be forced to leave him behind, once more."²⁸ Thus the question Hyppolite raised for Foucault was "...can one still philosophize where Hegel is no longer possible? Can any philosophy still exist that is no longer Hegelian?...to think of the sciences, politics, and daily suffering as a Hegelian?"²⁹ In this sense, Foucault says, Hyppolite attempted to "...turn Hegel into a schema for the experience of modernity" in which the task of philosophy would not exactly be that of tracing the universality of the concept within the movement of history; rather, the task of philosophy, as understood by Hyppolite, would be the continuous, critical posing of the very inaccessibility of the universal as the "...recurring question in life, death and memory."³⁰ Philosophy understood in this way, Foucault says, proceeds to "...examine the singularity of history, the regional rationalities of science, the depths of memory in consciousness."³¹ However, if philosophy understood thusly is constantly and critically attending to the "non-philosophical" domain of singular events, revolts, struggles, and forms of life and historical memory, "...where then lies the beginning of philosophy? Is it already there, secretly present in that which is not philosophy, beginning to formulate itself half under its breath, amid the murmuring of things? But perhaps, from that point on, philosophy has no *raison d'être* or, maybe, philosophy should start out on a priori assumptions?"³²

²⁸ Foucault. 'The Discourse on Language', 235

²⁹ Foucault. 'The Discourse on Language', 236

³⁰ Foucault. 'The Discourse on Language', 236

³¹ *ibid*

³² *ibid*

In short, the problem posed by philosophy understood by Hyppolite is the rift between philosophy and life, logic and existence, the ‘absolute discourse’ of universality within the movement of history and the “...singular individual, within a society and a social class, and in the midst of a struggle”.³³ For Hyppolite, the task of philosophy was understood as the critical project of ‘continually intertwining and unravelling’ the links between the universality of thought and the singularity of life, existence and social struggle. Philosophy, according to Hyppolite, is therefore at once *the critical interrogation and analysis of the universal within the ‘actual’*. The tradition of philosophy following Hyppolite within which Foucault locates his own immediate work requires, he says, “...a perpetual attentiveness, in an everyday alertness and generosity, in its apparently administrative and pedagogic responsibilities (i.e. *doubly political*)”³⁴. Indeed, Foucault says, “(I)t is because I have borrowed both the meaning and the possibility of what I am doing from him...I would like to dedicate my work to him, what I end this presentation of my projected work by invoking the name of Jean Hyppolite. It is towards him...that the questions I now ask myself are pointing.”³⁵

There are numerous themes in Foucault’s homage to Hyppolite that will return in his later writings: the limits of discourse in doing history, the role of ‘philosophy’ in critique, the political role of the intellectual, the virtues of generosity, attentiveness and concern for the present in truth-telling and modes of *parrhesia*, all of which are intimately connected. However, I want to begin by noting that these themes in Foucault’s later writings – themes usually attributed to Foucault’s critical reception of Kant in the essay *What is Enlightenment* – are already present in

³³ Ibid

³⁴ Foucault. ‘The Discourse on Language’, 237

³⁵ Foucault. ‘The Discourse on Language’, 237

Foucault's own self-conception of his critical method as Chair of the History of Systems of Thought, a method indebted to Hyppolite's philosophical problematization of Hegel and the question of our actuality as free begins. However, I wish to focus on two key elements of Foucault's later work that can be traced to the 'return of Hegel' in his work from 1979-1984. These two elements are an ontology of actuality and a theoretic ethics. Before analyzing this later work, however, I seek to show that Foucault's genealogical work (*wirkliche historie*) operates through the phenomenological concept of *effectivité*, and not (yet) the concept of *actualité* to which Foucault will turn to in his later work.

It is in the essay, *Nietzsche, Genealogy History* that Foucault traces his genealogical method to Nietzsche's idea of *wirkliche historie*. Foucault will translate this as effective history, a method which locates 'singularities' within history in their aspects of *Herkunft* and *Entstehung*. An analysis of the *herkunft* of a singular historical moment will focus on the materiality and corporeality of the forces involved. Indeed, "(T)he body...is the domain of *Herkunft*."³⁶ Thus genealogy will study the aspect of *herkunft* of a singular historical moment in order to "...expose a body totally imprinted by history and the process of history's destruction of the body."³⁷ As we will see, the aspect of *Herkunft* is already somewhat ambiguous for Nietzsche, as it will be for Foucault. The question that will re-emerge for both Nietzsche and Foucault is the question of how to understand 'the historical body', at once an imprint of history but also a reflection of real, biological life and human interaction. For if 'the body' is simply analyzed from any given historical moment as a momentary imprint of discontinuous chaotic matter, then how are the

³⁶ Michel Foucault. *Nietzsche, Genealogy, History* in *The Foucault Reader*, Paul Rabinow Ed. (New York: Pantheon, 1984) 83

³⁷ Ibid

processes of life and human action across time and space intelligible? However, if the body is understood *also* as a domain of real, biological life with its own human qualities and characteristics, then this allows us to posit a certain continuity that underlies historical analysis, a continuity of life, being, and human activity (sexuality, procreation, sociality, etc).

In Hegel, Nietzsche, and the Criticism of Metaphysics, Stephen Houlgate charts the change in Nietzsche's conception of *das Wirklichkeit*, noting the early influence of Schopenhauer on his conception of actuality as a kind of metaphysical 'cosmic unity' that underwrites the constant flux and chaos of 'becoming' in the world. However, as Houlgate notes, "(A)fter 1876, however, when his romance with Schopenhauerian metaphysics draws to an end, Nietzsche begins more and more to equate becoming directly with this-worldly nature and biological life, and in particular with the complexity and uniqueness of *human* action and experience."³⁸

Calling attention to the major tension in Nietzsche's earlier divide between life and language, Houlgate shows that such a claim makes Nietzsche dependent upon a sort of 'direct' knowledge or access to the very relationship between life and language he wishes to sever. Besides calling attention to Nietzsche's critique of the validity of Kant's project ('how can reason criticize itself'), Houlgate argues through analyzing several passages that "...[Nietzsche's] criticism of language and consciousness rests upon the foundation of intuition, sensation and feeling."³⁹

Houlgate shows how Nietzsche later bases his critique of morality on the assumption that the free mind is "...guided by intuitions [*Sensationen-Wirrwarr*] rather than by concepts".⁴⁰ For

³⁸ Stephen Houlgate. *Nietzsche, Hegel and the Criticism of Metaphysics* (New York: Cambridge University Press, 1986) 49

³⁹ Stephen Houlgate. *Nietzsche, Hegel and the Criticism of Metaphysics*, 50

⁴⁰ *ibid*

Houlgate, Nietzsche retains the division between life and language, but one whose divide is mediated now (after 1876) by the mode of sensation, feeling, vision or intuition. Houlgate concludes that Nietzsche's critique operates on two tiers of human awareness: a level of "...linguistic, reflective consciousness...[and]..the pre-linguistic vision of life, this 'world of unworded experiences'."

Thus, Houlgate concludes, Nietzsche's conception of the domain of actuality involves the positing of both an impure reflective consciousness as well as a "...pre-linguistic insight into life".⁴¹ It involves elements of an impure reason as well as a phenomenological intuition. And, even at times such as in the Twilight of the Idols, Houlgate notes that Nietzsche privileges the latter, going so far as to say that sensation of intuition "...reveals reality in a purer way than reflective consciousness."⁴² For Houlgate, Nietzsche does not deny that "...we can be aware of the complexity of human life in various ways and use words to point to (*bezeichnen*) what we are aware of; nor does he deny that we can register the contradiction he detects between what we feel and what we are able to say."⁴³ For Houlgate, Nietzsche's truth claim that, for example, all human beings lie in their interpretation of their own experience of life rests upon an intuitive judgment based on Nietzsche's own *self-knowledge*. Such self-knowledge, furthermore, comes from the combination and interaction between the two-tiered faculties of reflective consciousness and a pre-linguistic intuition or sensation.

⁴¹ Houlgate. *Nietzsche, Hegel and the Criticism of Metaphysics*, 50

⁴² *ibid*

⁴³ *ibid*

Nietzsche's later conception of what it means to reflect on actuality, therefore, will become extremely crucial for Foucault's relationship with genealogy as *wirkliche historie* and, later, an ontology of actuality. Indeed, Foucault's inauguration as Chair of the History of Systems of Thought at the College de France will in one sense be dedicated to just this question: how to reflect upon the division between life and language, or, as Hyppolite's seminal work would have it, the division between Logic and Existence. As Badiou points out, the pressing question for Foucault and the tradition of French thought in the 20th century would in fact be the question of the relationship between Hegel's Phenomenology and his Logic. Or, as John Bartley Stewart has put it, the question of actuality for 20th century French thought would be the question of the reconciliation between Hegel's quest for the objectivity of self-consciousness and Kierkegaard's quest for individual subjectivity.⁴⁴ The question of actuality therefore would thus at the same time pose the question and the answer to the reconciliation between the "non-philosophical" domain of life and existence with the 'philosophical domain' of self-consciousness and the development of reason. For Foucault, his work at the College de France would always stand in an uneasy and ambiguous relation to this problem, always seeking to create a new kind of philosophical reflection that would begin from the non-philosophical. It is this ambiguous position, in part influenced by his evolving relation to the phenomenological tradition following Merleau-Ponty, that led Foucault to first formulate genealogy (*wirkliche historie*) as an effective history, and later a historical ontology of ourselves as a reflection on *actualité*.

The ambiguity of the German *Wirklichkeit* as it appears in French (and English) is immediately apparent when we consider that a common translation of *wirklichkeit*/actuality in

⁴⁴ Jon Bartley Stewart, *Kierkegaard and Existentialism* (Burlington: Ashgate, 2011) 237

both French phenomenology and in common parlance is in fact more properly a rendering not of *wirklichkeit* but rather *wirksamkeit*, or practical effectiveness of something on our senses.⁴⁵ Thus, as Claude Romano clarifies in his *Event and World*, the common understanding of actuality in French as *l'effectivité* is synonymous with the phenomenological aspect of 'the news', film or television that, while commemorating 'events', are nonetheless *ephemeral* and come only to pass away.⁴⁶ This meaning is reflected in some corners of contemporary French phenomenology in the wake of Merleau-Ponty, where we find the assertion that "*L'effectivité (Wirklichkeit) est une des désignations phénoménologiques de la réalité*"⁴⁷, where *la réalité* is understood here through Merleau-Ponty in contrast to '*la virtuel*'. In this interpretation of Merleau-Ponty then, *wirklichkeit* refers to the domain that is contrasted with 'the virtual', namely *l'actualité*. Here, actuality (*wirklichkeit*) is understood to designate the phenomenological character of 'the real', which is understood through its effectivity. Thus to the extent that we understand *wirklichkeit* as effectivity, or *wirkliche historie* as effective history, we have thus conflated *wirklichkeit/actualité* with *wirksamkeit*, or the phenomenological notion of practical effectiveness. Indeed, such a move not only conflates the two terms, but elides the fuller meaning of *wirklichkeit* for Hegel, as well as the fuller meaning of *actualité* in the thought of Merleau-Ponty's *The Phenomenology of Perception*. For Foucault, the move from effective history to a reflection on actuality will constitute a major transition in his work on freedom, ethics and

⁴⁵ In Fichte's work, for example, Goddard and Rivera de Rosales point to the distinction between *wirklichkeit* and *wirksamkeit*, the latter regarded as 'pratique d'effectivité': "Cette reconnaissance consiste en se poser et en les poser en tant que tels sous la catégorie pratique d'effectivité (*Wirksamkeit*) et pas sous la théorique d'actualité (*Wirklichkeit*). Goddard, Jean-Christophe and Jacinto Rivera de Rosales (eds). *Fichte et la politique* (Monza: Polimetrica, 2008), 409

⁴⁶ Claude Romano. *Event and World* (New York: Fordham University Press, 2009) 205

⁴⁷ Delia Popa. 'Les marges du réel et la vie imaginaire' in *Phenomenology 2005: Volume 3: Selected Essays from Euro-Mediterranean Area, part 2*. (Zeta Books, 2007), 559

practices of truth-telling or *parrhesia*. Indeed, Merleau-Ponty's *Phenomenology of Perception* will serve as one direct inspiration for Foucault's re-thinking the problem of actuality in (ethico-political) terms of the 'unexplored ground' or 'horizon' of 'the True and False'.

Foucault's inaugural lectures at the College de France, *Lectures on the Will to Know*, begin by problematizing the Aristotelian differentiation of 'true' philosophical discourse from the 'materiality of discourse' spoken of by the Sophists. For Foucault, Aristotle differentiates the 'syllogism' as abstract philosophical measure of truth from the 'materiality' of discourse which refers to the social field of struggle, rivalry, "...and the situation of combat between men".⁴⁸ With this differentiation of an abstract measure of truth and error of statements, a "great split" occurred in the relationship between life and truth. This split, Foucault writes, gives birth to "...a logic of the concept and difference which right from the start neutralizes the materiality of discourse", making the latter into "...an unreal shadow that haunts the ideal reality of the *logos*."⁴⁹ Thus for Foucault, Aristotle effected the differentiation of the ideality of *logos* from the field of materiality, struggle and social agonism. The ideality of *logos*, then, corresponds to the domain of Being, where the materiality of discourse corresponds to the domain of materialities, shadows and social struggles – beings within the materiality of the social.

This separation between the ideality of discourse and the materiality of struggle, for Foucault, thus serves as the historical moment when the domain of logic and philosophical discourse was differentiated from the domain of life, existence and social struggle. Rather than viewing the emergence of 'true' philosophical discourse as the emergence of a separate domain

⁴⁸ Michel Foucault. *Lectures on the Will to Know: lectures at the College de France, 1970-71* (New York: Palgrave Macmillan, 2011), 47

⁴⁹ Michel Foucault. *Lectures on the Will to Know*, 50-51

of ‘objective spirit’, or the ‘universal’ measure of true statements, Foucault – without denying the ground of its own proclaimed validity - shows how the invention of ‘true discourse’ depends upon a series of exclusions and elisions at the level of materiality, desire and struggle. In other words, Foucault’s aim is to show how the conditions of validity for ‘true discourse’ depend the exclusions and elisions at the level of materiality, struggle and the will to know. The ‘universality’ of true discourse, therefore, is made possible by exclusions made within the field of social relations. For Foucault, this amounts to neither denying the validity of syllogistic reasoning, or ‘apophantic discourse’, nor reducing all operations of discourse to the realm of materiality, struggle and the play of ‘shadows’ within social reality. Thus Foucault, following Hyppolite’s critical method of philosophy, problematizes the relation between the ‘universality’ of philosophy as ‘truth-measure’ and the materiality of life and struggle within social relations.

In this sense, Foucault sought to not *only* historicize the attempts to abstract a realm of ‘universality’ from the materiality of discursive relations within the social field, but rather to *problematize* that very relation between ‘universality’ and the materiality of history and social struggle. This strategy, not exactly Nietzschean nor exactly Hegelian, seeks, in the tradition of Hyppolite, to critically pose the problem of the ‘universal’ *within* the “non-philosophical” – the domain of singular events, revolts, struggles, and forms of life and historical memory. Thus, by problematizing the ‘great split’ in Western history between truth and life, logic and existence, discourse and materiality, Foucault seeks to critically pose the question of the ‘universal’ *within* the fabric of (non-philosophical) historical and social reality, and thus for the domain of ‘the actual’. Such a critical philosophy then seeks at once to interrogate and examine ‘the universal’ as it emerges as an imminent feature of various events, singularities, and relations within the social field. In this way, Foucault’s *Lectures on The Will to Know* seek to “...examine the

singularity of history, the regional rationalities of science, the depths of memory in consciousness”⁵⁰, and in doing so, “...revealing the meaning this non-philosophy has for us [in]...the present moment.”⁵¹ For Foucault, it is precisely this work of ‘revealing’ and ‘unfolding’ of meaning within the social and historical fabric that opens up the possibility for ‘the present’ to become ‘actual’. As I will argue in the final section, it is precisely the work of a theoretic ethics, as a reflection on the continuity of ourselves (“we”) as free beings in struggles against forms of authority, that makes a reflection on ‘the present’ into a moment of *wirklichkeit*, an ethical, *effective/affective* moment. It is thus the philosophy of actuality that Foucault develops in which we can find the tools for an affirmative account of politics that Badiou sensed as incomplete in Foucault.

Foucault’s problematization of the relationship between the universality of discourse and the materiality of discourse is reflected in his theoretical commitment to what Colin Gordon has described as the separation between the level of discourse and the level of actuality, or *Wirklichkeit*. Gordon reminds us that for Foucault, there is a crucial distinction between the ‘material of the human world’ in its actuality (*Wirklichkeit*), and the strategic rationalities (‘discourses’) that attempt to ‘programme’ and control the materiality of the social fabric. As Gordon reminds us, for Foucault’s thought it is essential that the domain of social practices and human technologies [*savoir*], understood through the Hegelian concept of *Wirklichkeit*, remain distinguished from the domain of *programmes*, understood as the discursive regimes of knowledge and political rationality that seek to control social reality.⁵² This fundamental

⁵⁰ Foucault, *The Discourse on Language*, 236

⁵¹ *ibid*

⁵² Colin Gordon. ‘Afterword’ in Michel Foucault. *Power/Knowledge: Selected Interviews and Writings, 1972-1977* (New York: Pantheon Books, 1980), 229-260 “The field of strategies is a field of conflicts; the human material

distinction is crucial, Gordon reminds us, in order for Foucault to retain a robust conception of how resistance and freedom is an inherent feature of the actuality of human social life in all the depth and multiplicity of its relations and its ‘intransigence’ to strategic manipulation and control.

The distinction between the actuality of human social relations and technologies on the one hand, and the domain of programmes, discourses and political rationalities on the other can in fact be traced to the methodological framework of *The Archeology of Knowledge*. There, Foucault distinguishes between three levels of analysis for archeology: i) the non-discursive, ‘real’ or primary relations within the actuality of social forms, events and practices, ii) ‘reflexive’ relations of discourse internal to itself, and iii) discursive or tertiary relations between individuals and groups in the social field.⁵³ As Ellen Feder has noted, the field of discursive relations for Foucault concerns the field of both discursive and non-discursive elements that come into play over political, economic, and social struggles. Indeed, as in Foucault’s archeology of the medical gaze in *The Birth of the Clinic*, Feder notes Foucault’s definition of the tertiary or discursive relation as “...the locus of various dialectics: heterogeneous figures...political struggles, demands and utopias, economic constraints, social confrontations.”⁵⁴ Thus for Foucault, archeology recognizes three domains of analysis: i) the non-discursive domain of the actuality of social forms, processes and events, ii) the reflexive domain of discourses themselves, and iii) the domain of discursive relations inherent to social

operated on by programs and technologies is inherently a resistant material. If this were not the case, history itself would become unthinkable.” Colin Gordon in ‘Afterword’ in *Power/Knowledge*, 255

⁵³ Michel Foucault. *The Archaeology of Knowledge and the Discourse on Language* (New York: Vintage Books, 1972) 48-49

⁵⁴ Ellen K. Feder, *Family Bonds: Genealogies of Race and Gender* (New York: Oxford University Press, 2007) 13

struggles within and over the discursive and non-discursive fields themselves. Therefore, for Foucault, archeology distinguishes not only between the level of discourse and actuality, but also between the ‘programmatically’ level of discourse and the social level of ‘discursive relations’ and practices, as Foucault makes very clear.⁵⁵

For Foucault, the “...ineluctable discrepancy between discourse and actuality”⁵⁶, as Gordon puts it, means that there will always be a ‘non-correspondence’ between strategic rationalities that seek to programme power relations in the social field, and the actual social field of diverse power relations between various kinds of partners. This means that strategic programmes and discourses, for Foucault, can never ‘successfully’ insert themselves into the social field as if they were an ‘ideal’ model imposed upon the existing social fabric in its complexity. This distinction also means that, when conducting genealogies and histories, the ‘logic of strategy’ “...cannot in itself entail any necessary coherence whatever”, since “...the human ‘elements’ of the [historical] field are themselves not an inert and passive material.”⁵⁷ Thus for Foucault, utilizing the interpretive grid of strategies to conduct a ‘history of struggles’, is thus one, very limited way of conducting history, one which places more emphasis on the ‘antagonism of strategies’ and their potential for reversal or resistance than on the social field of power relations itself in its actuality [*wirklichkeit*]. In this sense, Gordon reminds us, “...a history cannot be *based* on the concept of strategy. The concept only becomes pertinent as an instrument

⁵⁵ Foucault, *The Archeology of Knowledge*, 49

⁵⁶ Colin Gordon. ‘Afterword’, 250

⁵⁷ Colin Gordon. ‘Afterword’, 252

for historical decipherment at the point where the instrumentalization of the social terrain [*wirtlichkeit*] interacts with its formation by programmes and technologies of power.”⁵⁸

Thus as Gordon explains, Foucault’s genealogical histories entail the presupposition of and distinction between three levels: i) the actuality of human rationalities imminent to the social field⁵⁹, ii) the strategic relations of ‘human technologies’ of power, and iii) the programmatic level of discourses and political rationalities. For Foucault, conducting history through the interpretive grid of ‘strategies’ then restricts such historical analysis to the antagonism of strategies between (ii) and (iii), between the strategic rationality of human technologies and the political attempts of programming (i) the social field of power relations and human technologies.

Crucially, conducting history through the interpretive grid of strategic rationality therefore means that genealogical analyses both acknowledge and bracket the non-strategic, field of actuality of social relations and human technologies. This is an important point for Foucault, since this entails the acknowledgement that “...[human] technology possesses an intrinsic rationality of its own, independent of the phenomena” of the discursive programming and coordination of logics of domination.⁶⁰ In other words, Foucault’s genealogical histories already presuppose, but do not yet take as its primary object of analysis, the non-strategic, non-programmed field of actuality of human social relations.

It is this distinction between the actuality of human social relations [*wirklichkeit*] and human technologies (of self) on the one hand, and the discursive field of political rationalities,

⁵⁸ Colin Gordon. ‘Afterword’, 252

⁵⁹ It should be clear by now that I interpret power relations with Gordon as “...coterminous with the conditions of social relations in general.” Colin Gordon. ‘Afterword’ in *Power/Knowledge*, 246

⁶⁰ Colin Gordon. ‘Afterword’, 252-53

and programmes on the other, that Foucault in his late writings will return to in order to emphasize the former, previously neglected domain under the name of ‘an ontology of actuality’. For Foucault, an ontology of actuality will then include a study of the various forms of human practices, technologies and relations from the standpoint, not of strategic potential, but of their *actual* efficacy in contributing to the understanding of the continuity of ourselves as free beings engaged in struggles against forms of authority. In other words, the reflection on our own actuality will not locate the antagonism of strategic ‘we’s’ pitted against each other in a game or struggle (genealogy); rather, a reflection on our own actuality will seek to introduce continuity in our understanding of ourselves as a “we” engaged in struggles against forms of authority; it will aim not to interpret the antagonism between two ‘we’s’ in history, but rather to make ourselves intelligible as a “we”, in the present moment. Rather than merely conducting history through the interpretive grid of strategic rationality, Foucault would, in his late work, focus on the neglected, but always-already presupposed domain of actuality that characterizes the rational, relational fabric of the social world. However, this ‘return’ to the field of ‘the actual’ would crucially be understood as the field of problematization for a theoretic ethics that Foucault would begin to develop later. It would be through a theoretic ethics of the present that Foucault would ‘return’ once again to the problematization of the universal within the ‘actual’, and thus the continuous provocation of Hegel that haunts Foucault’s work as Chair of the History of System of Thought.

In his essay *Nietzsche, Genealogy, History*, Foucault defines genealogy through Nietzsche as a kind of *wirkliche historie*, an effective history. As some commentators have noted, a better translation would no doubt be ‘actual history’. However, as I’ve clarified, it should be kept in mind that Foucault is translating *das wickliche* through the French *l’effectivité*. For purposes of consistency, I will use the original *wirkliche historie* in order to emphasize the

reference to *wirklichkeit/actualité*, which will take center stage in Foucault's later 'ontologie de l'actualité'. In this essay, Foucault distinguishes '*wirkliche historie*' from traditional history in that the former locates singularities, events, or relations of force within the social field, which are intended to introduce discontinuity in our relation to history. In other words, what makes *wirkliche historie* an *effective* history, for Foucault, is that it *effectively* introduces a discontinuity in the way we relate, phenomenologically, to history.

Thus, for Foucault, genealogy seeks to conduct *effective histories* that introduce discontinuities in our historical *sensibilities*. Genealogy is an historical method whose aim is to locate singularities in the social field that *effectively* alter our bodily, emotional and phenomenological relation to history. It is the *effectation* of the possibility of a moral labor upon ourselves – what Foucault will later refer to as the moral labor of 'political affect'. Genealogy, when it achieves its goals, is itself a reflection on our own actuality. If and when it succeeds in becoming more than just history – when it becomes *actual* – is the moment when it becomes an ethical work upon ourselves, a kind of moral labor that is activated upon us. Genealogy, then, is *effective* just to the extent that it is *affective*: as a way of re-thinking history, it aims at effecting an actual change in the way we perceive, envision, and relate to the world and to ourselves, while aiming to *affect* us on an emotional, spiritual and universal level. It is in this way that genealogy holds the *potential* for the *actual* awakening of secret affinities, solidarities and affectivities. Actual history, then, will share with an ontology of actuality the same theoretic ethic: to *effect/affect* a change in our mode of relating to our own actuality. However, whereas genealogy will seek to introduce discontinuity in our mode of relating to history, an ontology of actuality will seek to introduce continuity in our mode of relating to ourselves and specifically others. One will have reference to an actual *history*, and one will have reference to an actual

ethics. One will refer to an interpretation of *affective* history, and one will refer to a standpoint of freedom as a practice. Genealogy will seek to locate in history a division between two opposing sides, whereas an ontology of actuality will seek to locate in the present an affinity, a continuity between ourselves and others, a “we” engaged in struggles against forms of authority.

As Badiou notes, the tension between the discontinuity of archaeological method and the particular kinds of continuity revealed by genealogy become more and more evident in Foucault’s College de France lectures. Foucault’s lectures Society Must Be Defended (2003) which Badiou discusses are indeed a particularly fruitful example of how these tensions emerge in genealogical analysis. Perhaps the most obvious way of calling attention to this tension is the following: in those lectures, Foucault uncovers what he considers to as the first historico-political discourse of struggle that is directed against the juridico-philosophical discourse of the State. Foucault begins by tracing the emergence of this ‘insurrectionary’ discourse of struggle from the Hebraic tradition of religious emancipation to the revolutionary discourses of Coke, Lilburne and the doctrine of popular sovereignty. During this reconstruction of ‘insurrectionary’ discourse (which will be appropriated by the discourse of the State), Foucault identifies the continuity of these insurrectionary knowledges with great fervor, calling attention to their common emphasis on the emancipation of people from mechanisms of oppression. As Badiou notes, it is precisely because this genealogy thinks the continuity of specific forms of insurrectionary knowledge that it is able to distinguish the historico-political discourse of struggle from the juridico-philosophical discourse of the State. Therefore, at this stage of the genealogy, Foucault introduces a certain continuity in our mode of relating to a certain historical-political discourse of struggle. This, as Badiou suggests, is the basis of *wirkliche historie* as an ‘actual’ and not merely *effective* history. For Foucault then, genealogy understood as *actual*

history seeks to locate discontinuous singularities (historico-political discourse of struggle), which in turn serve as potential points for the actualization of those knowledges and discourses in the present.

However, the continuity of the historico-political discourse that Foucault identifies in the lectures soon becomes fragmented, dispersed and appropriated by other discourses, transposed into the binary logic of social war that is taken up in the history of races, nations and classes, culminating in the emergence of the bio-political State. Indeed, soon after Foucault identifies the continuity of the historico-political discourse of struggle, he clarifies that this discourse is ‘polyvalent’ in its application and interpretation, allowing it to become transposed into discourses as diverse as racism, nationalism, socialism, Fascism and Stalinism. Thus, the continuity of the discourse of struggle we are presented with in the first half of the genealogical reconstruction becomes a fractal, dispersed and ambiguous discourse in the second half of the reconstruction. Insurrectionary knowledge and struggle becomes State biopower.

Foucault’s insistence on the ‘polyvalent’ nature of discourses in the 1976 lecture course (Foucault 2003, 77), it would seem, undermines the ability to speak of a real continuity between the forms of historico-political discourse Foucault identifies. After all, if discourses are by nature ‘polyvalent’, how can speak of “a discourse” *in the singular*, when such a discourse may always have other valences, other origins, and other conditions of emergence than the ones that any genealogy identifies. In short: if all discourses are ‘polyvalent’, then can we say that “a discourse” *in the singular* has a particular ‘valence’, a particular ‘truth’ around which diverse forms of knowledge and struggle are organized? If so, then what does it mean to say that discourses are ‘polyvalent’? And if not, then does this invalidate any search for any sort of

historical continuity whatsoever? Isn't the prospect of identifying distinct discourses with particular histories rendered impossible if not incoherent? Is genealogy then actually possible?

In order to answer this question, it is helpful to return to Foucault's distinction between the level of discourse, the tertiary level of social relations and the domain of actuality. While it is true that discourses for Foucault remain 'polyvalent' in their ability to be transposed into other 'valences' or regimes of power-knowledge, Foucault never claims that the forms of local knowledge and social struggle that produce such discourses are themselves 'polyvalent' (which would be an incoherent proposition in itself). As clarified in section one, while the discourses of 'struggle' or 'the State' may be polyvalent at the level of *programmes* and rationalities, we must distinguish these from the *discursive practices* that characterize the social relations inherent to the field of struggle – the field of relations Foucault calls 'the tertiary'. Thus, while the State may appropriate the discourse of social war in order to make intelligible various mechanisms of social defense (racism, biopower), the field of social struggles, knowledges and human technologies cannot, properly speaking, be 'appropriated' or '*étatisized*' ('State-ified'). Therefore, we might say that, in the 1976 lectures, the continuity that Foucault identifies in the historico-political discourse of struggle, while appropriated by mechanisms of State racism and biopower, allow us to think our own *actuality*, the continuity "we" have with regard to these struggles as free beings. As the field of human technologies imminent to social relations, the domain of the tertiary or social struggle remains, as Colin Gordon reminds us, impervious to the complete programming and manipulation of discourses and rationalities. It is the latter – programmes, rationalities and discourses – which are properly speaking 'polyvalent'.

Thus, we can say that, against Badiou, that genealogy – as *wirkliche historie* – does not rule out or cancel the prospect of a philosophical reflection on the continuity of 'invariant' forms

of knowledge and power. Rather, genealogy as ‘actual history’ presupposes an historical field of social struggles, moving back and forth from the domain of discursive practices, technologies and struggles to the domain of ‘discourses’, programmes and rationalities. In the following section, I argue, with Badiou, that Foucault did return to a closer examination of the field of ‘the actual’ as a philosophical reflection on understanding the continuity of ourselves as free subjects engaged in struggles against forms of authority. In the following section, I show how in several interviews and essays in 1979 and the 1982-83 lectures on *The Government of Self and Others* Foucault develops a ‘moral-theoretical’ standpoint of ‘the True and False’ based on a reflection upon our own actuality with regard to a particular “we”.

In an essay titled ‘For an Ethic of Discomfort’, Foucault writes that, by attending to *l’évidence* of present struggles, conflicts and revolts in the domain of the social world (the tertiary), one is able to see (*de voir*) ‘that which one has never lost sight of’. Here, citing Merleau-Ponty, Foucault speaks of analyzing social struggles from a ‘*horizon familial*’ based on a ‘ground’ (*sol*) that is always unexplored. Foucault writes that, by attending to the commonality of certain social struggles from the *certitude* of this familiar horizon, we can begin to see, from a distance, the ‘evidence’ of ‘the True and False’. Foucault writes,

Bien sentir que tout ce qu’on perçoit n’est évident qu’entouré d’un horizon familial et aml connu, que chaque certitude n’est sûre que par l’appui d’un sol jamias explore. Le plus fragile instant a des raciness. Il ya a la toute une etique de ‘evidence sans sommeil qui n’exclut pas, tant s’en faut, une economie rigoureuse du Vrai et du Faux; mais elle ne s’y resume pas.’⁶¹

Concerning the ‘evidence’ that comes to light from this ‘ground’, Foucault writes that “...Et puis l’évidence nouvelle est toujours un peu une idée de derrière la tête. Elle permet de voir a

⁶¹ Michel Foucault. *Pour une moral de l’inconfort*, Le Observateur, no 754, 23-29 avril 1979, pp. 82-83. *Dits et Ecrits* III texte n. 266, p. 783

nouveau ce qu'on n'avait jamais tout a fait perdu de vue.”⁶² Thus, here Foucault speaks of a certain kind of ‘vision’ that resides not in the faculty of sight itself, but as a kind of pre-linguistic knowledge of ‘what one already knows’. The ‘something’ that one never loses sight of, the thing that stays in the back of one’s mind, and is evidenced by social struggles, is the *horizon familier*, that ‘always unexplored ground’ [*sol jamais exploré*] upon which one stands with *certitude*. Indeed one takes a stand with certitude upon a ground that is always unexplored, and this is what makes this kind of moral-theoretical reflection one of *l’inconfort*, an ethic of discomfort.

In a text released in the same year, ‘Is it Useless to Revolt’⁶³ – a reflection on the Iranian revolution – Foucault distinguishes this ‘unexplored ground’ of an ‘ethics of discomfort’ from the view that one is simply obliged to support every struggle or revolt. Indeed, even though it is true that practices of resistance and revolt are “...how subjectivity...is brought into history”⁶⁴, this does not commit an ethic of discomfort to support every form of subjectivity that asserts itself within the annals of history through revolt. Indeed, “...no one is obliged to support them.”⁶⁵ However at the same time, the question of revolt and resistance for Foucault constitutes a moral imperative to confront such struggles in their singularity, in their struggle against authority, which includes the moral imperative to become “...intransigent as soon as power violates the universal.”⁶⁶ This imperative to be at once attentive to *l'évidence* of struggle and

⁶² Michel Foucault. *Pour une moral de l'inconfort*, Le Observateur, no 754, 23-29 avril 1979, pp. 82-83. *Dits et Ecrits* III texte n. 266, p. 783

⁶³ Michel Foucault. “Useless to revolt?” in *Essential Works, 1954-1984, Vol. 3: Power*. J. Faubion, ed., (New York: New Press, 2000), pp. 449–453

⁶⁴ Michel Foucault. “Useless to revolt?”, 452

⁶⁵ Michel Foucault. “Useless to revolt?”, 451

⁶⁶ Michel Foucault. “Useless to revolt?”, 453

revolt while also remaining aware of the ‘unexplored ground’ of our *certitude* is part of what Foucault here calls a ‘*morale théorique*, a theoretic ethic’.

Note that we are here, from this standpoint or horizon, removed from the domain of *Herkunft*, that descent into the domain of bodies, desires and the clash of races, peoples, or social types. We are here dealing with far more than simply documenting the affiliations, antagonisms or ambiguities that exist in the field of force relations. From a moral-theoretical standpoint, an ethic of discomfort, we no longer engaged in *simply* genealogy. We are no longer *merely* conducting an *effective* history. Reflecting upon the present from the point of view of a theoretic ethics means that one proceeds on the basis of a rigorous empiricism, one which seeks out evidence of ‘the True and the False’ within the domain of social struggles, always aware of the ‘unexplored ground’ of one’s *certitude*. Furthermore, this unexplored ground or horizon from which we reflect upon the social struggles and conflicts in the world is not *merely* concerned with *effecting* a change in relation to history, or to oneself. Rather, as Merleau-Ponty (2013) would say in the *Phenomenology*, one ‘reckons’ with present struggles and conflicts, not merely by being-in-the-world, but also by *being-in-the-truth* [*la vérité*].

For Merleau-Ponty, *being in the world* is inseparable from participating in what Foucault calls ‘a rigorous economy of the True and False’. As beings who experience the ‘evidentness’ of the world through perception, we are for Merleau-Ponty always-already engaged a certain game of truth. As a result, “...being-in-the-truth [*l’être -a-la-vérité*] is not distinct from being in the world [*être au monde*].”⁶⁷ There is little doubt that Foucault’s reference to Merleau-Ponty during his later interviews is indicative of Foucault’s (re)engagement with the *Phenomenology of Perception* as a way to re-think the relation between truth, life and the interpretation of social

⁶⁷ Merleau-Ponty, Maurice. *The Phenomenology of Perception*. Trans. Donald A. Landes (New York: Routledge, 2013), p. 415

struggle. Indeed, Merleau-Ponty's notion of 'being-in-the-truth' is not so far removed from Foucault's conception of *parrhesia* as a condition of possibility for true discourse.

It is from this point, around 1978-79, that Foucault's methodological language regarding what he is doing begins to change. The language of genealogy will remain. However, alongside the language of genealogy as interpretation, perspective or analysis, we begin to see Foucault speaking in methodological terms of a 'ground' [*sol*], a 'familiar horizon' [*horizon familiar*], 'an economy of the True and False', and a 'point of view' [*perdu de vue*]. Indeed in some of his last lecture courses at the College de France, Foucault will speak of *parrhesia* and the practices of *parrhesia* as constituting 'the standpoint of philosophy', which in turn serves as 'the attitude of modernity'. For Foucault, this is not a 'stand' or 'ground' in any traditional metaphysical sense. Foucault rejects any sort of metaphysical ground for critique, or any kind of transcendent 'stand' from which one may view the totality of history. At the same time, Foucault does speak of standpoints, *perdu de vue*, an 'unexplored' ground, and the 'evidence' we can gain from this standpoint as evidence of the 'True and False'.

Philosophy & the Critique of Authority

In the lectures on *The Government of Self and Others*, Foucault begins with an analysis of Kant's essay *What is Enlightenment?* In these lectures, Foucault can be seen both adopting certain elements of Kant's (and Hegel's) critical apparatus, while at the same time critiquing the very form of philosophical practice upon which that apparatus is based (*parrhesiastic* function of philosophy). Here Foucault articulates his own position within the tradition of critical philosophy following Kant, Hegel, Nietzsche and Weber while simultaneously taking care to distinguish the ways that, for example, philosophical practice has been linked to the Christian pastorate, the conduct of others and thus the history of police and *raison d'état* that he studied several years

prior. The way that Foucault will present these lectures therefore will be to situate them as an ontology of actuality, or an historical ontology of ourselves, in which a critical apparatus is consciously developed which constantly questions its own implication in relations of power, knowledge and authority. Thus for Foucault, critique –following Kant as much as Hegel - will be first and foremost *a critical reflection on forms of authority and obedience, in the present moment, that prevent us from knowing, deciding, or planning our own lives*. In this way, understanding what Foucault means by an ontology of actuality will in turn illuminate how the philosophical reflection on our own actuality means understanding the continuity of ourselves as free subjects engaged in struggles against forms of authority, such as the public authority of the State, the police, public health, administration, etc.

In the 1982-83 lecture course on *The Government of Self and Others*, Foucault situates himself with respect to an analysis of Kant’s philosophical reflection on actuality. For Foucault, the question of actuality Kant asks is distinct from a mere reflection on ‘the present’ or ‘reality’. A reflection upon one’s own actuality, for Foucault, is distinct from a reflection on ‘reality’ in the following ways. First, that “...among all the elements of the present, the question [of actuality] focuses on the definition of one particular element that is to be recognized, distinguished and deciphered.”⁶⁸ Second, a reflection on one’s actuality involves, “...showing how this element is the bearer of expression of a process which concerns thought, knowledge and philosophy.”⁶⁹ And third,

...within this reflection on this element of the present which is the bearer of or which reveals a process, what is to be shown is in what respect and how the person who speaks as a thinker, a *savant*, a philosopher, is himself a part of this process. But it is even more

⁶⁸ Michel Foucault. *The Government of Self and Others: lectures at the College de France, 1982-83* (New York: Palgrave, 2008) 12

⁶⁹ Michel Foucault. *The Government of Self and Others*, 12

complicated than this. He has to show not only how he is part of this process, but how, as such, as *savant*, philosopher, or thinker, he has a role in this process in which he is thus both an element and an actor.⁷⁰

For Foucault, this question of actuality Kant raises is itself a particular mode of subjectivation, a particular mode of relating to oneself through history. What distinguishes this mode of subjectivation as *modern*, that is a modern version of ‘the *parrhesiastic* standpoint’ of philosophy in general, is that the question of one’s actuality for the subject “...will no longer be one of his adherence to a doctrine or a tradition, or one of his membership of a human community.”⁷¹ Rather, the mode of subjectivity marked out by the Kantian reflection on our actuality is “...a question about him being part of the present, about his membership of a particular ‘we’ if you like, which is linked, to a greater or less extent, to a cultural ensemble characteristic of his contemporary reality.”⁷² Focusing on the importance of the cultural ensemble of a “we” in the becoming of subjectivity proper to a reflection on one’s actuality, Foucault continues by affirming that, “(T)his ‘we’ has to become, or is in the process of becoming, the object of the philosopher’s own reflection. By the same token, it becomes impossible for the philosopher to dispense with an interrogation of his singular membership of this ‘we’.”⁷³ Foucault concludes that, from the philosophical standpoint of actuality, “...this ‘we’ to which he [the thinker] belongs and in relation to which he has to situate himself, is a distinctive feature of philosophy as a discourse of modernity and on modernity.”⁷⁴

⁷⁰ Michel Foucault. *The Government of Self and Others*, 12

⁷¹ Michel Foucault. *The Government of Self and Others*, 13

⁷² *ibid*

⁷³ *ibid*

⁷⁴ *ibid*

Most interestingly, Foucault remarks that this ‘modern subjectivity’ grounded in a reflection on one’s actuality in relation to a ‘we’ is “...itself part of a broad and important historical process whose scope should be assessed.”⁷⁵ This historical process, Foucault remarks, is marked by its reflection on its relationship to the Ancients and the central question of authority. Specifically, “...the question of modernity arose either in terms of an authority to be accepted or rejected.”⁷⁶ According to Foucault, the reflection on one’s actuality with regard to a “we” concerns the challenge and critique of authority, a moment represented for Kant by the French Revolution. However, as Foucault makes clear, the significant aspect of the Revolution that informs a reflection on one’s actuality is not the ‘fact’ of the Revolution itself, but rather what Kant calls ‘the sympathy of aspiration’ or enthusiasm felt by humankind for the ideals of the Revolution. Indeed, what is significant for a reflection on one’s actuality with regard to a “we” is the “...relationship to this Revolution in which they themselves are not engaged or in which they are not the main actors. What is significant is the enthusiasm for the Revolution.”⁷⁷

As Foucault explains, the ‘enthusiasm’ or sympathy with the ideals of the Revolution were a *sign*, a signal “...that all men think it is the right of every people to give itself the political constitution that suits its and that it wants.” And, in addition, “...it is the sign that men seek to give themselves a kind of political constitution that, by virtue of its very principles, avoids all offensive war.”⁷⁸ Thus, for Foucault, a reflection on one’s actuality with regard to a “we” concerns the ‘affect’ or ‘sympathy’ one feels with the principles of popular sovereignty and the

⁷⁵ Michel Foucault. *The Government of Self and Others*, 14

⁷⁶ Michel Foucault. *The Government of Self and Others*, 13

⁷⁷ Ibid

⁷⁸ *ibid*

avoidance of offensive war. However, for Foucault, this reflection will involve much more than just this. As Foucault continues his analysis of Kant's text on Enlightenment, he turns to the question of what it means to have affective sympathy for a "we" that rises up to question forms of authority. In doing so, Foucault will set out the terms of authority, obedience and revolt that define the conditions under which a philosophical reflection of actuality may occur, and hence a critique of authority grounded in a particular "we".

Spelling out Kant's notion of 'tutelage', Foucault clarifies that certain forms of *authority* emerge in societies that, while considered legitimate, always raise the question of revolt and disobedience. For Foucault, certain forms of 'legitimate' authority emerge "...because men are unable or do not wish to conduct themselves, and others have obligingly come forward to conduct them."⁷⁹ In particular, Foucault says, Kant refers to "...a state of affairs in which it turns out that, through connivance and, as it were, an obligingness slightly tinged with cunning and shrewdness, some people have taken upon themselves the direction of others."⁸⁰ Foucault names the three forms of 'legitimate' authority Kant mentions: the book that replaces the understanding, the spiritual director that takes place of moral conscience, and the doctor who takes the place of taking care of oneself.⁸¹ For Kant, as for Foucault, such forms of legitimate authority – the book, the spiritual director, the doctor – can easily produce relations of dependence and subjection when

...the individual makes these three authorities...work in relation to himself...the way in which the individual substitutes the book for his own understanding and makes the book function instead of and in the place of his own understanding. It is found in the way in which, when employing his own moral conscience, he replaces it with the moral

⁷⁹ Michel Foucault. *The Government of Self and Others*, 29

⁸⁰ Michel Foucault. *The Government of Self and Others*, 29

⁸¹ Michel Foucault. *The Government of Self and Others*, 30

conscience of a spiritual director who tells him what he must do. And, finally, it is found in the way of making use of his own technical knowledge concerning his own life, such that he substitutes a doctor's knowledge for what he is capable of knowing, deciding, or planning with regard to his life.⁸²

In this passage, we can see Foucault developing the critical apparatus for forms of pastoral power, and the 'conduct of conduct'. And, in fact, we can see in Kant's examples three distinct kinds of authority that appear in Foucault's critical project. First, we might say that the substitution of the *connaissance* found in a book for one's own understanding represents Foucault's critique of the human sciences in their tendency to guide and inform how we think about ourselves. Second, we might say that the substitution of a spiritual director for one's own moral conscience represents all the 'normalizing' institutions that seek to 'reform' the individual: psychiatry, psychology, the police, social welfare, the penitentiary, ecclesiastical and charitable institutions, self-help industry, etc. And finally, we can see how the substitution of the doctor for the care of one's self represents Foucault's critique of the emergence of bio-power, *medizinische polizei*, the administrative state and the power of medicine and public health over the population. Indeed one can say that the critique of authority developed here as a reflection on one's actuality references Foucault's earlier critiques of the human sciences, the society of normalization and the emergence of the bio-political administrative state. And, in each case we may specify the particular "we" that Foucault's studies pick out as the ensemble out of which the critique gains its normative force: the mad, the mentally ill, the indigent, the idle, the poor, prisoners, sexual deviants, women, children, etc. In this sense, a reflection on one's actuality, for Foucault, will entail a reflection on certain forms of authority exercised over a particular "we", and thus a

⁸² *ibid*

certain form of subjectivity that emerges alongside the exercise of this authority, whether legitimate or not.

Therefore, for Foucault, a critical ontology of actuality understood in this way will focus on singularities of ‘authority-obedience’ in which a particular “we” comes into being through practices of freedom, revolt or resistance to a certain form of authority. It is this particular examination into the actual technologies of freedom employed by a “we” that Foucault distinguished from the analysis of the ‘antagonism of strategies’ that he deployed as a method of historical interpretation. Indeed for Foucault, this separation between a reflection on actuality as the domain of technologies of freedom employed by a “we” will become more and more distinct from the analysis of strategic rationality as a historical method of interpretation.

In his essay *What is Enlightenment*, Foucault again reiterates the distinction between the historical analysis of strategies and the analysis of practical rationalities within the social field of actuality. In that essay, Foucault writes that an ontology of actuality or, ‘a critical ontology of ourselves’, will study the practical systems of thought and action within the social field by examining two distinct components, which include

forms of rationality that organize their ways of doing things (this might be called the technological aspect) and the freedom with which they act within these practical systems, reacting to what others do, modifying the rules of the game, up to a certain point (this might be called the strategic side of these practices. The homogeneity of these historico-critical analyses is thus ensured by this realm of practices, with their technological side and their strategic side.⁸³

As Prado clarifies in his book on *Foucault’s Legacy*,⁸⁴ Foucault’s ontology of actuality seeks, in the words of Foucault, “...to give new impetus, as far and wide as possible, to the

⁸³ Michel Foucault. ‘What is Enlightenment?’ in *The Foucault Reader*. Paul Rabinow Ed. (New York: Pantheon Books, 1984) 48

⁸⁴ C.G. Prado, *Foucault’s Legacy* (London: Continuum Books, 2009)

undefined work of freedom.”⁸⁵ This ‘undefined work of freedom’, for Foucault, means giving positive content to the historical and pragmatic work of becoming more free in how we relate to ourselves and others, and not *merely* as strategic beings locked in a game of struggle. Rather than taking the much narrower lens of strategy that takes as its historical object the ‘antagonism of strategies’ that seek to gain the upper hand over another, the ontology of actuality for Foucault – in the tradition of Kant, Hegel, Weber, Heidegger, the Frankfurt School, etc. - will take up as its object “...the system of actuality within which we think”, in order to activate the subject as a free thinking, living being in relation with others.⁸⁶ As McGushin explains, for Foucault, the ontology of actuality takes as its domain of analysis the various human “...technologies and relations of care of the self” whose objective is the becoming of subjects who care for themselves and others in relations of truth, generosity and respect. Indeed, the moment when we cease to develop in reality forms of practical rationality that link us together as thinking, living beings in mutual, caring relation to others,

...political government arises as an ensemble of relations, institutions, and technologies for producing subjects who are normal: politics starts to take care of people...[where] disciplinary power absorb[s] the poetics of subjectivity, the care of the self. The care of space, time, bodies, and existence is now primarily managed by disciplinary experts...within disciplinary institutions...and is oriented toward the construction of normal...individuals and lives. Bodies, space, time and relations are managed by disciplinary and normalizing procedures: they are arranged in precise ways that induce specific effects.⁸⁷

In short, the stakes of conducting an ontology of our actuality for Foucault are that if “we” do not critically attend to our actuality as free beings engaged in struggle against authority, then the

⁸⁵ Michel Foucault. ‘*What is Enlightenment?*’, 46

⁸⁶ Edward McGushin. *Foucault’s Askesis: an Introduction to the Philosophical Life* (Chicago: Northwestern University Press, 2007) 283

⁸⁷ McGushin, *Foucault’s Askesis*, 283

strategic rationalities and programmings of modernity will do it for us. If we do not concern ourselves with the evaluation of the present from the standpoint of the principles of freedom imminent in social struggles against forms of authority, the strategic rationality of modernity will take care of us (i.e. human sciences, normalization, biopower).

Foucault's turn to an ontology of actuality as an historical and pragmatic standpoint of history must here be interpreted alongside his methodological remarks in the *The Subject and Power*, and his turn to what he called a theoretic ethics. In a short essay published in *Le Monde* in 1979 titled 'Is it Useless to Revolt'⁸⁸, Foucault links the intelligibility of human history and the universal principles of freedom to the actuality, or 'reality', of 'revolt'. In that essay, Foucault writes that, "(P)eople do revolt. That is a fact. And that is how subjectivity (not that of great men, but of anyone) is brought into history, breathing life into it."⁸⁹ Indeed for Foucault, "...it is because there are such voices that the time of human beings does not have the form of evolution but that of 'history'."⁹⁰ Foucault then proceeds to distinguish the theoretic-ethical analysis of social struggles and revolts and the irreducible principles of such struggles from a certain strategic analysis utilized by historians, politicians and revolutionaries. Foucault writes,

If I were asked for my conception of what I do, the 'strategist' being the man who says, 'What difference does a particular death, a particular cry, a particular revolt make compared to the great general necessity, and, on the other hand, what difference does a general principle make in the particular situation where we are?', well I would have to say that it is immaterial to me whether the strategist is a politician, a historian, a revolutionary, a follower of the shah or of the ayatollah; my theoretical ethics is opposite theirs. It is 'antistrategic': to be respectful when a singularity revolts, intransigent as soon as power violates the universal. A simple choice, a difficult job: for one must at the same time look closely, a bit beneath history, at what cleaves it and stirs it, and keep watch, a bit behind

⁸⁸ Michel Foucault. 'Inutile de se soulever?', *Le Monde*, no 10661, 11- 12 mai 1979, pp. 1- 2. *Dits Ecrits Tome III* texte no. 269, p. 790-794

⁸⁹ Michel Foucault. 'Is it Useless to Revolt?' in *Essential Works of Foucault: 1954-1984, Vol. 3, 'Power'*. Paul Rabinow Ed. (New York: New Press, 2000), 452

⁹⁰ Michel Foucault. 'Is it Useless to Revolt?', 452

politics, over what must unconditionally limit it. After all, that is my work; I am not the first or only one to do it. But that is what I chose.⁹¹

Thus for Foucault, a theoretic ethics conducts historical analysis of social struggles *not* as a ‘strategist’ looking for possible reversals or interchangeable logics for how one side might achieve the upper hand or a victory over a foe. For Foucault, a theoretic ethics begins by taking the ‘actual’ domain of the concrete social experience of suffering and social struggle as the starting point for thinking dialectically about the ‘principles of freedom’ and insubordination that are imminent in those struggles.

Thus, for Foucault, a theoretic ethics is a reflection on one’s relation to the actuality of a particular “we”, the becoming a particular subjectivity in its emergence through practices of revolt. Here, we can see how for Foucault the reflection on one’s actuality implies a reflection on specific forms of authority against which a particular “we” – a ‘singularity - positions itself through practices of revolt, resistance or freedom. This means that, in Foucault’s critical project, the reflection upon one’s actuality means a reflection on the revolt of a certain subjectivity against a certain form of authority, which implies a certain *morale théorique*, a moral-theoretical standpoint from which one is able to respect the singularity of revolt (“we”), critique certain forms of authority, and consider the presuppositional ground or ‘horizon’ from which one views the world. It is this moral-theoretical standpoint that Foucault began to develop during his later work as a bridge between the nominalism of tracing discursive singularities and the idealism of a metahistorical account of freedom’s self-realization. It was, I argue, the bridge Foucault wished to build, which remained ever so elusive in 20th century French thought, between a philosophy of existence and a philosophy of consciousness.

⁹¹ Michel Foucault. ‘Is it Useless to Revolt?’, 453

It is during this period (1979-1984) that Foucault begins to speak of ‘the principles of freedom’ and the ‘universal’ in the context of a global ‘community of the governed’.⁹² A global community of the governed, Foucault writes, has an absolute right to speak out against violations of ‘the universal’, an absolute right grounded in social suffering. “(T)he suffering of men”, Foucault writes, “...must never be a silent residue of [governmental] policy. It grounds an absolute right to stand up and speak to those who hold power.”⁹³ For Foucault, the direct moral and social experience people have of confronting the suffering and struggles of others plays a central role in a theoretic-ethical account of actuality. Here Foucault speaks of the ‘moralization of politics’ and the ‘politicization of experience’ that leads us to carry out a sort of ‘moral labor’ on ourselves in the face of the actuality of social suffering and struggle of others. Indeed “...it is, after all, the role of the governed to take offense and put passion into their reactions. I do believe in the importance of political affect.”⁹⁴ Referring to the teaching of Merleau-Ponty, Foucault speaks of the ‘manifest truths’ and ‘presuppositions’ that guide our ethical confrontation with social struggle and suffering. Foucault writes that, while we should not be completely comfortable with such ‘manifest truths’ and presuppositions, we also should never

...let them fall peacefully asleep, but also never to believe that a new fact will suffice to overturn them; never to imagine that one can change them like arbitrary axioms, remembering that in order to give them the necessary mobility one must have a distant view, but also to look at what is nearby and all around oneself. To be very mindful that everything one perceives is evident only against a familiar and little-known horizon, that every certainty is sure only through the support of a ground that is always unexplored. The most fragile instant has its roots. In that lesson, there is a whole ethic of sleepless

⁹² Michel Foucault. ‘Confronting Governments: Human Rights’ in *Essential Works of Foucault: 1954-1984, Vol. 3, ‘Power’*. Paul Rabinow Ed. (New York: New Press, 2000)

⁹³ Michel Foucault. ‘Confronting Governments: Human Rights’, 475

⁹⁴ Michel Foucault. ‘The Moral and Social Experience of the Poles’ in *Essential Works of Foucault: 1954-1984, Vol. 3, ‘Power’*. Paul Rabinow Ed. (New York: New Press, 2000), 471

evidence that does not rule out, far from it, a rigorous economy of the True and the False; but that is not the whole story.⁹⁵

Thus for Foucault's theoretic ethics, there is a pre-suppositional ground of truth through which we perceive and are affected by the injustices and sufferings around us. This pre-suppositional ground provides a kind of standpoint characterized by a moral concern for and attentiveness to the present situation as well as a 'distant view' of the 'horizon' of experience. A theoretic ethics of actuality, of the present, therefore means perceiving in the concrete experiences, sufferings and struggles of others the very sorts of 'manifest truths' and 'universal' principles of freedom that one presupposes as an ethical, moral and affective ground.

For Foucault, actuality [*wirklichkeit*] becomes distinct from a reflection on 'the present' therefore only through developing a theoretic-ethical stance from the perspective of a "we". A reflection on the 'present moment' becomes understood as 'actual' for Foucault only in its "...recapturing something eternal that is not beyond the present, nor behind it, but within it."⁹⁶ For Foucault, 'effective critique' is thus a critique activated by a theoretic-ethical concern for the present, and not simply a reflection on 'the present moment' as such, but on a the present *as experienced* by a "we". Thus, critique becomes effective ('actual') just to the extent that it facilitates in us the realization of certain ethical, phenomenological and reflexive commitments, dispositions, and affectivities. This theoretic-ethic "...is accomplished through distance from the present [and] must also be premised on such attentiveness to the delimiting conditions of the present."⁹⁷ For Foucault then, a reflection on 'the present' becomes an 'effective critique' – part

⁹⁵ Michel Foucault. 'For an Ethic of Discomfort' in *Essential Works of Foucault: 1954-1984, Vol. 3, 'Power'*. Paul Rabinow Ed. (New York: New Press, 2000), 448

⁹⁶ Erin Gilson. actuality in *The Cambridge Companion Foucault Lexicon*. Leonard Lawler and John Nale Eds. (New York: Cambridge University Press, 2014)

⁹⁷ Gilson, actuality in *The Cambridge Companion Foucault Lexicon*

of an ontology of actuality – when and only when such reflection is *actualized* in a careful, attentive response to the ‘actual’ situations, struggles, and concerns of others in social reality. A reflection on the present, I argue, becomes ‘actualized’ only through developing a theoretic-ethical attitude, at once a phenomenological ‘attentiveness’ to the affectivity of social suffering and struggles, a reflexive labor upon oneself, and an ethical commitment to the universal ‘rights of the governed’, a respect towards the singularities of revolts and counter-conducts, and a commitment to the of *parrhesia* or ‘fearless speech.’

Genealogy to Ontology: the *Parrhesiastic Standpoint*

In this way, we can say that genealogy uncovers potentialities – affinities, solidarities, affectivities – that may be actualized in the normative spheres of ethics, politics and social life. However genealogy as a method of historical investigation of the present therefore focuses *not* on the question of how we may actualize and realize certain norms and principles in our relations with others in the present (at the level of thought, ethical action, political and social struggle); rather genealogy seeks to uncover the various potentialities or ways of thinking, perceiving and feeling that *might* become ‘efficacious’ for us in the present, in actuality. Whereas genealogy reveals potentialities for transforming our relation to history, an ontology of actuality – and more specifically a theoretic ethics – seeks to ‘actualize’ or make ‘efficacious’ certain principles and norms in our relation to others. If genealogy exceeds its goals and leads to the realization of universal commitments and dispositions with regard to social suffering and struggle in the present, then it has also succeeded in doing the labor necessary for a theoretic ethics, and thus an ontology of actuality.

For Foucault then, the actuality or concrete reality of social suffering, insubordination, and revolt constitutes the ‘thick’ domain of experience, or ‘horizon’, within which ‘universal’

norms and principles of freedom are expressed and articulated. However, the perception and recognition of these universal principles and norms depends upon the ‘presuppositional’ ground that guides one’s moral and social experience of the social world. Thus, conducting history through an ontology of actuality – not merely as genealogy – thus implies a dialectic relationship between the theoretic standpoint of universal principles, commitments and dispositions on the one hand, and the analysis of and experience with the social suffering, insubordination and revolt of others. Both standpoints, genealogy and actuality, are thus necessary in order to engage in the kind of dialectic work of enacting certain norms and principles of freedom while at the same retaining a critical ‘discomfort’ with regard to those norms and principles. It is this sort of dialectic between genealogy and actuality that Foucault develops in his 1982 essay, *The Subject and Power*.

As Foucault claims in his 1982 essay on *The Subject and Power*, both standpoints – the standpoint of freedom/insubordination and the analysis of struggle - are necessary for a normative critique of forms of domination. In this essay, Foucault states that the field of *power relations* concerns the domain of free action between partners that involves the necessary recognition of the others’ freedom and insubordination, whereas the ‘interpretation’ of strategic rationality concerns the strategies, procedures and mechanisms for establishing a relation of subordination. From the ‘standpoint of power relations’, then, we may analyze a variety of ways in which forms of communication and objective capacities are organized by certain power relations within the social field composed of free individuals and collectivities living together in shared work, speech and collective projects. From the interpretation of strategic rationality, on the other hand, we may analyze the various histories of struggle and domination within that same historical fabric. However, most importantly, for Foucault, “...it is precisely the disparities

between the two readings” which makes visible the various forms of domination that we seek to critique. In other words, in order for a critique of domination and subordination to be possible, we must retain a conceptual analysis of freedom and insubordination within the historical fabric of the social world. Speaking of the two ‘interpretations’ necessary for social critique, Foucault writes,

(T)he interpretations which result will not consist of the same elements of meaning or the same links or the same types of intelligibility, although they refer to the same historical fabric, and each of the two analyses must have reference to the other. In fact, it is precisely the disparities between the two readings [power/freedom v. strategy] which make visible those fundamental phenomena of ‘domination’ which are present in a large number of human societies.”⁹⁸

In short, without a conceptual standpoint based on ‘principles of freedom’ and non-subordination, the analysis of social struggles would lapse into the amoral genealogical analysis of ‘strategies’ that would make one into a mere ‘strategist’, rendering ethical intervention impossible; and, without the analysis of and experience with the actuality of social suffering and struggles of freedom and insubordination, the universal principles of freedom lose their concrete basis in social reality, making the idea of freedom an ideal concept with no real historical content. The critique of domination, for Foucault, thus requires and implies both a conceptual standpoint of universal principles, commitments and dispositions, as well as an analysis of and engagement with the actuality of social struggles and the affectivities felt and exchanged within the ‘community of the governed’. In this sense, the ‘universal’ norms and principles imminent to social struggles are recognized by a careful attentiveness to the present [*wirklichkeit*], from the conceptual standpoint or ‘presuppositional ground’ of a theoretic-ethics.

⁹⁸ Michel Foucault. *The Subject and Power*. *Critical Inquiry*, Vol. 8., No. 4. (Summer 1982), 794-95

This account of Foucault's theoretic ethics stands as a stark contrast from Colin Coopman's argument in his recent book Genealogy as Critique.⁹⁹ In this book, Coopman aims to "...explicate genealogy in such a way as to show that it offers a valuable, effective, and uniquely important practice of philosophical-historical critique of the present."¹⁰⁰ In doing so, Coopman sharply distinguishes genealogy as a 'critical method' of abnormative problematization from more philosophical or historical attempts that seek to reconstruct normative 'critical concepts'. For Coopman, this distinction between the 'critical methods' of genealogy (a method he interprets through problematization) and the 'critical concepts' uncovered by genealogical inquiry form the basis of Coopman's argumentative strategy in the book. Such a distinction, Coopman writes, "...helps make visible that genealogy *as a method* is not so much about discipline or biopolitics as it is about a philosophico-historical inquiry into the conditions that make possible problems such as modern sexuality and modern punishment."¹⁰¹ Indeed, it is this distinction between the non-normative 'analytic toolkit' of genealogy and the 'transcendentalist', normative critique of power that will underwrite Coopman's argumentative strategy. This distinction will allow Coopman to further distinguish between the 'contingency-complexity' of genealogy as problematization from the 'universalizability' of a pragmatist critical theory.

In addition, Coopman will distinguish between the 'orientations' of genealogical emphasis on contingency and the ethical 'commitments' that underwrite more 'transcendental' attempts to articulate universal norms within the context of their violation in the social field.¹⁰²

⁹⁹ Colin Coopman. *Genealogy as Critique: Foucault and the Problems of Modernity* (Indiana University Press, 2013)

¹⁰⁰ Coopman, *Genealogy as Critique*, 5

¹⁰¹ Coopman, *Genealogy as Critique*, 6

¹⁰² Coopman, *Genealogy as Critique*, 19

The latter kind of project, according to Coopman's argument, is thus a 'transcendentalist' critique and not a 'genealogical' critique, once again, because genealogy itself *as a method* is an analytic toolkit and not normative critical apparatus. Genealogy, for Coopman, is not to be confused with certain schools of German critical theory following Hegel that seek to articulate universal norms of freedom and autonomy through an analysis of the ways that those norms are violated within the social field. And while Coopman regards Foucault's 'Kantian genealogy' as *compatible* with certain strands of pragmatist critical theory, Coopman is very clear that *genealogy for Foucault* (as defined in the book) is not itself a *normative critical theory*. Honneth's critical theory, therefore, will be one stark contrast from what Coopman wants to call 'Foucault's genealogy'. Coopman will also distinguish genealogy from what Mendieta will call Foucault's Left Kantianism which seeks to construct revisable universalizable norms through an analysis and articulation of their violation.

Coopman thus argues against the interpretations of Amy Allen and Eduardo Mendieta who both see in Foucault's later work, in different ways, the resources for a model of freedom based on ideas of autonomy and *constructivist universalizability*, respectively. According to Coopman, Foucault's later work on freedom and ethics should not be read as an attempt to locate normative principles or 'universal' norms in order to ground a conception of autonomy, liberation or practices of freedom. Rather, for Coopman, Foucault's ethics should be understood as "...a responsive practice of transformation"¹⁰³ inflected by different 'ethical orientations' provoked by the ambiguous problems of modernity. For Coopman, Foucault's later ethics should be understood as part of the 'grand narrative' of Foucault's 'problematization of modernity' that

¹⁰³ Coopman, *Genealogy as Critique*, 193

his previous work (Discipline and Punish for example) illuminated in great detail. For Coopman, Foucault's Discipline and Punish represents the 'problematic' feature of modernity that he believes is what all Foucault's work aims to show; namely, "...our reciprocal but incompatible practices of modern disciplinary power and modern liberatory freedom."¹⁰⁴ Thus for Coopman, Foucault's late work on freedom, critique, *parrhesia* and techniques of the self should be understood as "...an attempt to develop an orientation through which we might effectively respond to the problems of modern morality brought into focus by the previous work."¹⁰⁵

For Coopman, Foucault's later work does not rely upon ethical 'commitments' or categories of truth and falsity, much less an "...overly strong conception of freedom as autonomy"¹⁰⁶ developed by Amy Allen. Indeed for Coopman, emphasizing the positive conceptions of freedom, autonomy, liberation or emancipation in Foucault's work places too much of normative load on Foucault's more modest project of making the experience of the present a 'problematic' site of inventive response to the normative ambiguity of modernity. These inventive responses to the normative ambiguity of modernity is what Coopman refers to as 'Foucault's ethics'. For Coopman, "...we do not require anything nearly so weighty, or controversial, as an idea of autonomy that would surreptitiously invite the companion ideas of liberation and emancipation back into the debate."¹⁰⁷ Here, Coopman warns against over-emphasizing the ideas of autonomy, liberation and emancipation in Foucault because, according to Coopman, the central task of Foucault's 'project' is precisely the work of making our practices

¹⁰⁴ Coopman, *Genealogy as Critique*, 180

¹⁰⁵ Coopman, *Genealogy as Critique*, 185

¹⁰⁶ Coopman, *Genealogy as Critique*, 223

¹⁰⁷ Coopman, *Genealogy as Critique*, 223

of ‘modern liberatory freedom’ *problematic*, mired in what he will call ‘abnormative spaces’ of modernity where there are both ‘good’ and ‘bad’ elements to which we must respond. Thus for Coopman, “(F)oucault’s final work should be interpreted as an attempt to develop a set of tools that would enable us to respond to this problematization of the modern dilemma of the alternative between fascist and freespirt moralities.”¹⁰⁸ The aim of Foucault’s later ethics, according to Coopman, should be seen as a response to this problematization, highlighting the ways that power and freedom are imbricated in modern life, provoking inventive responses of self-transformation. Foucault’s ethics, according to Coopman, is therefore *not* about showing how we can be more autonomous or free, but rather how we can invent new modes of ethical responsiveness in the face of the normative ambiguity of modernity.

Coopman’s attempt to interpret Foucault’s later work on freedom and *parrhesia as abnormative modes of self-transformation* is, I want to argue, an untenable reading. The main problem of Coopman’s interpretive strategy, I want to argue, lies in Coopman’s failure to appreciate *the ways that Foucault’s own genealogical method itself changes leading up to the late 1970s*. As I attempted to show in this Chapter, Foucault began genealogy as effective history [*wirkliche historie*] and slowly but quite consciously (re)engaged the concept of *Wirklichkeit* no longer as *effectivite* but as *actualite*. By failing to appreciate the transition Foucault makes between effective history and the ontology of actuality, which Badiou seems to think began with the 1975-76 lectures, Coopman fails to appreciate Foucault’s later work (literally) *on its own terms*. Therefore, even when Coopman cites passages in Foucault’s later work in which Foucault speaks plainly about ‘violations’ of ‘universal’ and ‘inviolable laws’ or the ‘absolute rights’ of the ‘community of the governed’, Coopman is forced to interpret these remarks as anomalies of

¹⁰⁸ Coopman, *Genealogy as Critique*, 189

his otherwise non-normative and ‘contingency-seeking’ genealogical method of *problematization*. Thus Coopman will be forced to argue that Foucault’s later remarks about universality and inviolable laws and principles of freedom constitute an attempt at ‘universalizability’ that is simply inconsistent with what Coopman calls ‘Foucault’s genealogy’.

There are major problems with Coopman’s interpretation of Foucault’s later texts. The first quotation Coopman focuses on is from what he describes as “...a short topical piece on the role of intellectuals in political life.”¹⁰⁹ The text he is referring to is in fact a short topical piece, but the subject of the text is *not* ‘the specific intellectual’ in political life. And while that is certainly the immediate context for the quote Coopman cites, the text itself has to do with a much more substantial and influential event in Foucault’s intellectual and political history. The text Coopman cites is in fact the text published in 1979 as Foucault’s reflection on the Iranian Revolution with the title ‘Is it Useless to Revolt?’. The text itself is actually a philosophico-ethical reflection on the relation between revolt, freedom, and the emergence of human subjectivity in history. It is in this text that Foucault will declare that it is through revolt that “...subjectivity...is brought into history, breathing life into it.”¹¹⁰ Revolts, for Foucault, are in this text described not only as the motor of subjectivity but also the ‘anchor point’ for the demands of freedom and human rights. It is also in this text where Foucault will distinguish the political “...spirituality which had meaning for those who went to their deaths” and the “...bloody government of an integrist clergy.”¹¹¹ In this way, Foucault will distinguish the ‘irreducible’ element of the ‘spirit’ of the Iranian Revolution from the ‘atrocious elements’ that

¹⁰⁹ Coopman, *Genealogy as Critique*, 232

¹¹⁰ Foucault, “Is it Useless to Revolt”, 452

¹¹¹ Foucault, “Is it Useless to Revolt”, 451

tattered it. In doing so, Foucault admits that the Revolution contained important ‘global stakes’ as well as the ‘atrocious elements’ of ‘virulent xenophobia’, imperialisms and ‘the subjugation of women.’ Nevertheless, Foucault will insist that, “(A)ll the disenfranchisements of history won’t alter the fact of the matter: it is because there are such voices that the time of human beings does not have the form of evolution but that of ‘history’, precisely.”¹¹² Thus for Foucault, temporality is experienced as *history* just to the extent that people revolt. And most crucially, for Foucault, “...People do revolt; that is a fact.”¹¹³

This final point in Foucault’s text is extremely crucial for understanding why Foucault’s later work must be understood as more than effective history of abnormative practices of self-transformation, but as a reflection on our actuality as subjects of history engaged in revolt, or struggles against authority. Since for Foucault, revolt is a fact of reality, and revolt both brings subjectivity into history and makes the temporality of the real experienced *as history*, then it follows that any reflection upon ‘reality’ necessarily implies a reflection on revolt, subjectivity and history. This is an extremely important argument for Foucault, one which should be laid out clearly:

- P1: Revolt (R) is a Fact of Reality (α)
- P2: Revolt ‘brings subjectivity into history’ (S)
- P3: Revolt gives human temporality the form of *history* (H)
- P4: Any Reflection upon Reality (β) implies a reflection upon the Facts of Reality (α)

1	Revolt (R) implies Subjectivity (S)	
2	Revolt (R) implies History (H)	
3	Revolt (R) implies Subjectivity (S) and History (S)	1,2
4	Reflection upon Reality (β) implies reflection upon the Facts of Reality (α)	P4
5	Reflection upon Reality (β) implies Reflection on Revolt (R_α)	1, 4
6	Reflection upon Reality (β) implies Reflection on Subjectivity & History (S_α & H_α)	3, 5

¹¹² Foucault, “Is it Useless to Revolt”, 452

¹¹³ *ibid*

That is, for Foucault, reflecting on the ‘reality’ of the present (β) necessarily implies a reflection on the ‘facts’ of revolt, subjectivity and human history. It is precisely such a reflection on the ‘reality’ of the present (β) that Foucault will describe as the ontology of actuality. The reflection on one’s actuality, therefore, will be a reflection on how subjectivity and history are simultaneously generated through revolt and struggle. Thus a genealogy of modes of subjectivity (for example) will necessarily involve an analysis of how modes of subjectivity (‘we’) emerge in history through revolt or struggle and makes claims regarding freedom.

In this way, the ‘universal’ and inviolable laws of freedom that Foucault speaks of here are intimately related to the careful, philosophico-ethical reflection on the history of struggles, revolts and subjectivities. For the relation established here by Foucault implies that we will know the universal and inviolable laws of freedom (the right to not be governed) only by attending to the historical instances which give content to what it actually means to *not be governed*. In other words, the universal ‘right to not be governed’ for Foucault is meaningless *without subjects who define, by asserting that very right, what it actually means for that right to be violated*.

Therefore, for Foucault, the ‘universalizability’ of the ‘right to not be governed’ is a process by which subjects define ‘the universal’ in the very act of refusal, recognition and struggle. This kind of universalizability in the reflection upon actuality is what Eduardo Mendieta (2014) has recently called Foucault’s Left Kantianism.¹¹⁴

It is during this period (1978-1984) that Foucault can be seen to engage in what Eduardo Mendieta has called the ‘constructivist universalist’ project of Left Kantianism. And, as Amy

¹¹⁴ Eduardo Mendieta. “On Left Kantianism: From Transcendental Critique to the Critical Ontology of the Present”, *Foucault Studies*, No. 18, pp. 245-252, October 2014, 246

Allen argues, it is within this same period that Foucault develops the kind of normative resources that allow one to construct a Foucaultian conception of freedom as autonomy. In their review essays of Coopman's book, Mendieta and Amy Allen each voice concerns over Coopman's interpretation of Foucault's work as non-normative and/or inconsistent with 'universalizable' norms of freedom and autonomy. Allen and Mendieta's objections to Coopman, as I see it, run in two separate and extremely fruitful directions. First, Allen's review makes clear that while Coopman suggests that 'Foucault's project' was not incompatible with normative evaluation, he nonetheless claims that such normative evaluation was not Foucault's project. Allen does not spend time on this point, but it is safe to say that she seems to think, as I do, that Coopman's conception of 'Foucault's project' is precisely the issue.

Relatedly, Allen challenges Coopman's interpretation of problematization as a kind of non-normative analytic method for illuminating various 'ambivalent' problems of modernity. Calling attention to the normative motivations of Foucault's work, Allen writes, "(F)oucault made specific choices about which aspects of modernity to problematize, and it seems obvious that he chose to problematize madness, criminality, and sexuality because he thought that certain features of our modern understanding of these categories are problematic in the normative sense of that term, and, as such, ought to be resisted or transformed."¹¹⁵ In his reply to Allen, Coopman (2014) makes a distinction between 'spaces of problematization' and sites of injustice. For Coopman, sites of injustice fall within *spaces of normativity* in which 'we can only see the bad' (or only the good?), whereas 'spaces of problematization' fall under spaces of *abnormativity* in

¹¹⁵ Amy Allen. The Normative and the Transcendental: *Comments on Colin Coopman's Genealogy as Critique*, *Foucault Studies*, No 18, 240-41

which we ‘cannot but see both the bad and the good’.¹¹⁶ Coopman writes, “(A)ny supposed problem in which we can only see the bad (e.g fascism, colonialism, or patriarchy) is not for us a problematization in the abnormative sense. These things are not problematic, but are rather already-determined sites of injustice, or evil, or wrong.”¹¹⁷ Taking sexuality as an example, Coopman writes that “(S)exuality is just too ‘problematic’ to be a proper object of normative determination”.¹¹⁸ Thus for Coopman, Foucault’s history of sexuality is one example of an abnormative space of normative ambiguity, as opposed to a ‘site of injustice’ wherein we can make normative endorsements or denunciations. Indeed, Coopman writes, “(F)oucault did not say whether the practices he studied were good or bad, but that is not because he sought to do so cryptonormatively. It is rather because he thought that such practices were in actual fact neither good nor bad, but rather abnormative.”¹¹⁹

However Coopman’s reply seems to beg the very question Allen raises. If the answer to the question ‘*why* problematize sexuality?’ is that ‘sexuality is *abnormative*’, then this simply begs the question as to why Foucault would pick *this* abnormative space over others, such as Allen’s example of ‘traffic’. Indeed if the goal of genealogy as problematization is precisely to avoid all those ‘weighty’ and ‘controversial’ ideas of autonomy that would “...invite the companion ideas of liberation and emancipation back into the debate”¹²⁰, then why would Foucault pick the domains of punishment or sexuality over something else which has far less to

¹¹⁶ Colin Coopman. “Genealogy, Methodology & Normativity beyond Transcendentalism: Replies to Amy Allen, Eduardo Mendieta & Kevin Olson”, *Foucault Studies* No 18. p. 270

¹¹⁷ Colin Coopman. “Genealogy, Methodology & Normativity beyond Transcendentalism: Replies to Amy Allen, Eduardo Mendieta & Kevin Olson”, 270

¹¹⁸ *ibid*

¹¹⁹ *Ibid*

¹²⁰ Coopman, *Genealogy as Critique*, 223

do with autonomy, subjectivity and the struggle of freedom? Indeed, if the goal of genealogy is to study the abnormative spaces of modern life which have both ‘good’ and ‘bad’ elements, then it becomes unclear how such a method differs substantially from the trendy problematization approach in social science research. Indeed, for some social science researchers, “(S)ocial science has lost its way; it has lost its capacity for self-questioning by assuming that autonomy and rationality are foundations rather than modes of problematization...social science must recover the project of modernity as a critical and therefore self-limiting philosophy in the sense of a project that is willing to reflect on the conditions of possibility of knowledge.”¹²¹ Thus, one question for Coopman’s definition of genealogy as problematization is how this conception is at all different from social science methods of problematization that *also* see problematization as the central work of social science as a sort of “critique” of modernity? Since, just as for social science, autonomy for Coopman is not a foundation but a ‘mode of problematization’ in Foucault’s critique of modernity, it becomes very unclear how Coopman’s “genealogy” is any different than exactly what social science researchers perceive themselves to be doing. But if these two conceptions are more or less the same – genealogy and social science – then we arrive at the strange conclusion that Foucaultian genealogy is itself a sort of social science, or at least provides the basic tools and general self-understanding for social scientific research. This seems to be the position of Delanty, who emphasizes the influence of Foucault’s genealogy on the self-understanding of contemporary social science, as well as Flyvbjerg who takes Foucaultian “genealogy” as one model for ‘reviving’ social science.¹²² Thus, defining Foucault’s ‘project’ in

¹²¹ Gerard Delanty. *Social Science* (McGraw-Hill International, 2005) 158

¹²² Ben Flyvbjerg. *Making social inquiry matter: why social science fails and how it can succeed again* (Cambridge: Cambridge University Press, 2001)

terms of the master concept of problematization forces us to distinguish all the ways that Foucault's work differs from social science methods of problematization.

Another objection inspired by Amy Allen's line of inquiry has to do with Coopman's attempt to distinguish between sites of injustice and spaces of abnormality, the latter being the domain for genealogy as problematization. However, as the example of Foucault's reflection on the Iranian Revolution shows, this distinction is not very helpful. For Foucault, the Iranian Revolution without a doubt contained elements of 'good' and 'bad'. While 'injustices' emerged from the Revolution, the Revolution itself cannot be *reduced* to a 'site of injustice'. As a result, it stands as an event of both good and bad. But notice that this did *not* lead Foucault to 'problematize' the Revolution as an 'abnormative space' where the struggle for freedom is inevitably imbricated in power. He did not see the Revolution as a site of problematization. Rather, Foucault saw the Revolution as a moment to reflect on our actuality, on the role that revolt and the 'spirit of revolt' plays in bringing certain subjectivities and histories into the self-understanding and self-consciousness of the present. *For Foucault, the Revolution was a moment to reflect, not upon the normative ambiguity of the event, but rather upon the normative violation of 'the universal'.*

One reason Coopman's reply fails to address Allen's concern about normativity is that Coopman seems to isolate Foucault's concern with 'the problematization of sexuality' from the rest of his *oeuvre*, as if it were a space of abnormality that had had little to do with the normative motivations behind his more general history of governmentality. On the contrary, Foucault was led to the domain of sexuality as a site of biopolitical regulation and administration of bodies and populations, a phenomena he would later subsume under the broader category of governmentality. For Foucault, sexuality is the interface for the disciplinization of bodies and the

regulation and administration of populations in the modern State; it is one of many domains that allowed techniques of normalization to emerge alongside those of law and sovereignty. Sexuality also represents for the 'typical' Western pastoral subject a space in which she finds herself caught in a continuous network of obedience and the examination of the truth of herself. In this way, the history of sexuality for Foucault is mostly a history of how sex and the body have been 'individualized' and 'governmentalized', and inserted into various regimes of regulation, administration and categorization.

We must remember that, for Foucault, 'sexuality' refers to the *scientia sexualis*, the *connaissance* of sex and the body that was constituted and utilized in various power/knowledge regimes that sought to administer and regulate it. In *The History of Sexuality, Vol. 1*, Foucault writes that in the eighteenth century, the sexuality of women and children became a police matter, "...an ordered maximization of collective and individual forces".¹²³ In fact, the same goes for madness, as well as the techniques of biopower over the population. Thus in the History of Madness, Foucault states that "...confinement, that massive phenomenon, the signs of which are found all across eighteenth-century Europe, is a police matter; police, in the precise sense that the classical epoch gave to it-that is, the totality of measures which make work possible and necessary for all those who could not live without it"¹²⁴ In fact even the emergence of 'bio-politics', understood as a regulatory power over the population, will be described by Foucault as a form of police, *Medizinische polizei*.¹²⁵ Thus, for Foucault, the domains of sexuality, madness

¹²³ Michel Foucault. *The History of Sexuality, Vol. 1*, (New York: Vintage Books, 1990) p. 24

¹²⁴ Michel Foucault. 'The Great Confinement' in *The Foucault Reader*, Paul Rabinow Ed. (New York: Pantheon Books, 1984), 128

¹²⁵ Michel Foucault. *Securite, territoire, population*, Annuaire du College de France, 78e annee, Histire des systemes de pensee, annee 1977-1978, Dits et Ecrits Tome III texte n 255, pp. 719-723

and biopower are to be understood as part of Foucault's more general history of the 'governmentalization' of individuals, bodies and populations. Therefore for Foucault, it would be strange to characterize these domains as 'neither good nor bad', since Foucault regarded the 'governmentalization' of individuals as something to be resisted. And, in his Tanner lectures, Foucault would do just this, documenting the various struggles against 'the governmentalization of individuals' and specifying the principles they all have in common.

Eduardo Mendieta's reply to Coopman's book brings an extremely fruitful analysis to the understanding of both Coopman's book and to Foucault's work in particular. First, noting the scholarship that has emphasized Foucault's 'inversion' of Kant's transcendental critique' (Amy Allen's useful characterization) into a 'historical ontology of the present', Mendieta (2014) pushes us beyond the 'general consensus' that seeks to nail down the correct 'orientation' of the entirety of Foucault's work. Mendieta writes,

There is a distinction between recognizing a general orientation, on the one hand, and shifts in how that orientation, or philosophical attitude, is direct to a set of problems... We do not do disservice to a thinker when we recognize that they changed their minds, and that in fact, they acknowledged that they changed their mind... In any event, we need to nuance how we see the coherence and consistency of a form of thinking, and how that form of thinking matured, grew more acute by focusing on [a] different set of problems, and developed a more insightful language out of its frustration with the limits of its autochthonously generated lexicon.¹²⁶

Here, Mendieta motions towards a key problem in Coopman's interpretation. For Coopman, the wholesale interpretation of 'Foucault's project', as if it were a single cognizable thought, in terms of abnormative problematization seems to ignore all the ways that, even in his own terms, Foucault's thought matured, grew more acute and developed into very different sets of problems, projects, lines of research, levels of analysis, modes of thought, and 'unexpected' and

¹²⁶ Eduardo Mendieta. "On Left Kantianism: From Transcendental Critique to the Critical Ontology of the Present", *Foucault Studies*, No. 18, pp. 245-252, October 2014, 246

‘surprising’ turns. Indeed, as I will argue in Chapter Two, Foucault’s history of *parrhesia* as a counter-history to the history of governmentality was precisely one of these ‘surprising’ and ‘unexpected’ turns in Foucault’s thought, and one which cannot and should not be reduced to genealogy, whether in its abnormative or its effective mode.

Mendieta’s reply proceeds to propose, against the interpretation of Coopman, that Foucault’s remarks on universality can be located within

...a distinct tradition of constructivist universality that can be named Left Kantianism; that is, a Kantianism that is not interested in universalism or universality as that which is to be discovered, by aiming above or below, to that which cuts across all claims eternally, but that is instead interested in universality as a project, as something that is invented or made, from within time. Left Kantians are interested in how universality is generated from within the temporality of reason as iterations of claims that may be universalizable. *Left Kantians are constructivist universalists*. That is, left Kantians don’t discover universality, they fashion it from within time, from out of contingent conditions in which we practice freedom and enable new forms of being free. Left Kantians operate with the following maxim, one that was beautifully articulated by George Canguilhem: ‘It is in the nature of the normative that its beginning lies in its infraction.’ Universalizability is predicated in the recognition that claims to universality are revisable, and they are revisable in light of their failure in the present. We recognize a normative order when it is violated.¹²⁷

This illuminating passage leads Mendieta to explicate the idea of *normativeness* in Foucault following his mentor Canguilhem, wherein new orders of ‘normativity’ develop in response to ‘the failure, error, and violation of norms’.¹²⁸ Thus, for Foucault, one might say that the *normativeness* of ‘the universal’ emerges to the extent that social *norms* are violated. Thus,

¹²⁷ Eduardo Mendieta. “On Left Kantianism: From Transcendental Critique to the Critical Ontology of the Present”, 249

¹²⁸ Eduardo Mendieta. “On Left Kantianism: From Transcendental Critique to the Critical Ontology of the Present”, 251

through the recognition of the violation of these social norms, new orders of normativity develop that are universalizable, and at the same time also *revisable* given new experiences.

However, Coopman's reply to Mendieta's plausible account of how *normativeness* operates in Foucault's later work on universality and freedom turns once again on his refusal to revise his conception of Foucault as "...a theorist of the abnormative".¹²⁹ Coopman writes, "(I) find this intriguing as a way of updating the legacy of Hegel to the present. But I also find it out of step with Foucault understood as a theorist of the abnormative who (along with Deleuze) departs from the Hegelian (or, to be more precise, Kojevian) dialectics of contradiction."¹³⁰ Thus, Coopman ultimately rejects Mendieta's account of *normativeness* in Foucault's Left Kantianism on the same grounds that he resists Amy Allen's account of autonomy in the late Foucault: such accounts diverge from the conception of Foucault as a theorist of abnormativity. Coopman argues against Mendieta's account, arguing that the problematization of sexuality, since it was conceived by Foucault as abnormative, is a problematization that therefore cannot be resolved by the logic of contradiction and opposition that (Coopman claims) serves as the motor for the dialectical generation of *normativeness* that Mendieta views in Foucault. Thus, Coopman concludes, since the dialectic generation and universalizability of *normativeness* does not seem to work in the domain of sexuality, such an account is therefore 'out of step' with 'Foucault's project'.

Again, Coopman's reply to Mendieta relies upon the same strategy used against Allen's objections about normativity in Foucault. Coopman isolates the domain of sexuality from the rest

¹²⁹ Colin Coopman. "Genealogy, Methodology, & Normativity beyond Transcendentalism: Replies to Amy Allen, Eduardo Mendieta, & Kevin Olson", *Foucault Studies*, No. 18, pp. 261-273, October 2014

¹³⁰ Coopman, "Genealogy, Methodology, & Normativity beyond Transcendentalism: Replies to Amy Allen, Eduardo Mendieta, & Kevin Olson", 271

of Foucault's work and argues that this domain is abnormative and irresolvable through dialectic contradiction and opposition. But again, this strategy depends upon a very narrow view of what the history of sexuality *means* for Foucault and *why* he chose to study the history of sexuality as a site of *normalization* and the administration and regulation of bodies. In other words, if one constricts one's view of Foucault's histories as simply abnormative spaces of irresolvable and intractable problems of modernity, then Allen's original question still remains: *why* did Foucault select the domains of sexuality, madness, confinement, punishment, psychiatry, police, biopower, racism, and security instead of, say, domains that would have less to do with actual struggles, binary oppositions, power relations and questions of autonomy and liberation? Why wouldn't Foucault pick a more *purely abnormative* space, one which would be far less likely to be confused with a space where *normativeness* is generated by the violation of universalizable and revisable norms? In short, *why not traffic?*

My own objection to Coopman's book Genealogy as Critique has to do with the very foundational terms Coopman uses to launch his arguments, and indeed the title of his book. In attempting to define genealogy *as critique*, Coopman places himself in a very strange dilemma, since Foucault developed a very exacting definition of critique, one which does not square well with Coopman's definition of genealogy. Indeed, in his 1978 essay 'What is Critique' Foucault (2007) will define critique as "...the art of voluntary insubordination."¹³¹ Critique for Foucault will have to do with the work of questioning one's own relation to authority in order to liberate oneself from new forms of (Kantian) 'self-incurred tutelage' that constantly seek to establish new forms of authority. It is very hard therefore to see how Foucault's definition of critique could possibly be compatible with what Coopman wants to call genealogy. It seems clear that

¹³¹ Michel Foucault. 'What is Critique' in *The Politics of Truth* (LA: Semiotext(e). 2007) 47

Coopman's genealogy as 'abnormative problematization' cannot be construed *as critique* in Foucault's sense of the term, since for Foucault critique clearly involves the active insubordination or resistance to some normative order, either at the level of thought or action.

Once again, Foucault's definition of critique does not fall neatly on either side of Coopman's distinction between 'abnormative spaces' and sites of injustice. Rather, critique for Foucault may operate *anywhere* and *by anyone* who exercises a voluntary insubordination or resistance to a normative order or authority. The result of this is that critique may occur just as easily in an 'abnormative space' such as sexuality as in a 'site of injustice' such as colonialism – and everywhere in between. For Foucault, there were of course all sorts of governmental authorities and normative orders that emerged in the eighteenth and nineteenth century that sought to regulate and administer the sex, bodies and lives of individuals. These authorities and normative orders were, and continue to be, objects of critique, resistance and *voluntary insubordination*.

Therefore, Coopman's definition of genealogy as abnormative problematization cannot *be critique* as the title says, nor can it provide the kind of normative purchase required for the critique of normative orders and authorities; in fact, Coopman himself argues that genealogy as abnormative problematization does not itself provide the resources for any sort of critique based on voluntary insubordinations to a normative order. Genealogy therefore cannot be *defined as critique*, since for Coopman the former definition is distinct and independent of the latter.

One final note on Coopman's book has to do with a simple methodological complaint. When Foucault speaks of his own methodological approaches, he uses specific methodological terms, at different stages, to designate what he is doing. Thus, when he is doing genealogy, he uses the terms 'interpretation', 'interpretive grid', 'history of struggle', 'logic' of strategies, etc.

However, when he is speaking of an ontology of actuality, that is the study of human technologies and practices of freedom, Foucault uses altogether different terms: parrhesiastic standpoint, ‘ground’, ‘principles’, ‘presupposition’, ‘the universal’, ‘*morale théorique*’. And while it is true that Foucault uses the language of ‘self-transformation’ when speaking of an ‘aesthetics of existence’, the language of ‘ethical *orientations*’ simply does not appear as a methodological term for Foucault in his late work. As I’ve argued, it is precisely the domain of actuality, understood as a kind of philosophical ethics, that Foucault isolates as the locus for an analysis of and experience with forms of struggle that are grounded in principles of freedom and universal norms imminent to the ‘community of the governed’. As I’ve tried to show, Foucault’s theoretic ethics points us in this direction, albeit with a quite subtle conception of freedom that had yet to be fully articulated by Foucault himself. It is to this task that I turn in the final remarks on Chapter One, only to return in Chapter Two to the reconstruction of Foucault’s trans-historical account of non-subordinating modes of autonomy and subjectivity.

Foucault’s later theoretic-ethic account has recently been analyzed by communication theorists as a model for a new science of ‘embodied discourse’.¹³² Drawing upon the phenomenological, ethical and reflexive ideas of intersubjectivity found in Foucault’s theoretic ethics, these theorists find in Foucault’s account a fruitful contribution to verbal and nonverbal models of communication and intersubjectivity. While at the same resisting, along with Foucault, the *a priori* search for ‘universal’ normative principles upon which to base a theory of communication or recognition, the ‘embodied discourse’ model of intersubjective communication which these theorists find in the later Foucault emphasizes the important role

¹³² Richard L. Lanigan. ‘Verbal and Nonverbal Codes of Communicology: The Foundation of Interpersonal Agency and Efficacy’ in *Communicology: The New Science of Discourse*. Isaac Catt and Deborah Eicher-Catt Eds. (Cranbury: Associated University Presses, 2010), 102-110

that the phenomenological and ethical notion of actuality or ‘efficacy’ plays in Foucault’s model. As I’ve tried to show, the ‘embodied-discourse’ model that appears in Foucault’s later theoretic-ethical account should be understood as Foucault’s ‘return’ to the philosophical problematization with which he began his work as successor of Jean Hyppolite at the College de France: the Hegelian problematization of the question of the ‘universal’ within the ‘actual’.

The implications of re-evaluating Foucault’s work through the lens of his engagement with the Hegelian rather than Kantian tradition are significant and far-reaching. First, rather than interpreting the entirety of Foucault’s work after 1978/79 through the lens of a Kantian genealogy in the service of ‘self-transformation’, we are able to view this later work in a much different light. Indeed, if the interpretation presented here is a plausible one, it allows us to view Foucault’s later work on actuality, ethics and freedom, literally, ‘on its own terms’. Beginning with Foucault’s inaugural lectures as the inheritor of a Hegelian problematization of the universal within the actual, we can see how Foucault’s later work is not only a ‘return to’ that problematic but in fact a continuation or working out of that problematic. Such an interpretive standpoint thereby allows us to appreciate the distinctive qualities of an ‘effective critique’ over against a genealogical critique, highlighting the richness of Foucault’s theoretic-ethical conception in its emphasis on the phenomenological, ethical, reflexive, social and political elements of what it means to pose the problem of the universal within ‘the actual’.

While the rich complexity of Foucault’s ‘embodied discourse’ model that some have appreciated within a theoretic ethics stands apart from genealogical critique, it also complements genealogical critique in a way that, I would suggest, allows a much richer, sharper and more coherent social critique. And, in turn, genealogical critique may serve a crucial critical function for a theoretic ethics that grounds itself in commitments and principles which may be shown to

be not nearly as ‘universal’ or necessary as taken to be. Thus, over and above the genealogical analysis of forms of power-knowledge which seeks to expose the contingency and possibility of transformation within the social and historical fabric, a theoretic ethics refers to the full activation of such transformation in the present moment, effectuated by the realization of certain commitments and dispositions that genealogy cannot and will not provide. At the other end, genealogical critique may serve a critical function with regards to a theoretic ethics by showing the contingency or fragility of the very commitments and dispositions that are taken as a ‘presuppositional ground’.

Thus in Foucault’s late turn to the ontology of actuality as the historical and pragmatic standpoint of history, we must read his historical work in this period as operating through the much broader conceptual standpoint he develops in *The Subject and Power*, namely the conceptual standpoint of the analytics of power, or simply a theoretic ethics. In this way, Foucault’s histories of the practices of freedom can be seen to be based not merely in the concept of strategy and its potentiality of reversal or resistance, but also in the concept of ‘freedom’ in its actuality, in the concrete relations that emerge within the social field of non-subordination, generosity, care, friendship and *parrhesia*. It is in this regard that some scholars have taken up Foucault’s positive conception of freedom in its contribution and challenge to a theory of recognition. Indeed, because Foucault reserves a space within his analysis of social relations for non-subordinating (and non-subjugating) forms of communicative, intersubjective relations, as I’ve argued, scholars have begun to examine how Foucault’s conception of freedom, contrary to the reductionist interpretation of his account of power and subjectivity, not only accommodates but informs and challenges a theory of recognition, even and especially on normative grounds.

Scott identifies Foucault's contribution to a theory of recognition in Foucault's detailed histories and genealogies of cultural identities and 'experiences' of individuality. For Scott, Foucault's conception of the 'field of experience' as a rich and dynamic domain of social life, he claims, allows Foucault to conduct his histories as an "...accounting [of] structures of recognition, which let things appear in their cultural identities. These structures of recognition are not subjective or ideal structures but are those of historicosocial formation. They are structures of discourses which give identity and significance to things and individuals."¹³³ In this sense, Scott reads Foucault in light of Heidegger's influence on his thought, calling attention to Foucault's insistence on the linking of relations of communication within different spheres of social life with relations of power and the objective determinations of 'being thrown-into the world'. Indeed, "A system of recognition for Foucault", Scott writes,

...is always one of power relations, so we can say initially that disclosures – the way things come to presence – are infused from the start with forces that place and move things in axes of importance and relative degrees of control. Individuals come to presence within systems of rules and practices that allow them their ways of being that appear as subject to change: whatever is necessary in the concreteness of a given situation can cease to be as it is and is, in that sense, optional.¹³⁴

In this sense, Scott locates within Foucault's analytics of government a commitment to what he calls the 'openpossibility' [sic] of action within a given field of experience.¹³⁵

It is in this context that Foucault, in the interview on 'Friendship as a Way of Life'¹³⁶, speaks of the rich 'relational fabric' of social life that allows a multiplicity of possibilities for

¹³³ Charles Scott. *On the Advantages and Disadvantages of Ethics and Politics* (Bloomington: Indiana University Press, 1996) 201

¹³⁴ Charles Scott. *On the Advantages and Disadvantages of Ethics and Politics*, 201

¹³⁵ Charles Scott. *On the Advantages and Disadvantages of Ethics and Politics*, 201

¹³⁶ Michel Foucault. 'Friendship as a Way of Life' in *Essential Works of Foucault, 1954-1984, Vol. 1, Ethics: Subjectivity and Truth*. Ed. Paul Rabinow. Trans. Robert Hurley. (New York: New Press, 1997), 135-140

different forms and modalities of intimate friendships between individuals. In that interview and elsewhere in his ethical writings, he develops a dynamic conception of the social field which is constantly threatened by its institutionalization and ‘impoverishment’ by structures of identification and mechanisms of government that constrain the field of experience within the social world. Foucault speaks of friendship as a dynamic mode of intersubjective communication and recognition in which individuals, of all genders, ages and classes, may within the rich meanings of the social world develop unique forms of intimate relations based on the mutual recognition of a particular shared form of life. In his book on the political import of that essay for identity politics and queer theory, *Friendship as a Way of Life*, Tom Roach also charts Foucault’s contribution to and critique of a theory of recognition in his theorization of friendship and *parrhesia*. In that work, Roach shows how the ‘politics of recognition’ that fixes gay and homosexual identities to political institutions of recognition are underwritten by the pastoral technique of the Christian confessional, the modern equivalent of which is the ‘coming-out’ that precedes social and potentially political recognition. Roach rehearses the ways that Foucault linked the politics of recognition to the appropriation of pastoral technologies of power by state institutions, including the penitentiary, the asylum, and psychiatric and legal discourses of identification and recognition. Indeed, deploying confessional identities such as *gay* and *lesbian* in politics, for Roach, “...runs the risk of reifying the very categories and typologies that have historically disciplined same-sex desire.”¹³⁷ However as Roach rightly explains, Foucault is critical of but not disparaging of such a politics of recognition, if only because “(I)n terms of garnering rights and changing laws...the use of such identity markers has proven quite

¹³⁷ Tom Roach. *Friendship as a Way of Life* (Albany: State University of New York Press, 2012) 22

successful. The recent legalization of same-sex marriage in an increasing number of countries and states is evidence of the potency of identity politics.”¹³⁸

As Roach shows, Foucault is critical of a politics of recognition and the pastoral (and police) power upon which it is founded precisely because such institutionalization forecloses and limits the much richer relational field of experience that Foucault posits as a normative ideal. Quoting Foucault, Roach notes that for Foucault, “(W)e live in a relational world that institutions have considerably impoverished. Society and the institutions which frame it have limited the possibility of relationships because a rich relational world would be very complex to manage. We should fight against the impoverishment of the relational fabric (Essential, VI: Ethics, 158)”¹³⁹. It is in this sense that Foucault, in his interview about friendship as a way of life, posits the relational fabric of friendship as the locus for developing and fostering new forms of communication and community that dispense with confessional and pastoral logics and, by extension, the very project of biopolitics and governmentality that seek to fix the truth of our individual and collective identities to a political mechanism of recognition. Both in the interview on friendship and in his 1983 lectures at Berkeley (‘Fearless Speech’), Roach shows, the model of the *parrhesiastic* relation of friendship appears as an alternative model to the confessional, pastoral relation that founds modern political rationality and the ‘government of individualization’. For Roach,

parrhesia offers an alternative model of subjectivity and relationality. If the confession engenders dependence on another and requires the objectification of the self to speak its truth, *parrhesia* operates along more immanentist lines: The self is not objectified but subjectivated, the self becomes the subject of true discourse and is transformed in the truth’s enunciation. Whereas what we might call a ‘confessional friendship’ requires friends to act as suppliant and judge, fostering a guilty interdependence, a *parrhesiastic* friendship is an experiment in truth-telling that provokes a productive tension...Danger is

¹³⁸ *ibid*

¹³⁹ *Ibid*

thus involved in a *parrhesiastic* friendship: encouraging the friend to become self-sufficient through criticism runs the risk of losing him.¹⁴⁰

Indeed, for Roach, Foucault is here positing the relational fabric of *parrhesiastic* friendship as a normative model of intersubjectivity and communication based not on relations of dependence, subjection, rhetoric, flattery, paternalism, opportunism or manipulation but rather on generosity, care and a robust sense of respect for the other's self-sovereignty. As Roach explains, "To encourage a friend to develop self-sovereignty in a form he finds most suitable is neither to impose one's will nor influence that development through eloquent, convincing instructions."¹⁴¹ The *parrhesiastic* relation, therefore, is neither disciplinary nor pastoral. It does not seek to establish a relationship of master-apprentice, teacher-student, shepherd-flock, or governor-governed. In short, the goal of *parrhesiastic* friendship is "...to aid the friend in developing an autonomous relationship to the self."¹⁴² *Parrhesiastic* friendship, therefore, appears as a normative model for communication and relation of mutual recognition based on generosity, truth and respect for the other's self-sovereignty, the political counterpart of which is what Foucault calls elsewhere 'the right to not be governed.'

This characterization of *parrhesiastic* friendship and rationality as a possible normative basis for a Foucaultian critical theory immediately meets the objections that *parrhesia* for Foucault not only lacks the status of a normative theoretical model for 'ideal' intersubjective recognition, but also that such a 'transhistorical' tool of analysis was clearly rejected by Foucault. Dyrberg thus seeks to argue in a recent book dedicated to the politics of *parrhesia* that

¹⁴⁰ Roach, *Friendship as a Way of Life*, 28

¹⁴¹ Roach, *Friendship as a Way of Life*, 28-9

¹⁴² Roach, *Friendship as a Way of Life*, 29

...*parrhesia* is not an ethical encounter of how individuals ought to behave in relation to themselves and one another or how citizens should manage themselves in public forums. *Parrhesia* is not a normative theory in which among things moral, cognitive and anthropological assumptions are worked into comprehensive doctrines of what individuals need to lead a good life and what constitutes a good society, as in, for example, Habermas and Honneth.¹⁴³

However, immediately after asserting that *parrhesia* is not a normative gauge for how individuals ‘ought’ to relate to one another ethically or politically, Dyrberg writes that the reason *parrhesia* is interesting for Foucault is that “...it makes it possible for him to find a *political* ground...which will make it possible to evaluate democratic political authorities and political rationalities, broadly speaking.”¹⁴⁴ Dyrberg then continues by saying that *parrhesia* was important for Foucault because of its “critical importance”, that it “...is especially relevant in relation to normative theory, which typically claims that a firm normative foundation is mandatory for engaging in critique.”¹⁴⁵ And, while Foucault is said to be “not normative” in the same way as Habermas and Honneth, Dyrberg also makes clear that *parrhesia* does in fact entail for Foucault, “...challenging demands on the individual. It requires sincerity, reasonability, and education; to risk one’s life takes dedication, courage and willpower; to conceive truth-telling as a duty calls for freedom and impeccable moral standing, and to take care of oneself and others entails generosity and a strict focus on the issue at hand.”¹⁴⁶ In this sense, *parrhesia* entails demanding standards of ethical relationship to oneself and to others, “...which serves to facilitate

¹⁴³ Dyrberg, *Foucault on the Politics of Parrhesia* (New York: Palgrave Macmillan, 2014) 77

¹⁴⁴ Dyrberg, *Foucault on the Politics of Parrhesia*, 77

¹⁴⁵ *ibid*

¹⁴⁶ Dyrberg, *Foucault on the Politics of Parrhesia*, 78

the other's ability to take care of him or herself. *Parrhesia* means to ensure and facilitate the autonomy of oneself and others."¹⁴⁷

Here, a strained tension arises in Dyrberg's attempt to situate *parrhesia* as something other than an 'ethical encounter' that is utilized by Foucault as a critical tool to evaluate political rationalities, especially since, in Dyrberg's words, *parrhesia* is understood for Foucault as, "...an opening, a possibility, an enactment of freedom that links up with power. In other words, it is a form of power that is not geared to secure the other's submission but to enhance his or her capabilities – an argument that could also be applied to collective entities in the political community."¹⁴⁸ Thus in Dyrberg's final analysis, *parrhesia* for Foucault is a form of power and political practice that fosters and facilitates the autonomy of self and others through relations of care, truth-telling and generosity, and which can be applied to the relation not only between individuals but as well as between collective entities within a political community. Most importantly, the conception of *parrhesia* according to Dyrberg, serves for Foucault the purpose of evaluating political authorities, rationalities and practices that impinge upon the freedom and autonomy of individuals and communities. Thus, in his final analysis, it remains a serious question why *parrhesia* and the principles of *parrhesiastic* rationality might not constitute for Foucault the very kind of normative conception of freedom that Honneth or Habermas utilizes as the basis for social critique.

Dyrberg's insistence that *parrhesia* cannot serve as a normative or conceptual foundation of freedom for Foucault is based on the confusion I've noted earlier, shared by many critical theorists and Foucault scholars since Fraser, between the field of power relations and relations of

¹⁴⁷ Dyrberg, *Foucault on the Politics of Parrhesia*, 80

¹⁴⁸ Dyrberg, *Foucault on the Politics of Parrhesia*, 80

strategy. Indeed, in Dyrberg's first book *The Circular Structure of Power*, Dyrberg makes the same move as Fraser, defining Foucault's notion of 'power' exclusively in terms of the 'complex of strategical situations'. According to Dyrberg, "(F)oucault states that power is 'the name that one attributes to a complex strategical situation'"'.¹⁴⁹ Here, the conflation of *power relations* with 'power' allows Dyrberg to interpret all *power relations* as relations of strategy. This then leads Dyrberg on the quest to 'make sense' of this false equivalence by interpreting the analysis of 'power' in terms of the 'struggle to become an identity'.¹⁵⁰ This leads Dyrberg towards the following, even more confusion definition: "(T)he temporal and spatial positing of identity *as if* it was presupposed, *as if* its identity was already 'there' before being posited in power struggles, is the 'complex strategical situation' Foucault names 'power'".¹⁵¹ In Dyrberg's reading then, 'power' for Foucault refers to the "...variety of heterogeneous demands and interests operating in hegemonic power struggles aiming at authorizing power politically."¹⁵² Power, according to Dyrberg, refers to the domain of strategies, procedures, interests and schemes characteristic of strategic rationality. As I've argued, such a conception of 'power' as exclusively strategic is decidedly *not* the one Foucault lays out in *The Subject and Power*. As I've argued, this confusion arises from a fundamental misunderstanding and conflation of Foucault's 'conceptual standpoint' of power and the analytics of freedom on the one hand, and the analysis of strategic rationality on the other. Crucially, maintaining this distinction in Foucault's late work is indispensable for providing the normative ('conceptual') basis for Foucault's social critique. Once this distinction

¹⁴⁹ Dyrberg, Torben Bech. *The Circular Structure of Power: Politics, Identity, Community* (Verso Books, 1997), 92

¹⁵⁰ Dyrberg, *The Circular Structure of Power*, 92

¹⁵¹ *ibid*

¹⁵² *ibid*

is made, the task then becomes locating the normative sources in Foucault's work, perhaps various and scattered, that provide just this normative basis.

The objections against locating *parrhesia* as a normative model in a Foucaultian critical theory have very recently been addressed by scholars who see in Foucault's work on the social freedoms of friendship and *parrhesia* the development of an implicit transhistorical conception of freedom. In an essay on Foucault and critical theory edited by Robert Nola, Wicks conducts a reinterpretation of Foucault's social critique as a form of historical 'concrete thinking' following Hegel and concludes that, "(F)oucault's conception of power-knowledge does not preclude the acknowledgement of universal necessities; it is consistent with their being and, moreover, his conception stands as the means to realize in a concrete institutional situation, whatever abstractly conceived universal necessities specify as socially good."¹⁵³ In short, because norms are embedded within the fabric of social practices that historical inquiry takes as its material, criticism of those social practices thus requires the assumption "...that there is some determinate truth about how humans ought to be with each other which is not merely an unrealizable ideal. Without this determinate, transhistorical assumption, we can hardly avoid falling prey to the very system we wish to criticize."¹⁵⁴ Wicks concludes that Foucault's critique of political reason and his account of freedom "...implicitly recognizes a transhistorical perspective", and as such Wicks claims that Foucault can "...maintain consistently that all knowledge, as it exists in a concrete social situation, must arise within the context of power, while assuming that there is a legitimate vision of how a less oppressive society ought to be."¹⁵⁵ For Wicks, then, there is

¹⁵³ Robert Wicks. 'Foucault and the Possibility of Historical Transcendence in Foucault' in *Foucault*, Robert Nola Ed. (New York: Routledge: 2014), 105

¹⁵⁴ Wicks, 'Foucault and the Possibility of Historical Transcendence in Foucault', 104

¹⁵⁵ 'Introduction' in *Foucault*, Robert Nola Ed. (Routledge: 2014) 3

necessarily implicated in Foucault's critique some sort of positive conception of ideal social relations upon which his critique is based. As I've argued, this positive normative conception of freedom is latent in the standpoint of actuality, and positively developed in his later 'trans-historical' account of freedom and *parrhesia*.

Parrhesiastic rationality – unlike disciplinary, pastoral or biopolitical rationality - is instead based in a normative conception of self-sovereignty and non-subordination within mutual relations of generosity, care and truth-telling. And, crucially, it is because *parrhesiastic* rationality is based on just these normative principles that Foucault can launch a critique of those political rationalities that violate them. Thus, from the conceptual standpoint of freedom, the principles of *parrhesiastic* rationality serve as the normative basis for a critique of the strategic rationalities of disciplinary, pastoral, or biopolitical practices.

However, this account of *parrhesiastic* rationality as the standpoint of freedom, we must recall, must be situated within what Foucault called his theoretic ethic. Indeed the principles and commitments of *parrhesiastic* rationality must, according to Foucault's theoretic ethics, be situated against the ethic of 'discomfort' which seeks to affirm these principles while also never being quite comfortable with them. Therefore Foucault's 'theoretic-ethic' account, as I call it, will take into account both the 'certitude' of the principles of *parrhesiastic* rationality (friendship, self-sovereignty, concern for self and others, respect for others autonomy, etc) while standing on an always unexplored 'ground' (*sol*). Foucault's theoretic-ethic account therefore will engage in the never-ending attempt to work out 'a rigorous economy of the True and False', taking care to observe the universalizable elements of struggles as they emerge in their singularity, while objecting when power oversteps the bounds of the 'inviolable laws' of the community of the governed.

My own analysis of Foucault's 'theoretic-ethic' account both differs and complements similar analyses of Foucault's work in recent critical theory. Martin Saar gives a positive evaluation to what he calls Foucault's 'action-theoretic' account of power according to which 'freedom' is not set as the opposite and normative counterpart to 'power', but rather as co-constitutive with forms of power. For Saar, a critique of domination that begins by positing an 'originary' position of freedom against which to judge any given social or normative too easily neglects the implication and social positionality of the evaluator in the act of critique. For Saar, the benefit of Foucault's 'action-theoretic' account of power lies in the fact that

...the decision as to whether a particular case of social order subjugates or empowers is shifted to the empirical or diagnostic level. This point of view appears all the more appropriate the more that social reality is populated by neither fully autonomous nor fully heteronomous social forms and identities. Today, freedom and power coexist and coincide in the very mentalities brought about by social relations and it is for this reason that an easy answer has to be rejected.¹⁵⁶

For Saar, Foucault's 'non-reductive' model of power and freedom makes it possible

...to problematize phenomena such as the coexistence of formal freedom and new deprivations of rights, the almost imperceptible complicity of subjects with evaluative and pejorative identification and the self-stabilising character of the processes of normalisation. From this second form of the critique of power, there arises an understanding of social philosophy that cannot forego contact with the real conflicts and desires of an age. This critique will always remain a diagnosis of its time. In the midst of the fragmented world of the social, it constitutes a mode of thinking about its own temporal sociality.¹⁵⁷

Saar's appraisal of Foucault's 'action-theoretic' account of power and freedom seems to square with the 'theoretic-ethic' model that Foucault was developing as a reflection upon one's own actuality. Indeed, for Foucault, the reflection upon one's own actuality must always be a reflection upon one's own 'temporal sociality'.

¹⁵⁶ Martin Saar. 'Power and Critique'. *Journal of Power* Vol. 3, No. 1, April 2010, 17

¹⁵⁷ Martin Saar. 'Power and Critique'. *Journal of Power* Vol. 3, No. 1, April 2010, 17

However, in my own analysis, I've emphasized that this reflection upon one's 'temporal sociality', as Saar puts it, is for Foucault a reflection not *merely* upon one's embeddedness in the socio-temporal dimensions of power and knowledge in general. Rather for Foucault, the reflection upon one's actuality is specifically a theoretic-*ethical* reflection upon one's relation to a particular "we", a particular struggle or revolt against a particular authority. Rather than merely a reflection on the general implication of one's own judgments in the critique of 'domination' in general, the theoretic-ethical reflection upon one's actuality is a reflection upon the specific principles and norms that emerge from actual struggles against authority, and one's relation to those struggles and to that authority.

Emphasizing this important element of Foucault's theoretic-ethic account of power and freedom allows us to entertain Mendieta's plausible account of a Foucaultian Left Kantianism, (Mendieta 2014) which seeks to identify *contingent universals* through an analysis of their violation. This 'quasi-Hegelian' approach of *constructivist universalism* would therefore seek not to identify an originary position of freedom that transcends the power-laden field of the social, but rather the revisable norms and principles of freedom that emerge from an analysis of social struggles and revolts against authority. This approach then would accommodate both an 'action-theoretic' account of power and freedom, as well as what Petherbridge identifies "...an intersubjective, relational notion of power that can be detected in Foucault's work."¹⁵⁸ Indeed, as I've tried to show, it is precisely the 'intersubjective, relational' notion of power we find in the account of *parrhesia* as the standpoint of freedom that provides the tools for an imminent, and more dialectical critique of domination.

¹⁵⁸ Daniel Petherbridge. *The Critical Theory of Axel Honneth*. (Lanham: Lexington Books, 2013) 231

In the following Chapter, I seek to fill out Foucault's positive conception of subjectivity and autonomy through a reconstruction of his trans-historical account of subjectivity in his lectures on The Courage of Truth. By distinguishing pastoral forms of subjectivity and obedience from Cynic forms of anti-pastoral subjectivity as an ethical-political mode of existence [*politeusthai*], I seek to show how Foucault understood the *continuity* of Cynic modes of existence to be based in generalizable normative principles for relating to oneself and others. In this way, I draw out the fundamental opposition in Foucault's later work between pastoral modes of subjectivity and Cynic modes of subjectivity, setting up an opposition in Foucault's account between police and the practices of *parrhesia*. Thus, I argue that the trans-historical critique Foucault develops in his last lecture course contributes greatly to the view that I endorse in Chapter One: namely, that the principles of *parrhesiastic* rationality developed by Foucault provide grounds for his normative critique of pastoral power and forms of authority. In this way, I argue, the trans-historical account of anti-pastoral subjectivity Foucault develops in his late work can be seen as a crucial component of the philosophical reflection upon our actuality as free beings engaged in struggles against authority.

CHAPTER TWO:

Subjectivity, Power & the Critique of Authority

In Chapter Two, I draw out the fundamental opposition in Foucault's later work between pastoral modes of subjectivity and Cynic modes of subjectivity, setting up an opposition in Foucault's account between police and the practices of *parrhesia*. In the first section, I show how the Foucault's trans-historical account of Cynicism distinguished between non-subordinating forms of subjectivity and subordinating modes of pastoral subjectivity. Here, I explicate Foucault's trans-historical analysis of *subjectivation* and Cynic *parresia* in his lectures on The Courage of Truth in order to show how Foucault's history of freedom and *parrhesia* was the 'counter-history' to the history of governmentality. For Foucault, I argue, the fundamental antagonism between pastoral and Cynic modes of subjectivation lies in the *voluntary subordination or non-subordination* to authority. In short, the antagonism between the two forms of subjectivity will lie in the presence or absence of *critique as voluntary insubordination*.

In the second section, I situate Foucault's account of subjectification and subjectivity within broader debates over power, autonomy, politics and war. Here, I use both Foucault and Arendt's distinction between political activity and war to illuminate various critiques of Butler's account of subjectivity as subordination, beginning with Amy Allen's critique of Butler in her book The Politics of Ourselves: Power, Autonomy and Gender in Contemporary Critical Theory. In doing so, I seek to draw out the distinction in both Foucault and Arendt's work between subordinating and non-subordinating conceptions of subjectivity and political activity. Here, I also turn to Claire Snyder's book Citizen-Soldiers and Manly Warriors in order to show how the attempt to link the political and the military-pastoral undermines the kind of politics endorsed by

Arendt and later Foucault.¹⁵⁹ In the final section, I return to Foucault's notion of critique as voluntary insubordination to illuminate the relation between critique and the politics of *parrhesia*. In doing so, I draw out a fundamental antagonism between critique as voluntary insubordination and the technologies of police that seek to implement military-pastoral relations of obedience and subordination.

***Parrhesia* or, the Counter-History of Governmentality**

Foucault's last lecture course at the College de France in 1983-84 (The Courage of Truth: the Government of Self and Others II) was the result of a series of major turning points in his work. The genealogies of psychiatry and disciplinary power undertaken in the early 1970s led Foucault to study the framework of biopower, namely liberalism and the art of government. For Foucault, this led him to understand his previous work partly in terms of the pastoral techniques for leading and conducting others that have developed in the modern era into the political apparatus of government. Thus, Foucault's 1982-83 lecture course (The Government of Self and Others) was to be understood as a sort of pre-history of modern governmentality and the pastoral practices of 'spiritual directing', conduction and confession that prefigured the emergence of psychiatry, disciplinary power and the political pastorate of police. As Foucault writes in The Courage of Truth,

You may recall that last year [1982-83] I undertook the analysis of this free-spokenness, of the practice of *parrhesia*... The study of *parrhesia* and of the *parrhesiastes* in the culture of the self in Antiquity is obviously a sort of prehistory of those practices which are organized and developed later around some famous couples: the penitent and the confessor, the person being guided and the spiritual director, the sick person and the psychiatrist, the patient and the psychoanalyst. It was, in a sense, this prehistory that I was trying to write.¹⁶⁰

¹⁵⁹ Claire Snyder R. *Citizen Soldiers and Manly Warriors: military service and gender in the civic republican tradition*. (Lanham: Rowman & Littlefield, 1999)

¹⁶⁰ Michel Foucault *The Courage of Truth: the Government of Self and Others II: Lectures at the College de France, 1983-84* (New York: Palgrave Macmillan, 2013) 7

However, as Foucault tells us, something surprising and unforeseen occurred. While attempting to conduct this prehistory of modern governmentality that he had outlined years before in his studies of liberalism and biopolitics, Foucault tells us that he discovered something that he had not expected. Foucault writes,

Only then, while studying this parrhesiastic practice in this perspective, as the prehistory of these famous couples, I became aware again of something which rather surprised me and which I had not foreseen. Although *parrhesia* is an important notion in the domain of spiritual direction, spiritual guidance, or soul counseling...it is important to recognize that its origin lies elsewhere, that it is not essentially, fundamentally, or primarily in the practice of spiritual guidance that it emerges.¹⁶¹

As Foucault reminds us, the ‘surprising’ and ‘unforeseen’ discovery was that the history of *parrhesia* could not be characterized as simply a pre-history of modern governmentality and its techniques of discipline, biopower, and police. Rather, what Foucault found himself tracing was instead “...the notion of *parrhesia*...[as] first of all and fundamentally a political notion.”¹⁶²

Originally rooted in the political practice of democracy, Foucault discovered that an entirely new sort of history had to be written around the development of *parrhesia* as an ethical-political mode of existence. However, far from abandoning the history of governmentality and pastoral power, Foucault insists that the history of *parrhesia* must be conducted within the more general framework of the government of self and others. In this way, Foucault writes, “(B)y examining the notion of *parrhesia* we can see how the analysis of modes of veridiction, the study of techniques of governmentality, and the identification of forms of practice of self interweave. Connecting together modes of veridiction, techniques of governmentality, and practices of the

¹⁶¹ Foucault, *The Courage of Truth*, 8

¹⁶² Ibid

self is basically what I have always been trying to do.”¹⁶³ Foucault makes clear at the beginning of this lecture course therefore that the analysis of *parrhesia* cannot be reduced to the analysis of procedures of power, regimes of truth, nor forms of subjectivity. As Foucault writes,

...to depict this kind of research as an attempt to reduce knowledge (savoir) to power, to make it the mask of power in structures, where there is no place for the subject, us purely and simply a caricature. What is involved, rather, is the analysis of complex relations between three distinct elements none of which can be reduced to or absorbed by the others, but whose relations are constitutive of each other. These three elements are: forms of knowledge (savoir)...relations of power...and finally the modes of formation of the subject through practices of self...we can study the relations between truth, power and subject without ever reducing each of them to the others.¹⁶⁴

The temptation to reduce Foucault’s account of power relations and the formation of subjectivity to the effects of disciplinary subjection and subordination can be traced to very early misinterpretations of Foucault’s work by prominent scholars such as Judith Butler, Nancy Fraser, Charles Taylor, and others. In a very thorough treatment of The Political Philosophy of Michel Foucault, Mark Kelly summarizes the situation by saying that “(T)he problem here...is that people take Foucault to be *reducing* subjectivity to a mere effect of structures – then of structures of discourse, now of structures of power-knowledge. In neither case is this true: rather, Foucault’s interest is in showing the *extent to which* subjects are the effects of discourses or power by bracketing the relative autonomy of the subject.”¹⁶⁵ Indeed, as Foucault’s later work makes extremely clear, forms of subjectivity are always to be analyzed through regimes of veridiction (truth), procedures of government (power), and modes of ethical self-relation (subjectivation). Focusing *only* on how procedures of government constitute a subject is

¹⁶³ Ibid

¹⁶⁴ Ibid 9

¹⁶⁵ Mark Kelly. *The Political Philosophy of Michel Foucault* (New York: Routledge, 2009) 89

therefore to gloss over the ways that, in all of Foucault's histories, regimes of truth and modes of ethical self-relation interact with and augment the forms of power that help constitute subjects.

Distinguishing the more general category of *subjectivity* then from subjectification [*assujetissement*], as well as from ethical modes of self-relation [*subjectivation*], Kelly notes that Foucault's later work implies and acknowledges the existence of forms of power and subjectivity that do not necessarily emerge from relations of 'subjectification'. Indeed for Kelly, *subjectivity* in the late Foucault is a category that cannot be simply analyzed in terms of heterogeneous power relations that make one into a subject. Whereas *subjection* refers to the modern forms of disciplinary subject-formation, and *subjectivation* refers to the techniques by which we make ourselves the subjects of a certain kind of truth, the general category of subjectivity for Kelly will refer to simply "the historical relation of the self to the self", which may include all kinds of relations to of self to self.

One of Foucault's earliest and most direct remarks on the topic of subjectivity comes in his review of Deleuze's The Logic of Sense. In this interview, published in 1970¹⁶⁶, Foucault develops through his reading of Deleuze's Logic of Sense a critique of what he calls there "the dialectical sovereignty of the same".¹⁶⁷ Focusing his critique on the dominance of both 'the Aristotelian concept' and Hegelian dialectics on the way the West has conceived what "thinking" is, Foucault makes an explicit connection between the "dialectical thinking" of Western metaphysics and what would become his later critique of political reason and theory of subjectivation. Referring to Deleuze's critique of the Aristotelian metaphysics of identity in *Difference and Repetition*, Foucault states that difference

¹⁶⁶ Michel Foucault. 'Theatricum Philosophicum' in *Aesthetics, Method and Epistemology: Essential Work of Foucault 1954-1984, Vol. 2*. Paul Rabinow (ed.) New York: New Press. 1998

¹⁶⁷ *ibid*

is generally assumed to be a difference from or within something...we pose, through the concept, the unity of a group and its breakdown into species in the operation of difference (the organic domination of the Aristotelian concept). Difference is transformed into that which must be specified within a concept, without overstepping its bounds... This stands as the first form of subjectivation [*l'assujettissement*]: difference as specification (within the concept) [ibid 356]

In the original translation of this text by Brouhard and Simon, the term *l'assujettissement* is rendered as 'subjectivation'. As several scholars have argued, this rendering is outdated at best or just wrong-headed when one considers the distinction Foucault makes in his later critical work between *l'assujettissement* and the term *subjectivation*. These authors maintain that *l'assujettissement* should be rendered as "subjectification" and understood as the dual "...process by which a subject is formed within a nexus of power/knowledge relations, while at the same time the subject serves as a nodal point that makes that power/knowledge nexus possible."¹⁶⁸ This term, it is argued, should be distinguished from the French term *subjectivation*, which should refer specifically to "...the relation of the individual him/herself; to the multiple ways in which a self can be constructed on the basis of what one takes to be the truth."¹⁶⁹ Chambers, for instance, argues that Butler's early rendering of *l'assujettissement* in English as "subjectivation" has caused much of the confusion for English readers of Foucault on this matter.

One major problem in conflating the two terms, as Mark Kelly and others have noted, is that they each refer to very distinct modes of analysis for Foucault. Thus, when Foucault is doing an analysis of disciplinary power in Discipline and Punish, he uses *l'assujettissement* to refer to the various ways that power individuates subjects whose autonomy in these studies, is as Kelly writes, "bracketed". Discipline and Punish, therefore, is not to be understood as a study of the various ethical modes of self-relation by which subjects produce the truth of themselves

¹⁶⁸ Alan Milchman and Alan Rosenberg, 'The Aesthetic and Ascetic Dimension of an Ethics of Self-Fashioning: Nietzsche and Foucault', *Parrhesia*, 2: 44-65. 2007.

¹⁶⁹ Milchman and Rosenberg, quoted in Chambers, 2012, 99

[*subjectivation*]. Rather, *l'assujettissement* refers to the various ways that the individual is 'subjectified' as a point of relay for a regime of power/knowledge. In this sense, *l'assujettissement* in Foucault's studies will refer to the "autonomy" of the individual *only insofar* as the individual serves as a relay and condition of possibility for a regime of power/knowledge within which the individual exercises that autonomy. Therefore, the "autonomy" of the subject here is implicit insofar as it serves to reproduce the very power/knowledge regime within which autonomy is exercised.

For Foucault then, subjectification [*l'assujettissement*] in fact refers to the particular and partial standpoint of the analysis of how individuals serve as *relays* for a certain power/knowledge regime. Thus for example in the lecture course on The Courage of Truth, Foucault analyzes the Cynic practice of poverty as both an ethical-political mode of self-relation (*subjectivation*), as well as a possible relay for the reproduction of subordination and dependence.¹⁷⁰ For Foucault, the sovereignty, independence and autonomy of Cynic subjectivity is therefore to be understood as both a mode of subjectivation, as well as a form of subjectification [*l'assujettissement*]; it is a form of subjectivity which practices an autonomous ethical-political relation to self and others, while serving as a possible relay for the reproduction of power.

This allows us to understand more clearly Foucault's critique of the Aristotelian metaphysics of identity in his remarks on Deleuze. Foucault's critique then will be precisely that the Aristotelian schema of identity-formation is *itself* a form of *l'assujettissement* (and *not* therefore a form of *subjectivation* or ethical self-relation). For Foucault, this is because the 'first form of subjectification (*l'assujettissement*) occurs at the level of *thought*, where the individual

¹⁷⁰ Foucault, *The Courage of Truth*, 259

subjects her/himself to a logical schema of sense and cognition which itself determines the conditions of possibility for thought. The schema of sense and cognition Foucault calls ‘common sense’ or the dialectical sovereignty of the Same is for Foucault the dominant schema of sense and cognition specific to Western metaphysical thinking about identity. In such a schema, the difference and alterity of subjects can only be thought through its specification within the concept, within categories of Sameness or Difference-From. For Foucault, this leaves only the possibility that difference and alterity are only thought insofar as they are specified within pre-determined concepts of the Same. The dominant mode of identity-formation in the West then, occurs anytime that – at the level of thought itself – we adopt a logic of sense and cognition through which we perceive and think about the world *and ourselves* in terms of the dialectical sovereignty of the Same, failing to give free reign to the chaotic play of differences and multiplicities which elude specification and categorization. Foucault calls this procedure of *thought-subjection* the subjectification to common sense, which he describes as a process by which we subject ourselves to an already given binary logic of representation which, by leading us to think through the Aristotelian concept, we attempt to impose upon experience. This logic of “common sense”, Foucault adds,

turning away from mad flux and anarchic difference, knows how, everywhere and always in the same manner, to recognize what is identical...But what recognizes these similarities, the exactly alike and the least similar – the greatest and the smallest, the brightest and the darkest – if not good sense? Good sense is the world’s most effective agent of division in its recognitions, its establishment of equivalences, its sensitivity to gas, its gauging of distances, as it assimilates and separates.¹⁷¹

Subjectification (*l’assujettissement*) for Foucault, then, is in fact to be understood as the first moment when the individual becomes a relay for power/knowledge. From the standpoint of subjectification (bracketed the autonomy of the subject), this will refer to the first moment that

¹⁷¹ Ibid 357

we are inserted into a regime of power/knowledge for which we are relays and conditions of possibility. The subjectification to common sense for Foucault then, will refer to the recognition of oneself as an individual within a multiplicity of like individuals, and the identification of oneself as an individual of that multiplicity. However the important point here for Foucault is that *the subjectification to common sense is a specific form of subject-formation (l'assujettissement) that links individuals to the power/knowledge regime of government.*

Subjectification therefore refers to the processes by which the individual recognizes herself, and is recognized by others, as an individual relay and object of power/knowledge.

However, as Foucault will clarify later, subjectification is only a very partial element in the story of subject-formation. Since *l'assujettissement* focuses only on the individual insofar as she is a relay for a power/knowledge regime, it is a very limited analysis of how subjectivity is constituted. Foucault's history of *parrhesia*, as he will clarify later, will incorporate the analysis of subjectification into the analysis of subjectivation and the analysis of veridiction, giving us a fuller understanding of how subjectivity is constituted not only by power, but also by practices of the self and forms of knowledge, respectively. In order to illuminate Foucault's analysis of subjectivity in his late works, I turn to his trans-historical analysis of Cynic subjectivity in The Courage of Truth, attempting to outline in further detail his positive conception of autonomy and subjectivity.

In The Courage of Truth, Foucault insists on analyzing different 'modes of existence' [*experience*], such as the Cynic *bios philosophikos*, through the analysis of power, truth and ethical self-relations. In the context of Ancient Greek culture, Foucault will reorient these terms as the analysis of *aleitheia* [regime of truth] *politeia* [structures and rules of power in a city] and *ethos* [ethical self-relations]. As Foucault mentions at the outset, this framework is in part a

result of his ‘unforeseen’ foray into the history of *parresia* as *not* exclusively a pre-history of governmentality, but rather a history of *parrhesia* as a pre-history of truth-telling that will give rise to a certain mode of ethical-political existence. For Foucault, there will be a sharp distinction made between two distinct historical trajectories: on the one hand, there will be a history of Socratic *parrhesia*, understood as the birth of a metaphysical and ontological discourse of self-knowledge which focuses on discovery and examination of the truth of one’s soul. On the other hand, there will be the history of truth-telling (*parresia*) as the birth of an art of ethical-political existence focused not on the truth of one’s *psukhe* but on the courage of one’s existence.¹⁷² For Foucault, it is the former discourse of Socratic self-knowledge and examination that will be traced to the Christian pastorate and the techniques of confession that prefigure the political pastorate of modern government. Indeed, as Foucault says at the outset, it was precisely the prehistory of the pastoral techniques of modern government that Foucault set out to write in the 1982-83 lectures, only to discover an alternative history of *parrhesia* that would serve as the counter-history to governmentality. Indeed, as we will see, it is precisely because the *parresiastic* subject is opposed to the pastoral subject of Western governmentality that the history of *parrhesia* can be described as the counter-history to the history of governmentality. As Foucault will write, “(W)here there is *parrhesia* there is not obedience.”¹⁷³

As Foucault clarifies in the 1977-78 lectures on Security, Territory, Population, the *specific* form of subjectivity that characterizes the “typical” form of subject in Western modernity is a pastoral form of subjectivity. As Foucault describes in these lectures, the typical form of subject that has been constituted as a correlate of modern governmentality is one

¹⁷² Foucault, *The Courage of Truth*, 160

¹⁷³ Foucault, *The Courage of Truth*, 366

characterized by a network of “continuous obedience” and the “extraction of ‘truth’” imposed upon him as a condition of subjectivity. As Foucault writes in his summary of his work on governmentality in the 1977-78 lectures,

Et il prélude aussi à la gouvernementalité par la constitution si spécifique d'un sujet, d'un sujet dont les mérites sont identifiés de manière analytique, d'un sujet qui est assujéti dans des réseaux continus d'obéissance, d'un sujet qui est subjectivé par l'extraction de vérité qu'on lui impose. Eh bien, c'est cela, je crois, cette constitution typique du sujet occidental moderne, qui fait que le pastorat est sans doute un des moments décisifs dans l'histoire du pouvoir dans les sociétés occidentales.¹⁷⁴

Thus for Foucault, the specific type of subjectivity constituted as the modern correlate of *Western governmentality* should be understood through the history of the Christian pastorate, and the imposition of a network of continuous obedience [*réseaux continus d'obéissance*] and the extraction of truth [*l'extraction de vérité*] as a condition of subjectivity.

However, as I seek to show in Chapter Three, pastoral forms of power and subjectivity are not exclusively ‘modern’ phenomenon. On the contrary, I argue in Chapter Three that police as a form of military-pastoral technology can be traced to Ancient Greece, and can be understood as a form of power/knowledge that underwrites certain forms of subjectivity. This means that we can in fact speak of ancient forms of subjectivity as being constituted by technologies of police, which in turn will shift our conceptions of how modern forms of subjectivity and power are constituted by this specific technology that I call a military-pastorate. In what follows, I argue that police understood as a set of military-pastoral technologies constitutes certain forms of subjectivity, authority and political obligation that we can call government.

It is precisely in this context that it is helpful to speak of an ontology of actuality as a reflection on the forms of authority and obedience that have shaped and defined ancient (and

¹⁷⁴ Michel Foucault. ‘La gouvernementalité’ (‘La gouvernementalité’; cours du Collège de France, année 1977-1978: Sécurité, territoire, et population’, 4e leçon, 1er février 1978), *Aut-aut*, nos 167-168, septembre-décembre, pp. 12-29. *Dits et Ecrits* Tome III texte n. 239, pp. 635-657

thus modern) subjectivity in the West. The historical ontology of ourselves therefore will be understood as a reflection on the various forms of authority, obedience, revolt and counter-conduct that have shaped us as the kind of subjects who submit, revolt, obey, disobey, subjugate and resist. Thus, beginning in his 1979 Tanner lectures, Foucault engages in a sort of Kantian reflection on his own actuality, beginning by reflecting on the present struggles of particular “we’s” against forms of power and authority in order to identify the commonality of these struggles in the principles and norms they share. And, by identifying the common principles and norms these struggles against authority share, Foucault also links these struggles to those against exploitation in the nineteenth century and those against domination in the seventeenth and eighteenth century, thereby introducing continuity across time and space in how each of these particular “we’s”, found across distinct historical singularities, all express certain principles of and norms of freedom.

Thus, what we see Foucault doing in the Tanner lectures is itself an ontology of actuality or historical ontology of ourselves, a reflection upon our own actuality as free beings engaged in struggles against certain forms of power and authority. Notably, this reflection on our own actuality will introduce a certain continuity in our understanding of the common norms and principles that such struggles share, while linking these norms and principles across historical time and space, keeping intact the specificity of these struggles. To the extent that we conceive ourselves as individuals engaged in struggles against authority and relations of obedience, I argue that we are engaged in a form of Cynic or anti-pastoral subjectivity. In this first section, I situate Foucault’s Tanner lectures as a reflection on our actuality, noting the linking of shared norms and principles of particular “we’s”, a continuity that is ensured by a Cynic or anti-pastoral critique of authority. In this way, I show how an ontology of actuality, following Kant, entails

not only a Cynic critique of certain forms of authority, but also (following Badiou) a sort of positive theoretic ethics that presupposes certain principles and norms of freedom.

Foucault spends the first several lectures of The Courage of Truth working out the distinction between different modalities of truth-telling and *parrhesia*. The main distinction Foucault develops there, besides the one he already developed in the last course between political and ethical *parrhesia*, is that between Socratic and Cynic *parrhesia*. In the 29 February lecture, Foucault distinguishes Socratic and Cynic forms by writing that

The Cynic mode of life is not just a life which demonstrates and manifests virtues like temperance, courage, and wisdom, which Socrates had given evidence that he possessed. The mode of life which is entailed and presupposed, which serves as framework, support and also justification of *parrhesia*, is characterized by extremely precise and codified forms of behavior, by highly recognized forms of behavior.¹⁷⁵

For Foucault, the Cynic *bios* or mode of ethical-political existence does not seek to establish a Socratic harmony between one's teaching of virtue and the practice of virtues. Rather, the very daily life and existence of the Cynic subject "...plays the role of condition of possibility of truth-telling."¹⁷⁶ The staff, beggar's pouch, his poverty, his roaming, and his begging are each, for Foucault, conditions of possibility – exposing one's bare life – for Cynic *parrhesia*.

For Foucault, this is because what the Cynic seeks to reveal is the scandal of dependence, subordination and attachment that comes with the *politeia*. For Foucault, the Cynic mode of life "...reveals what life is in its independence, its fundamental freedom, and consequently it reveals what life ought to be."¹⁷⁷ Citing Epictetus, Foucault characterizes the Cynic mode of *parrhesia* in the saying, "(I) have no wife, no children, no governor's palace, but only the earth and sky and

¹⁷⁵ Foucault, *The Courage of Truth*, 169

¹⁷⁶ Foucault, *The Courage of Truth*, 170

¹⁷⁷ Ibid

an old cloak. And what do I lack? Am I not without grief and fear, am I not free?”¹⁷⁸ In this way, Foucault says, the Cynic mode of life “...makes the form of existence a way of making truth visible in one’s acts, one’s body, the way one dresses, and in the way one conducts oneself and lives. In short, Cynicism make life, existence, *bios*, what could be called an *allethurgy*, a manifestation of truth.”¹⁷⁹

It is in the lecture immediately after these remarks that Foucault will begin to speak of “Cynicism itself” as “...a trans-historical category.”¹⁸⁰ Foucault will proceed to trace Cynicism as a mode of ethical and political practice of the self through the Franciscan ‘Cynics of medieval Christianity’, the anti-institutional and anti-ecclesiastical Cynics of the Protestant Reformation, and to the Cynics of modern European Revolutionary and militant movements in the West.¹⁸¹ As Foucault makes clear, the common principles that ensure the continuity of these Cynic modes of existence include their militant commitment to an anti-institutional, anti-ideological (ecclesiastical) and anti-establishment form of existence.

Foucault continues by describing the common principles of the Cynic *bios philosophikos* through which we can identify the continuity of distinct forms of Cynic *parrhesia* across historical time and space. For Foucault, the Cynic life entails these principles and ways of relating to the self and others:

- Preparation for life
- Practical care of the self
- Subverting the currency [*parakharaxon to nomisma*]

¹⁷⁸ Foucault, *The Courage of Truth*, 171

¹⁷⁹ Ibid

¹⁸⁰ Foucault, *The Courage of Truth*, 179

¹⁸¹ Foucault, *The Courage of Truth*, 182-185

- Shameless publicity [*bios kunikos/adiaphoros*]
- Indifference to attachment
- Discriminating between friends and enemies [*diakritikos*]
- Protecting and saving others [*phulaktikos*]

As Foucault notes, Cynic modes of life, because of these principles and ways of relating to self and others, are the polemical reversal of the typical Socratic subject that characterizes the ‘straight and narrow’ life of typical Western subjectivity: the law-abiding citizen. Indeed, for Foucault, Cynic modes of ethical-political existence are “...the scandalous, violent, polemical reversal of the straight life, of the life which obeys the law (*nomos*).”¹⁸²

One final characteristic of the Cynic mode of subjectivation that will become extremely crucial for Foucault’s trans-historical critique of governmentality is the universal function of *politeuesthai*. For Foucault, Cynic *parrhesia* acquires the status of the “highest task” in the service of universal freedom because the Cynic, as Foucault writes,

...is a functionary of humanity in general; he is a functionary of ethical universality. And this man, of whom one demands detachment from every particular tie of family, homeland, and civic and political responsibility, is freed from these ties only so that he can accomplish the great task of ethical universality, which is not the political universality of the group (city, or State, or even the whole of mankind), but the universality of all men. An individual bond with individuals, but with all individuals, is what characterizes, in its freedom as well as in its obligatory form, the Cynic’s bond with all the other men who make up humankind.¹⁸³

For Foucault, the Cynic function of *politeuesthai* thus refers to the way that the Cynic detaches herself from the particularity of the laws, customs, and conventions of one’s own city or *politeia*, and instead exercises an ethical-political concern, care and responsibility for all humankind. That is, instead of concerning oneself with one’s own *politeia*, and the politics of one’s own city or

¹⁸² Ibid 244

¹⁸³ Foucault, *The Courage of Truth*, 302

state, one exercises "...the true function of *politeuesthai*, the true function of the *politeia*, understood in the true sense of the term, that *politeia* where it is not just a question of war and peace, of duties, taxes, and revenues in a city, but of the happiness and misfortune, the freedom and slavery of the whole of mankind... The *politeuesthai* is no longer that of the cities and States, it is that of the whole world."¹⁸⁴ The ethical universality of the function of *politeuesthai*, to which I will return in Section Three of this chapter, will thus be distinguished from the particularity of the *politeia* and its laws, conventions and forms of authority. It is this distinction to which I return in Section Three.

Foucault's trans-historical account of the history of *parrhesia* will lead him to an extremely important conclusion regarding the political function of Cynic modes of subjectivity in the history of the West. For Foucault, as we've seen, Cynic modes of subjectivity will be sharply distinguished from Socratic forms of self-examination and self-knowledge, precisely because, as Foucault shows later on in the lectures, these latter forms of subjectivity will dovetail with the emergence of Christian asceticism and the history of pastoral power and government. Indeed, the foreign concept Christian asceticism will introduce into Cynicism is precisely the fundamental notion of pastoral power and government that underwrites modern forms of subjectivity in the West: the notion of *obedience*. Foucault writes,

...if I were to undertake this history of the movement from Cynic to Christian asceticism, at present I would tend to emphasize... something which is not found in either Cynicism or Platonism. This is the principle of obedience, in the broad sense of the term. Obedience to God conceived of as the master (the *despotes*) whose slave, whose servant one is; obedience to His will which has, at the same time, the form of the law; obedience finally to those who represent the *despotes* (the lord and master) and who receive an authority from Him to which one must submit completely.¹⁸⁵

¹⁸⁴ Foucault, *The Courage of Truth* 303

¹⁸⁵ Foucault, *The Courage of Truth*, 319-320

In short, for Foucault, the trans-historical critique of Christian asceticism reveals the fundamental relation that distinguishes forms of pastoral authority and subjectivity from Cynic modes of existence: the relation of obedience. In this way, Foucault's trans-historical critique of subjectivity in The Courage of Truth distinguishes on the one hand a history of governmentality which is understood through the proliferation and *etatisation* of pastoral relations of obedience and truth; and, on the other, a history of *parrhesia* which is embodied in the relations and principles of the Cynic *bios philosophikos*, in the idea of ethical universality, or *politeuesthai*.

Thus for Foucault, we have here two histories that lead to two distinct forms of subjectivity: one which corresponds with the "typical" form of pastoral subjectivity in Western modernity characterized by relations of obedience and examination of truth, and one which corresponds to an anti-pastoral form of subjectivity characterized by relations of shamelessness, loyalty, subversion, discrimination, protection, and ethical universality. And while each of these forms of subjectivity can be analyzed in terms of *subjectification* (as a relay for power/knowledge) as well as in terms of *subjectivation* (ethical relation to self), for Foucault there is a fundamental antagonism between them. For Foucault, the fundamental antagonism between pastoral and Cynic modes of subjectivity lies in their relationship to sovereign authority. Pastoral modes of subjectivity find their truth within a hierarchical network of obedience and sovereign authority that is delegated across a range of pastoral figures. A pastoral subject finds the truth of herself in her subordination to the network of pastoral (sovereign) authorities. The truth of the pastoral subject is realized insofar as she finds herself within this network of obedience.

Cynic modes of subjectivity, on the other hand, begin with a fundamental presupposition of self-sovereignty and militant insubordination. The Cynic life of self-sovereignty and

independence, as Foucault has it, knows not of the relations of obedience to another and works her whole life to rid herself of all those relations of dependence which make one subordinate. The Cynic *bios philosophikos* also in this way attempts to reveal through her life the very scandal of pastoral modes of subjectivity, in their unnecessary subordination to sovereign authority outside themselves. Opposed to the relations of obedience that characterize Christian asceticism and its hierarchical network of obedience, Cynic subjectivity recognizes this hierarchical network of obedience as itself a scandal, a chain of dependence that makes individuals subordinate to the sovereignty of another. Thus, for Foucault, the fundamental antagonism between pastoral and Cynic modes of subjectivation lies in the *voluntary subordination or insubordination* to authority.

Foucault's account of Cynic subjectivity as a kind of *voluntary insubordination* should be understood within the context of Foucault's definition of critique as *voluntary insubordination*.¹⁸⁶ In an interview in 1978, Foucault situated critique in opposition to the subordinating effects of pastoral power and governmentality. In this way, Foucault would begin to return to the problems of war and the military basis of society that he took up in the early-to-mid 1970s. Reflecting on his late interest in international law, human rights and 'military justice', Foucault said several years later in an interview that "(A)nd if God grants me life, after madness, illness, crime sexuality, the last thing that I would like to study would be the problem of war and the institution of war in what one could call the military dimension of society." Insubordination – itself understood in military terms – would thus become the actual work of critique. The following section therefore explores Foucault's notion of critique as voluntary insubordination, thereby linking the practice of freedom as critique to the practice of

¹⁸⁶ Michel Foucault, 'What is Critique' in *The Politics of Truth* (LA: Semiotext(e). 2007) 47

insubordination as resistance to forms of military-pastoral authority. Drawing upon his late work I show that Foucault, much like Arendt, sought to distinguish the ethical universality of politics (*politeuesthai*) from the military-pastoral relations of command-obedience that increasingly characterize contemporary politics as war continued by other means. In doing so, I argue for a trans-historical conception of freedom in Foucault as voluntary insubordination, hoping to thereby open up new forms of political life and existence that might counter new forms of military urbanism in the neoliberal security state (Chapter Five). Finally, by linking freedom as insubordination to the practice of politics, I also seek to define a positive conception of the political as a mode of existence of ethical universality [*politeuesthai*].

In what follows, I compare Foucault's distinction between the military-pastoral and the political (*parrhesia*)' with Arendt's distinction between war and politics. In doing so, I show how for Arendt, the meaning of politics is corrupted precisely to the extent that politics is conceived as a game between leaders and followers, those who wield authority and those who obey. Indeed for Arendt, the very existence of politics as a realm of freedom and equality between partners is threatened by the militarization of the fabric of the social world. However, for Foucault, freedom understood as insubordination cannot be extinguished; for Foucault, the intransigence of the "will to not be governed" ensures that there will always be an 'originary freedom', defined by its founding act that brings political subjectivities into existence: the act of insubordination. In order to breach the subject of *subjectivation* and subordination in Foucault and Arendt, I turn to Amy Allen's critique of Butler in The Politics of Ourselves: Power, Autonomy and Gender in Contemporary Critical Theory. In what follows, I endorse Allen's argument that Foucault does not abandon but re-conceptualizes the concept of subjectivity and its relation to power. At the same time, I suggest that an overemphasis on Kant's influence, and

Foucault's writings on Kant, tends to narrow the analysis of Foucault's critical project in a way that excludes a much richer, comprehensive view of the critical apparatus he is developing during this period (1978-1984). In any case, Allen succeeds masterfully in showing that, for the late Foucault, the analysis of subjectivity, autonomy and freedom cannot be uncoupled from an analysis of the ways that power "individuates" us within certain historical matrices of experience. It is this fundamental insight about the 'trans-historical' study of forms of subjectivity and their linkage with forms of power, across historical time and space, that will guide my investigations into how certain power-knowledges of police are linked to the constitution of certain kinds of subjects. In what follows, I focus on Allen's critique of Butler as a launching point to discuss various critiques of Butler's conception of subjectivity.

Subjectivity & Subordination in Butler, Allen, Arendt & Snyder

With her book The Politics of Ourselves, Amy Allen makes a major intervention in debates over 'the late Foucault', clarifying important debates about the role of power and autonomy in Foucault's work, some of which have been mired in confusion for years. At the heart of many of these confusions lie several misinterpretations regarding the relationship between subjectivity and power in Foucault's work. Towards this end, Allen sets out to provide both "...an analysis of power in all its depth and complexity...and an account of autonomy that captures the constituted subject's capacity for critical reflection and self-transformation."¹⁸⁷ Allen goes on to argue against the widespread reading of Foucault where his account of subjectivity is reduced to merely the operation of heterogeneous relations of power-knowledge. As Mark Kelly, Mark Redhead and others have also noted, the reduction of Foucault's conception of subjectivity to the operations of power-knowledge misconstrues not only his later

¹⁸⁷ Amy Allen. *The Politics of Ourselves: Power, Autonomy and Gender in Contemporary Critical Theory* (New York: Columbia University Press, 2008), 2-3

re-conceptualization of subjectivity and practices of freedom, but also his middle works where the subject is far more than *merely* a constitutive unit of disciplinary subjection on account of the fact that, as Kelly says, the relative autonomy of the subject is “bracketed”.

In addition, Allen argues against the common assumption that Foucault wishes to dispense with or eliminate the concept of subjectivity altogether. Distinguishing Foucault’s thesis on the death of man in The Order of Things as a reflection on the analytic of finitude from his more general analytics of subjectivity, Allen clarifies that for Foucault, “...there exists no structure of subjectivity that is not always already an effect of a power/discourse matrix”. Indeed, a proper reading of Foucault’s The Order of Things, as well as The Birth of the Clinic should lead to the conclusion that “(F)oucault is not, then, arguing for the obliteration of subjectivity and individuality, as many of his critics have assumed.”¹⁸⁸ For Allen, this is clear from his late work on technologies and techniques of the self, understood as modes of subjectivation by which the self acts upon one’s own body, mind, soul, or conduct to effect a transformation on one’s self. However, Allen writes, we cannot understand modes of subjectivation for Foucault as simply free-floating techniques for autonomous ethical self-transformation. Rather, “(W)hat he is suggesting is nonetheless potentially disturbing: power is (at least in part) what individuates us...our individuality provides the perfect conduit for power relations.”¹⁸⁹ Thus for Allen, modes of subjectivation, or techniques of the self, are for Foucault forms of autonomous self-relation whose analysis should not be separated from the analysis of the power/knowledge matrix within which those autonomous self-relations occur. In other words, for Allen, the analysis of modes of *subjectivation* (autonomous modes of ethical self-relation) must not be separated from the

¹⁸⁸ Amy Allen. *The Politics of Ourselves*, 55

¹⁸⁹ *ibid*

analysis of *l'assujettissement* (individualization as relay for power/knowledge). The analysis of the practices of freedom and autonomy, therefore, cannot be separated from the analysis of power relations. This allows us to understand the constitution of subjectivity in Foucault as always a form of individuation by power relations *and* an autonomous self-relation at the same time. Indeed, the conclusion that subjectivity and forms of subjectivation for Foucault are always a relay for a power/knowledge regime "...does not preclude the existence of a self that is in some sense autonomous, provided that selfhood and autonomy are properly understood."¹⁹⁰ Thus, for Allen, we may distinguish different forms of subjectivity across historical time and space, specifying the various forms of power-knowledge that help constitute these forms of subjectivity and practices of freedom, without reducing the latter to the operation of the former. Indeed, this is Mark Kelly's position, namely that Foucault (at least in his genealogies) always proceeded with the intention to show "...the *extent to which* subjects are the effects of discourses or power by bracketing the relative autonomy of the subject."¹⁹¹

For Allen, there is no doubt that the conceptions of subjectivity and autonomy Foucault develops in his later works are products of his inversion of the Kantian transcendental-phenomenological subject. In fact, Allen goes further than this, claiming that,

His oeuvre is best understood as an imminent critique of the Kantian notion of the transcendental subject; its overall aim is to interrogate the historically, culturally, and socially specific conditions of possibility of subjectivity in the modern era.

The problem with this claim, as I hoped to show in Chapter One, is that it fails to take into account Foucault's long relationship within the French Hegelian tradition, his explicit

¹⁹⁰ Amy Allen. *The Politics of Ourselves*, 55

¹⁹¹ Mark Kelly. *The Political Philosophy of Michel Foucault*. 89

engagement with the idea of *wirklichkeit* through Hegel, Nietzsche and Hyppolite nor his (re)engagement with Merleau-Ponty. Taking this intellectual history of Foucault's thought into account, one gets a much richer conception of Foucault's "oeuvre", and thus a very different picture of how this "oeuvre" is to be 'best understood'. In any case, it is certain that Foucault's life-long engagement with the question of *das wirkliche/wirklichkeit/actualite* as a reflection on our actuality must be taken into account in any discussion of Foucault's account of subjectivity, and what it means for a subject to develop a relationship to oneself on the basis of one's own actuality. Indeed, as I hoped to show in the first chapter, it is this question – the relation of oneself to one's actuality – which serves as the fundamental question of freedom in the late Foucault, and which serves as the starting point for an analysis and critique of authority.

One of the most illuminating and, I think decisive, accounts in Allen's book is her critique of Butler's psychoanalytic account of subjectivity in Foucault. Focusing on Butler's The Psychic Life of Power, Allen takes on the relationship Butler establishes between the 'primary dependency' that renders the child *vulnerable* and her subordination. As Allen notes, Butler begins from the assumption that the child develops modes of attachment to the caregiver that renders the child vulnerable to subordination and manipulation. Butler calls this fact of development 'primary dependency'. Allen clarifies that, for Butler, "(T)he fact of primary dependency thus renders all human beings *vulnerable* to subordination by compelling us to settle for whatever form of attachment is available to us, whether subordinating or not." (81) Beginning from these initial conditions, therefore, Butler proceeds to argue that subjectivity always-already emerges from the condition of *vulnerability to* subordination. As Allen notes, "(H)owever, from this it does not follow, as Butler concludes, that subjectivation is always

subordinating.”¹⁹² For Allen, Butler makes this move because it appears, in Butler’s account, that dependency is conflated with subordination, and subordination with power. Allen writes,

To be sure, it makes sense to think of dependence as a power relation...But is dependence necessarily a relation of subordination?...If we resist the idea that subjection is per se subordinating, then this opens up the possibility of conceptualizing forms of dependency, attachment, and recognition that are nonsubordinating, or at the very least less subordinating...After all, if becoming a subject always already involves becoming attached to subordination, then why resist any particular form that such subordinating subjection takes; why seek out different forms of attachment, if they all lead to subordination?¹⁹³

Allen notes Butler’s later ambivalence on the question of whether or not we can speak of ‘nonsubordinating’ modes of subjection and subjectivity, ultimately concluding that Butler herself does not provide the resources for determining this very question.

Allen’s critique of Butler is joined by other critics who see Butler’s account of subjectivity as a reductive over-simplification of Foucault’s account of power and subjectivity. Just as for Foucault the constitution of subjectivity always involves certain kinds of power relations, the converse is also true: to the extent that relations of power are reduced to the raw and violent relationship of complete subordination, we can no longer speak of subjectivity. As Foucault makes clear in his essay *The Subject and Power* there are, as Kelly Oliver says, “...degrees of subordination, degrees of objectification, and corresponding degrees of subjective erosion.”¹⁹⁴ As Kelly Oliver (2001), Johanna Oksala (2012)¹⁹⁵, Julian Reid (2014) and others have recently argued, Butler’s modeling of subjectivity on the notions of dependence,

¹⁹² Amy Allen. *The Politics of Ourselves*, 81

¹⁹³ Amy Allen. *The Politics of Ourselves*, 82-4

¹⁹⁴ Kelly Oliver. *On Witnessing: Beyond Recognition* (University of Minnesota Press, 2001) 89

¹⁹⁵ Johann Oksala. *Foucault, Politics & Violence* (Northwestern University Press, 2012). Oksala’s account of Foucault’s conception of ‘the political’ is based on the distinction Foucault makes between the domain of power relations and the ‘non-political’ relations of violence.

vulnerability and subordination not only seems to conflate different kinds of subjectivity and subjection with subordination, but such an account of subjectivity also serves as “...the first presupposition of liberal bio-politics and its biologized subject.”¹⁹⁶ As Julian Reid argues, conceiving the formation of subjectivity through relations of vulnerability and dependence upon one’s social, psychic and natural milieu render the subject “...captured...within the biopolitical limits of liberal discourse...dependent on a milieu of protection without which it cannot survive. Thus it is akin to the subject of psychoanalysis, a subject defined by that which it lacks”.¹⁹⁷ Reid contrasts Butler’s account of subjectivity with a ‘hubristic’ account of subjectivity which emphasizes the positive ways that subject is formed “...by the ways which it decides what it wants, asserts what it possesses, and celebrates what it is able to do”¹⁹⁸. Conceiving the formation of subjectivity through the relations of dependence, therefore, sets up a game of recognition in which recognition of the other is always *recognition of their dependence and subordination*. In this way, one makes the recognition of the other’s subjectivity and autonomy conditioned on the recognition of the other’s dependence and vulnerability: indeed, a first presupposition of biopolitical government.

The political consequences of this account are thus the following: that *one becomes a subject* (with agency and autonomy) *precisely to the extent* that one can be recognized as *dependent upon a pastoral power for protection*. Drawing upon Reid, Oksala and Oliver’s critiques of Butler’s account of protection-subjectivity, I show how this dependency account of subjectivity and subordination leads to an account of political subjection that places the subject

¹⁹⁶ Julian Reid. ‘Fighting states of subjection: the biopolitical stakes of the liberal War on Terror’ In *States of War Since 9/11: Terrorism, Sovereignty and the War on Terror*, Alex Houen Ed. (New York: Routledge, 2014) 194

¹⁹⁷ Reid, ‘Fighting states of subjection’, 194

¹⁹⁸ *ibid*

under the higher guiding authority of a pastoral power of protection. Utilizing Arendt's distinction between the political realm of human "power" relations and the military relation of command-obedience, I seek to distinguish Arendt and Foucault's positive account of subjectivity and power from a military-pastoral subjectivity that grounds the legitimacy of police and the imperatives of bio-political administration.

In The Promise of Politics, Arendt presents a critique of the tradition of political theory and political philosophy, focusing on the ways that the meaning of politics as a realm of freedom and human "power" relationships has been corrupted into the analysis of political "rule".¹⁹⁹ For Arendt, the true meaning of politics is revealed in the real world of human relationships, revealed in the plurality of its many perspectives. The actuality of the truly human world, therefore, refers to that domain of historico-philosophical reflection wherein a truly plural political world is opened up between us. The political world that is opened up by this historico-philosophical reflection on the plurality of the human world, therefore, constitutes the condition of possibility of human action between various kinds of human partners, or acting together in concert. One can say that for Arendt, the actuality of politics is realized just to the extent that politics is viewed *not* as a space of *multiplicity* and conflicting interests (Foucault's phenomenal republic of interests), but rather as a space of *plurality* and complementary perspectives. For Arendt, what renders the actuality (reality) of politics impossible is the destruction of the space between human partners which allows plural perspectives to stand together in their singularity *and* in their partiality. What destroys the space for politics for Arendt is therefore the attempt to either eliminate perspectives from the world or to make one partial perspective into the single, exhaustive description of the world. For Arendt, the reduction of the plurality of the world and its

¹⁹⁹ Hannah Arendt. *The Promise of Politics*. (New York: Schocken Books, 2003)

perspectives is a move towards the totalization of the human experience; it is a move towards totalitarianism.

For Arendt, politics becomes totalitarian to the extent that the agonistic principle that sustains the plurality of perspectives within the political domain reverts back to the mode of the military relation of command-obedience. Thus for Arendt, politics becomes totalitarian just to the extent that politics becomes war continued by other means; that is, just to the extent that politics reverts to the mode of the military formation, which inheres not in recognizing the singularity and partiality of perspectives, but precisely on the unification and totalization of all singular individuals and perspectives under a single perspective. For Arendt, the military formation then represents the very form of totalitarianism she wishes to contrast with the actuality of a plural political world: the relation of command-obedience. The military formation, for Arendt, represents a multiplicity subsumed under one perspective, what in political terms she will call rule (*hegemon/epagoge*). In contrast to political rule, Arendt conceives the meaning of politics to inhere in the plurality of perspectives that open up new points of beginning (*arche*) for collective action (*prattein*). For Arendt,

...the older relationship between *archein* and *prattein*, between beginning something and, together with others who are needed and enlist voluntarily, seeing it through to its end, is replaced by a relationship that is characteristic of the supervisory function of a master telling his servants how to accomplish and execute a given task. In other words, action becomes mere execution, which is determined by somebody who knows and therefore does not himself act.²⁰⁰

For Arendt, the actuality of the truly human world of relationships serves as the condition of possibility for the political realm. This truly human world of relationships, for Arendt, can be destroyed by brute force, but is not constituted by force relations properly speaking. For Arendt,

²⁰⁰ Hannah Arendt. *The Promise of Politics*, 93

the actuality of politics, in its plurality, is composed of real human relationships between partners which give rise to what Arendt simply calls “power”. For Arendt, “power” is produced through the being-together of human relationships, and is distinct from and opposed to ‘brute force’²⁰¹. Crucially, for Arendt, “power” does not arise from force relations, “...and its inherent destiny is not to perish by force.”²⁰² For Arendt, the Greek idea of the *polis* was premised

...on this world of coming together, being-together, speaking about something with one another, and they saw this entire arena under the sign of divine *Peitho*, the power to persuade and influence, which reigned among equals and determined all things without force or coercion. War, and the brute force it entailed, was, on the other hand, entirely excluded from what was truly political, which arose and had its validity among the citizens of the polis.²⁰³

As Arendt argues, it was only in dealing with other city-states, or foreign nations, that the *poleis* acted “unpolitically”. Arendt writes,

In consequence, and indeed of necessity, such military action invalidated the basic equality of citizens, who were neither rulers nor subjects. Because war cannot be waged without command and obedience, and because military decisions cannot be a matter of debate and persuasion, belonged, as the Greeks saw it, in a nonpolitical sphere. Everything we understand as foreign policy belonged in that same sphere. Here, war is not the continuation of politics by other means, but just the opposite: negotiation and the conclusion of treaties are understood merely as the continuation of war by other means, the means of cunning and deception.²⁰⁴

However, this initial separation between politics and war, Arendt writes, stands in an uneasy relationship in the Greek *poleis*, if only for the fact that politics always looked upon military virtues and ideals as a normative model for its own organization, purpose and ends. Indeed, for Arendt, “...the *polis* incorporated the concept of struggle into its organizational form, not only as

²⁰¹ Hannah Arendt. *The Promise of Politics*, 164

²⁰² Ibid

²⁰³ Hannah Arendt. *The Promise of Politics*, 166

²⁰⁴ Hannah Arendt. *The Promise of Politics*, 166-67

a legitimate pursuit, but also, in a certain sense, as the highest form of human communal activity.”²⁰⁵

However, immediately after showing how the military concept of struggle and war served as a model for thinking about the plurality of the political world, Arendt herself performs the very reduction of the plurality of the world that she wishes to critique. Writing about the reduction of the plurality of the human world, Arendt writes

If, on the other hand, there were to be some cataclysm that left the earth with only one nation, and matters in that nation were to come to a point where everyone understood everything from the same perspective, living in total unanimity with one another, the world would have come to an end in a historical-political sense. Those worldless human beings left on earth would have little more in common with us than those isolated tribes who were vegetating their lives away when first discovered on new continents by European explorers, tribes that the Europeans then either drew into the human world or eradicated without ever being aware that they too were human beings.²⁰⁶

Here Arendt seems to make a distinction between “human beings” and “the human world”, describing the isolated tribes discovered by Europeans as “human beings” *not yet integrated* into “the human world”, a task achieved by Europeans. Arendt seems to completely ignore or entertain the possibility that native tribes have their own human worlds, their own complex worlds of human relationships and spaces of communal life. What Arendt seems to reinforce here is, in fact, the colonial narrative that Europeans brought “politics” to a land populated by mere ‘human beings’, bare life without the capacity for political existence. Thus, in this way, Arendt performs the very reduction of the plurality of the world that she wants to critique, the very totalization of the singularity and partiality of human experience that she wishes to banish from political thought and analysis.

²⁰⁵ Hannah Arendt. *The Promise of Politics*, 167

²⁰⁶ Hannah Arendt. *The Promise of Politics*, 178

While Arendt's critique falters on this account, her distinction between the relations of political rule (command-obedience) and the relations of political action (*arche/prattein*) are extremely insightful. When applied to a discussion of subjectivity and subject-formation, this distinction highlights two very different ways of conceiving the constitution of political subjects. The forms of subjectivity produced in relations of rule will resemble those of a military formation, where subjectivity is recognized just to the extent that it is subordinated. Thus, conceiving the production of subjectivity in terms of subordination leads one to speak of the subject as *always-already* ruled. Therefore to the extent subjectivity is conceived, as in Butler's account, in terms of *subordination*, then the autonomy of the subject is subordinated and constrained under the terms of a military-like relation of command-obedience. Conceiving subjectivity in terms of subordination, then, is to speak of the constitution of subjectivity as always a form of rule, where the autonomy of the other is always recognized as *itself subordinated* to a higher authority or, as I argue, a form of military-pastoral power.

In this way, the ruled subject, always-already subordinated, is subjected to the higher guiding authority and protecting power to which it stands in a relation of being-ruled. Indeed, because for Butler the subject is not only subordinated but also *vulnerable* to the violence inherent to its milieu, and therefore *dependent*, the subject is not only *ruled* but also *in need of protection*. Conceiving *all forms* of subjectivity in terms of the ruled subject, therefore, implies a kind of military-pastoral subjectivity in which the subject is both *ruled* and *protected* by a higher guiding authority and protecting power. In such an account, one becomes a subject through one's *individualization* as *ruled and protected*. This subject of rule, a kind of military-pastoral subjectivity, stands outside the domain that Arendt properly calls "power". Again for Arendt, the relation of "rule" is an entirely distinct relation from the domain of truly human relationships

between partners that she describes as the domain of political action or “power”. Thus one can say that, for Arendt, the subject of rule, subordinated and dependent, finds itself not within a relation of power and collective human action, but rather in a war-like or military relation. The subject of rule, in Arendt’s terms, is properly speaking decidedly not political, but rather *unpolitical*.

Similarly, we might say that for the late Foucault, the ruled subject whose autonomy is only understood through its subordination to a military-like relation of command-obedience, likewise cannot be said to fall within the political domain of power relations he calls government, or more simply, the domain of “conduct”. For Foucault, the domain of conduct or government will be that domain of action upon other’s actions which presupposes the freedom of both partners in a relation where violence, struggle and relations of war and subordination are excluded. Indeed, Foucault’s insists in his 1982 essay *The Subject and Power* that, “...the relationship proper to power would therefore be sought not on the side of violence or of struggle, nor on that of voluntary contracts...but rather in the area of that singular mode of action, neither warlike nor juridical, which is government.”²⁰⁷ In that essay, Foucault insists that the analysis of power relations concerns the study of the government of conduct, a domain that is essentially different from war-like relations.

However, as I show in Chapter Five, the analysis of government as the art of conducting men cannot be separated from the analysis of military or warlike relations. There, I show how the military-style discipline established by Captain Elam Lynds at Auburn state penitentiary was conceived as ‘the art of conducting men’. In this way, I argue, the analysis of power as ‘the government of conduct’ must include an analysis of how war-like relations, along with juridical

²⁰⁷ Michel Foucault. ‘The Subject and Power’, 341

relations, were incorporated into the art of government that was assembled in the eighteenth century. In addition, for Foucault, the governmental state that emerged in the eighteenth century and remains for us today was constructed through the fusion of a military-diplomatic technology, a pastoral technology of the individual, and the technology of police.²⁰⁸ In this way, the analysis of political government cannot be separated from an analysis of how the ‘conduct of conduct’ is informed by the power/knowledge regimes of military-diplomacy, pastoral power, and police. As a result, the analysis of power in terms of conduct will necessary include an analysis of how relations of techniques and relations of military discipline, pastoral techniques of individualization, and technologies of police are incorporated into the art of government.

Drawing up Arendt’s thesis on the incompatibility between the political realm and the military-pastoral domain of rule, I turn now to Claire Snyder’s book Citizen Soldiers and Manly Warriors. In this book, Snyder attempts to reconstruct, within the civic republican tradition, the model of ‘the citizen-soldier’ as a normative ideal for participatory, democratic self-government. I argue that Snyder’s critique of the ‘undemocratic vices’ of the citizen-soldier undermines her attempts to revive the democratic potential she reads in the citizen-soldier ideal. Drawing upon my discussion of Butler and Arendt, I argue that the citizen-soldier ideal, by modeling citizenship and subjectivity on ideal conceptions of the military camp, corrupts the meaning of politics as a realm of human “power” relations, making politics into a matter of political rule. And while such a conception of ‘democratic rule’ is perfectly consistent, I argue that the conception of ‘democratic rule’ endorsed here is also perfectly consistent with a ‘militarized’ democratic state, always at war with external and internal enemies. This leads me to argue in

²⁰⁸ Michel Foucault. *Security, Territory, Population*, 110

Chapter Five that it is the democratic state functioning in the military-pastoral mode of rule which gives rise to a militarized police and the imperatives of bio-politics.

Thus in order to uncover how military-pastoral relations are intertwined with government and ‘the conduct of conduct’, I discuss how certain forms of subjectivity are imagined, perceived and produced through certain modes of martial self-relation, recognition and identity. In this way, I seek to complicate Foucault’s separation of the domain of government or conduct from the domain of military or warlike relations. To this end, I turn to Claire Snyder’s book Citizen Soldiers and Manly Warriors in order to address her argument concerning the ‘democratic potential’ of the citizen-soldier. While Snyder argues that we can overcome the gendered and racist historical overtones of the citizen-soldier, I argue that the very attempt to reconstruct the citizen-soldier ideal undermines the very project Snyder wishes to achieve. The civic republican attempt to ‘revive’ the citizen-soldier, I argue, fails to question its own theory of how subjects are produced, and in turn, fails to notice the ways that the imagination and constitution of subjectivity is always-already influenced by relations of power and knowledge, even and especially at the level of thought, perception, identity and self-recognition.

In her book Citizen-Soldiers and Manly Warriors, Claire Snyder critiques and reconstructs the citizen-soldier model of subjectivity within the civic republican tradition. Snyder’s provocative thesis is that, while the civic republican model of the citizen-soldier has been historically linked to masculinity, paternalism, racism, and right-wing radicalism, there is still nonetheless an essential “...democratic potential” in the model of the citizen-soldier for producing new modes of subjectivity. Snyder in fact develops an account of how subjectivity is produced through ‘practices of civic virtue’ that include communal and “martial rituals”. According to this account, individuality is produced “...as a set of practices that eventually

produce a civic identity, rather than as a pre-political category established through residence within a particular bounded territory (*ius solis*)- or through having a particular race or ethnicity (*ius sanguinis*).”²⁰⁹ In Snyder’s account, the citizen-soldier ideal “...played a central role in the constitution of masculine republican citizenship in American”, producing certain forms of subjectivity characterized by both positive civic virtues like liberty, equality and rule of law, as well as “undemocratic vices” such as racism, patriarchy and militarism.²¹⁰ In fact, as Snyder shows masterfully, the construction of ‘fraternity’ in nineteenth century citizen-soldier identities was inextricably linked to *white fraternity*, and thus directly to the history of racism in America. Nonetheless, Snyder argues for the essential democratic potential of the citizen-soldier which she claims “...constitutes a normative ideal that links military service to participatory citizenship...because martial practices instill in citizens the virtues *required* for participation in self-government aimed at the common good.”²¹¹

For Snyder, the normative model of the citizen-soldier as participatory, local community member faded away with the ascendance of the liberal, administrative state at the end of the nineteenth and early 20th century. The transition to an all-volunteer military force signals for Snyder the triumph of administration and a political elite over a more participatory and democratic populous, the vast majority of which are now completely removed from the ‘fatigues of the camp’. Snyder’s remedy, and her main argument, is that a more democratic and participatory model of the citizen-soldier should be revived as a set of civic practices based in community and martial rituals.

²⁰⁹ Claire Snyder. *Citizen Soldiers and Manly Warriors*, 91

²¹⁰ Snyder, *Citizen Soldiers and Manly Warriors*, 91-94

²¹¹ Snyder, *Citizen Soldiers and Manly Warriors*, 100

However, as Snyder notes in Chapter Five of her book, the very discourse of the citizen-soldier *is in fact* being revived by radical movements on the far right. In this chapter, Snyder argues that the “New Militia Movement” as she calls it, is part of a broader ‘crisis of legitimacy’ that has arisen in recent years regarding the lack of control, transparency and accountability from the American government, across all spectrums of the political field. Because of the discourses that have arisen to oppose this crisis of democratic legitimacy, the New Militia movement has been able to “...mask their racist and anti-Semitic agenda behind two democratic discourses that are central to the American political tradition: the currently dominant ‘identity politics’ and the historically important Citizen-Soldier tradition.”²¹² Thus, Snyder’s argument is that these racially and patriarchally motivated groups are able to mask their ‘true’ intentions through the discourse of the citizen-soldier and its emphasis on liberty, local community, and participation.

Yet, despite Snyder’s diagnosis of these groups’ “true intentions” and their clever “masking” of these intentions through the supposedly democratic discourse of the citizen-soldier, Snyder proposes no solution to this problem. Here, the argument runs into problems. For, if the claim is precisely that the “democratic” nature of the citizen-soldier discourse is being used to “mask” the undemocratic nature of these social movements, then it is justifiable to question the strategic merits of using such a discourse to advance democratic ideals and norms. Furthermore, if the ‘democratic potential’ of the citizen-soldier lies in its linking of military service and martial rituals to civic participation, then it is not entirely false to say that some New Militia movements are, by this standard, at least somewhat ‘democratic’. Snyder attempts to solve this dilemma by making a distinction between a *civic participation of practices* and a *civic participation of blood*. For Snyder, the New Militia movements cannot be considered democratic

²¹² Snyder, *Citizen Soldiers and Manly Warriors*, 109

since they function according to the latter and not the former, basing their views of civic participation on the purity of bloodlines and not the practices shared by members of a community. For this reason, Snyder makes clear that the politics of these new militia movements are not democratic, but rather a “...backlash reaction against democracy.”²¹³

However, this strategy only seems to work for the kind of examples she selects: the Ku Klux Klan and its new ‘quasi-fascist’ forms. Taking the KKK as the paradigmatic example on which to base this distinction, Snyder is then able to generalize the ‘the New Militia movement’ as a reactionary backlash against democracy. I do not wish to challenge Snyder’s argument along these lines. Instead, I argue that new forms of the ‘democratic citizen-soldier’ have emerged – particularly since 9/11 – that do *not* conform to the ‘KKK’ model, but which once again raise new problems for attempting to revive the citizen-soldier in the age of the war on terror. These *newer* forms of militia movements seek to galvanize a newer, highly problematic form of citizen-soldier to fight a new form of fascism more pernicious than Hitler or Stalin: radical Islam.

In a political pamphlet published as Citizen-Soldier: 101 Ways that Every American can Fight Terrorism, the author begins by announcing the urgency to mobilize a new generation of citizen-soldier against Islamic Totalitarianism, claiming that “...the rising tide of Islamic Totalitarianism is equally as daunting if not more dangerous than Hitler’s National Socialists and Stalin’s Communist/Left-Wing.”²¹⁴ In order to fight the psychological and spiritual warfare waged against America, the book announces that the new citizen-soldier will work on a local and

²¹³ Snyder, *Citizen Soldiers and Manly Warriors*, 113

²¹⁴ Michael Mandaville. *Citizen-Soldier Handbook: 101 Ways Every American Can Fight Terrorism* (Indianapolis: Dog Ear Publishing, 2009)

national level to practice and build up America's greatest strengths, "...patriotism, morality and its spiritual life."²¹⁵

The book unveils its main thesis, presented as a patriotic and democratic call to arms, inspired by the ideals of the American Revolution:

You. Me. Your neighbor. Your family. Your friends. Americans of every race, religion, creed and color. Freedom loving people everywhere....In the Massachusetts Bay Colony, as early as 1645, we joined the town's 'training bands', ready for rapid deployment. These men fought alongside cousins and in-laws, forging string ties for community defense. In 1774, the Massachusetts Provincial Congress required its militias to form companies – to turn out 'at a minute's notice'...from the bloody fields of Concord and Lexington where the American confronted the British...Citizen-Soldiers answered the call and created a new concept for mankind. People fighting for their own individual freedom."²¹⁶

The book proceeds to outline the procedures by which one can immediately begin becoming a citizen-soldier in the new democratic war against Islamic Totalitarianism, beginning with the production of "morale": Morale is critical to mount operations against a determined enemy like Radical Islam. This is your first step as a Citizen-Soldier. Your goal is to inform and inspire, command and lead your fellow citizens into a state of confidence and mettle to make a difference. This mental state will unite your group."²¹⁷ The second step outlined is to "become your own general", instructing citizen-soldiers to study the greatest military generals in history, and beginning to perceive oneself as a general ("To Take Command of a Battle, you have to take command of yourself.")²¹⁸ After instructing the reader to begin identifying as a "general", the book continues by giving the citizen-soldier a checklist of resources they will need in their

²¹⁵ Mandaville, *Citizen-Soldier Handbook*, 4

²¹⁶ Mandaville, *Citizen-Soldier Handbook*, 8

²¹⁷ Mandaville, *Citizen-Soldier Handbook*, 11

²¹⁸ Mandaville, *Citizen-Soldier Handbook*, 13

mission: firearms, money, pamphlets, food, portable water, etc. Following a long list of statements to memorize and repeat to oneself about the superiority and greatness of American democracy, the book then provides a “Future Chart” in which two options are provided: Option A (American democracy) or Option B (Islamic Totalitarianism), polarizing the citizen-soldier in his zeal against the new common enemy: radical Islam.

This new form of ‘democratic citizen-soldier’ thus complicates Snyder’s analysis of democratic civic participation and undemocratic participation based on bloodlines. The form of subjectivity and citizenship being proposed here is not the kind of anti-Semitic, racist white male subjectivity that Snyder targets in Citizen Soldiers and Manly Warriors. It is not based on blood (*ius sanguinis*), but religious belief. Yet, at the same time, this new forms of subjectivity seems to embody all the characteristics and traits of the democratic citizen-soldier that Snyder outlines as a normative ideal: liberty, equality, inclusion of all social groups in the ideal of military and community service, etc. Indeed, the citizen-soldier taking up the fight against Terrorism seems to embody the very ideal of the citizen-soldier that Snyder wishes to revive.

In this way, one could say that terrorism and the *threat* of terrorism produces exactly the kind of enemy that the civic republican tradition needs to revive the citizen-soldier ideal in an era of dismal citizen participation. Indeed, as Snyder readily admits, one of the problems of American politics is precisely the democratic deficit in the operation of government, a phenomenon that could be reversed by a revival of a community of martial ritual and engagement on a national level. In this way, the specter of terrorism provides exactly the kind of catalyst for such a democratic revival of citizen-soldiers from all walks of life.

But just as Snyder is especially suspicious of the “true” motivations and intentions of the New Militia movement in using the discourse of the citizen-soldier, why wouldn’t we be just as

suspicious of these movements in using the same discourse? In the former case, the New Militia movements are using the discourse of the citizen-soldier to “mask” their undemocratic agenda, which just so happens to be based in prejudiced ideas about race and *ius sanguinis*. However in the latter case, isn’t it just as likely that these movements might also use the discourse of the citizen-soldier to “mask” their undemocratic agenda, based on prejudiced ideas not about race but about religion? I make this point, again, not to challenge Snyder’s argument about the New Militia Movement’s undemocratic agenda, but rather to question Snyder’s optimism about reviving the democratic potential she thinks lies hidden away in the discourse of the citizen-soldier. Indeed, the example of the new American citizen-soldier once again seriously calls into question the very thesis of Snyder’s book: namely, that there does exist, buried away under the historical anomalies of racism, patriarchy, militarism (and xenophobia), an essential democratic potential of the citizen-soldier. Thus, one could conclude that Snyder’s thesis, while acknowledging the historical realities of the ‘vices’ that have accompanied the discourse of the citizen-soldier, seems at the end of the day to be begging the question. In other words, why should we believe that there *is* in fact a hidden democratic potential in the discourse of the citizen-soldier, when there are so many historical examples to the contrary – examples which Snyder herself documents in detail.

One problem of Snyder’s argument lies in the way she conceives the relationship between ‘martial practices’ or virtues and participatory democracy. To be clear, Snyder’s claim is *not* that shared martial practices are a *necessary condition* for instilling in citizens the virtues of participatory democratic self-government. Rather, for Snyder, “...martial practices instill in citizens the virtues *required* for participation in self-government aimed at the common good.”²¹⁹

²¹⁹ Snyder, *Citizen Soldiers and Manly Warriors*, 100

Thus shared martial practices, for Snyder, are conceived here as a *sufficient but not necessary* condition for instilling the virtues that *are* necessary for democratic participatory government. In other words, there might be plenty *other* sufficient conditions for instilling the virtues of democratic participatory self-government. This feature of martial practices as a *sufficient but not necessary* condition for producing virtues of participatory democratic self-government seems to weaken Snyder's argument. Since shared martial practices are not a necessary condition of producing such virtues, and such shared martial practices have been historically and discursively linked to undemocratic vices and social movements, then it follows that we do not have to risk reproducing these undemocratic vices in our attempt to produce democratic virtues.

Snyder's book, it seems to me, provides very good reasons to adopt the latter approach, especially in light of even newer militia movements utilizing the citizen-soldier discourse in the post-9/11 era of the war on terrorism. Indeed, as new anti-Islamist groups and anti-Muslim sentiment began to proliferate in the United States immediately after 9/11, this provided new ammunition for the Christian Right, allowing them to utilize a citizen-soldier discourse to galvanize the discourse of the "clash of civilizations", a battle between the democratic forces of America and its Christian founding and the tyrannical forces of Islamo-fascism and its Muslim radicalism. The discourse of the citizen-soldier is quintessentially ambiguous here, caught up in multiple discourses of 'he Christian soldier, the American Revolutionary, the culture warrior, the information warrior, the patriot, and the soldier of democracy. It is the ambiguity of the discourse of the new American citizen-soldier, and the openings that allow multiple forms of citizen-soldiers within its scope, that causes problems for Snyder's argument to revive that discourse.

This last point calls attention to one final problem of Snyder's analysis, which lies in the way that she describes the citizen-soldier ideal as a *discourse*. Snyder laments the ways that the

discourse of identity politics and the democratic citizen-soldier are appropriated by undemocratic movements and political organizations. Yet, if one is speaking of discourse as Foucault does, then it is understood that discourses are “polyvalent”. This does not mean that democratic principles and democratic movements are *themselves* polyvalent, or that there is no standard by which to judge the democratic nature of a movement. As I showed in Chapter One, for Foucault, the level of discourse is distinct from the level of ‘the tertiary’, the domain of social struggle and social movements. However, the discourses that emerge from social movements – such as the discourse of identity politics or the citizen-soldier – are ‘polyvalent’ precisely because and to the extent that they have become reified as a discourse, a body of knowledge composed of statements distinct from and independent of the social movements and context from which they emerged. In this way, the ‘model’, ‘ideal’, or discourse of the citizen-soldier becomes polyvalent precisely to the extent that a body of knowledge (*connaissance*) is constituted about the citizen-soldier, separate from the knowledge embedded in the actual practices found in the social domain of struggles and movements (*savoir*). There is therefore a fundamental tension in Snyder’s attempt to ‘idealize’ the normative model of the citizen-soldier as a set of principles, virtues and statements that can be recuperated and abstracted and from any social movement (a sort of discourse), while at the same time claiming that this normative ideal should be understood *as a set of practices* (*savoir*). Thus, the relation between the *discourse* of the citizen-soldier and the *actuality of democratic citizen-soldier practices* remains unclear.

In the final section, I compare Foucault’s conception of police as a set of political technologies by which we recognize ourselves and others as part of a city/nation/state against Althusser’s notion of police as ideological interpellation. First, I argue that the revolts Foucault documents in his Tanner lectures are revolts against the authority of police, thereby situating the

struggle for subjectivity over and against police as political technology. In this way, I also link the struggle for subjectivity, and against the authority of police, to the reflection upon our actuality as free beings engaged in struggles against authority. Second, I argue that Foucault's conception of police as political technology should be connected with his discussion of the disciplinary technique of the examination as ceremony of objectification, and lay out four types of political technology by which we recognize ourselves as subjects and objects of police: a technology of war, work, health and law. In conclude that Foucault's conception of police as political technology, unlike Althusser's, brings to light how we as individuals may engage in struggles against police authority and the government of our individuality.

Ideology v. Critical Ontology: Althusser & Foucault on police

In his Tanner Lectures delivered at Stanford University in 1979, Foucault outlines what he refers to as a 'critique of political reason', which takes as its aim the form of political rationality specific to the way in which the modern Western state has taken hold of and exercised power through the conjunction of both techniques of individualization (pastoral/police power) and procedures of totalization (reason of state).²²⁰ During this period (~1978-1982), modern political reason serves as a fundamental target of analysis in Foucault's lectures, interviews and texts on the question of identity, individualization, subjectivation, pastoral power, mechanisms of security, liberalism, freedom, and his re-engagement with the critical traditions of Nietzsche, Kant, Hegel and the Frankfurt School among others. Now as Foucault explains in his lecture at the University of Vermont in 1982, the impetus for this new re-evaluation of "what power relations are about" comes from Foucault's own observation of the concrete struggles, resistances and movements occurring during the time of his lecture. Foucault explains here that,

²²⁰ Michel Foucault. 'Omnes et Singulatim: Towards a Critique of Political Reason' in *Essential Works of Foucault: 1954-1984, Vol. 3, Power*. James Faubion Ed. New York: New Press, 2000

instead of following the model of the Frankfurt school in examining the totalizing domination of ‘Enlightenment rationalization’ over society and culture, he would like to propose a ‘new economy of power relations’ that is “...more empirical, more directly related to our present situation, and one that implies more direct relations between theory and practice.”²²¹ Drawing upon concrete resistances and struggles of the present, this new economy of power relations, “...consists in using this resistance as a chemical catalyst so as to bring to light power relations, locate their position, find out their starting point, find out their point of application and the methods used. Rather than analyzing power from the point of view of its internal rationality, it consists of analyzing power relations through the antagonism of strategies.”²²² The forms of resistance Foucault mentions here that serve as catalysts for thinking about power relations are “...the opposition to the power of men over women, of parents over children, of psychiatry over the mentally ill, of medicine over the population, of administration over the ways people live.” (ibid) Foucault goes on to list the common, ‘transversal’ elements all these struggles have in common, which include the fact they are 1) transnational, 2) critical of power as such, 3) anarchistic in their immediate confrontation of power, 4) struggles not against ‘the individual’ but against “the government of individualization” (ibid), 5) oppositions that challenge the regime of knowledge (*savoir*) and ‘competence’ that validates the exercise of government and power (e.g. liberalism), and 6) struggles that avoid ideological abstractions and instead focus on the concrete questioning of the present and of our selves. These struggles, Foucault reaffirms, are directed not at a unitary locus of power, or class enemy or state apparatus but, instead, are directed at a specific form of power (*savoir*) which has taken hold of and exercises power

²²¹ Michel Foucault. ‘The Political Technology of Individuals’ in *Essential Works of Foucault: 1954-1984, Vol. 3, Power*. James Faubion Ed. New York: New Press, 2000, 329

²²² Foucault, ‘The Political Technology of Individuals’, 329

through the conjunction of techniques of individualization and procedures of totalization.

Foucault, as he explains in his lectures during this period, is most interested in techniques of individualization and, more specifically, how these techniques are linked up with procedures of totalization and increasing state control: “(T)his form of power that applies itself to immediate everyday life categorizes the individual, marks him by his own individuality, attaches him to his own identity, impose a law of truth on him that he must recognize and others have to recognize in him. It is a form of power that makes individuals subjects.”²²³ Foucault then says that there are two moments of subjectification (*l’assujettissement*) specific to this form of power (*savoir*) which serve as possible resistance points against the process of individualization. The first moment of identity-subjection is the moment in which the individual is tied to itself through an identity, and the second moment is the moment when this self-identity is submitted to others in a process of recognition. The struggle against *this* form of subjectification therefore includes here for Foucault both 1) the struggle against that which ties the individual to himself, and 2) the struggle against submitting this ‘self-identity’ to others. Foucault then calls this specific process of subject-formation through individualization “the struggle against subjectivity and submission”.²²⁴

For Foucault, the “government of individualization” – made possible by the transference of pastoral power as State police power - constitutes one of the fundamental techniques of rule in the modern Western state. Indeed, it could be said that pastoral techniques of individualization and subject-formation constitute the fulcrum around which totalization and individualization operate. For Foucault, this occurs through the linkage of the nation-state’s sovereign mandate to

²²³ Foucault, ‘The Political Technology of Individuals’, 331

²²⁴ *ibid*

ensure the freedom, health and happiness of its subjects with the growth, maintenance and longevity of its own sovereign power. For Foucault, this linkage occurred steadily over the course of the 16th-18th century through the coupling of pastoral logics and reason of state. The key link between the ecclesiastical pastorate and reason of state, for Foucault, was the technology of police. For Foucault, police served as the link between the individualizing techniques of pastoral subjectivity and the totalizing techniques of reason of state. In this sense for Foucault, the struggle *for* subjectivity and identity in the West has always in a sense been linked with the demand for obedience to authority and the production of the truth of the individual. At the center of this struggle for a subjectivity based on relations of obedience and truth, are the political technologies he calls police.

Through examining Foucault's analysis of the various struggles against pastoral subjectivity (government of individualization), we arrive at a central thesis: the struggles Foucault identifies in the Tanner lectures are linked together in their revolt against a certain kinds of authority. The forms of authority Foucault links together are: i) patriarchy, ii) paternalism, iii) psychiatric power, iv) biopower, and v) administrative power. What these forms of authority all have in common, then, is that they each attempt to impose certain relations of obedience by the imposition of a certain 'truth' on the individual. In other words, these forms of authority seek to impose the very form of pastoral subjectivity that Foucault identified in Security, Territory, Population as the typical form of subjectivity found in Western modernity. It is for this reason that Foucault identifies these struggles as struggles against subjectivity and submission, referring to the form of pastoral subjectivity that marks the typical form of Western subject.

However the forms of authority Foucault picks out here in the Tanner lectures are anything but arbitrary. Indeed, Foucault had just published a study of the emergence of the sciences of sexuality in exerting control over women and children; he had devoted decades of research and an entire lecture course at the College de France to the emergence of psychiatric power over the lives of the mad and mentally ill; he had spent virtually his entire career spelling out the emergence of medicine as a technology of social control over individuals and populations, from his first book Maladie Mentale et Personalite (1954) to his analyses of biopolitics; and, he had traced the development of the administrative inquiry to the birth of statistics and reason of state. Yet, what exactly did these particular forms of power-knowledge and authority have in common for Foucault, and why can they all be characterized as mechanisms of a pastoral technology for the government of individuals through relations of obedience and truth?

Besides sharing in common a pastoral technology focused on producing obedience through imposing relations of truth on individuals, it is possible to identify a common thread between these forms of authority, one which relates directly to the history of pastoral power. That common thread is the public authority known as police power. Indeed, for Foucault, each form of authority identified here in his Tanner Lectures can be, and in fact was, analyzed in terms of police. Thus, in The History of Sexuality, Vol. 1, Foucault writes that in the eighteenth century, the sexuality of women and children became a police matter, "...an ordered maximization of collective and individual forces".²²⁵ In The History of Madness, Foucault states that "...confinement, that massive phenomenon, the signs of which are found all across eighteenth-century Europe, is a police matter; police, in the precise sense that the classical epoch gave to it-that is, the totality of measures which make work possible and necessary for all those

²²⁵ Michel Foucault. *History of Sexuality*, Vol. 1, p. 24

who could not live without it”²²⁶ Bio-politics, as a regulatory power over the population, in fact will first appear as a form of police, *Medizinische polizei*.²²⁷ And finally, Foucault’s understanding of public administration would be informed by his study of French, English and German police administration through the writings of De LaMare, Colquhoun, von Justi, and many others.

Thus, for Foucault, the forms of pastoral authority and subjectivity outlined in the Tanner lectures can be analyzed as forms of police power and the struggles against the various relations of obedience and power-knowledge it seeks to implement. In this regard, an analysis of police as a technology of power – whether modern or ancient – will necessarily involve an analysis of the various forms of knowledge and subjectivity that emerge alongside technologies of police. Situating an analysis of police within a political ontology of ourselves, therefore, will bring to light not only the ethical forms of subjectivity and freedom that police seeks to mobilize and put to work for the utility of the state; it will also reveal the various forms of struggle, freedom and revolt that have contested, challenged and asserted themselves against the policing of ourselves and others. In this way, I argue, we should understand the struggle for subjectivity as both struggles against the authority of police and the governmentalization of our individuality. In this way, the analysis of police is at the same time an analysis of the struggle for subjectivity and individuality, and thus a reflection upon our actuality as free beings engaged in struggles against authority.

²²⁶ Ibid

²²⁷ Michel Foucault. *Securite, territoire, population*, Annuaire du College de France, 78e annee, Histire des systemes de pensee, annee 1977-1978, Dits et Ecrits Tome III texte n 255, pp. 445-449

In 1982 Foucault delivered a lecture at the University of Vermont that was to become part of a new book he wished to develop on the technologies of the self.²²⁸ This “new line of inquiry” was for Foucault in fact a continuation of his history of governmentality, specifically the dual forms of modern political rationality he identified as early as 1977 as reason of state and police. For Foucault, the genealogy of the new governmental reason that emerged in the 18th century would constitute his first systematic treatment of police since its emergence in The History of Madness. By 1978, Foucault’s analysis of police had gone through a significant change, through his encounter with Enlightenment treatises on police, his study of delinquency and criminality, and his history of bio-politics, liberalism and governmentality.

Indeed, by the time Foucault gave his Tanner lectures in 1979, he had claimed that the analysis of police had become so inseparable from the analysis of capitalism, state rationality and the history of bio-politics and liberalism that the historical analysis of police, he claims, is necessary for any critique of

political rationality [that] has grown and imposed itself all throughout the history of Western societies. It first took its stand on the idea of pastoral power, then on that of reason of state. Its inevitable effects are both individualization and totalization. Liberation can come only from attacking not just one of these two effects but political rationality’s very roots.²²⁹

Foucault’s Vermont seminar lecture, titled ‘The Political Technology of Individuals’, is in this vein a more thorough investigation of modern political reason through an analysis of police rationality since the 18th century. Distinguishing a study of the technologies of the self which constitute identities through ethical techniques applied to the self, Foucault announces

²²⁸ Michel Foucault. *Technologies of the Self: A Seminar with Michel Foucault*. (University of Massachusetts Press, 1988) 3

²²⁹ Michel Foucault. *Omnès et Singulatim*, 325

that, “(T)here now is another field of questions I would like to study: the way by which, through some political technology of individuals, we have been led to recognize ourselves as a society, as a part of a social entity, as a part of a nation or of a state.”²³⁰ In this late project then Foucault was primarily concerned with a specific technique of power developed in Western societies whose function is the integration of the conduct of individuals into the mechanisms of the city and/or nation-state. This would be a genealogy of police technologies, understood as “the specific techniques by which a government in the framework of the state was able to govern people as individuals significantly useful for the world.”²³¹

This genealogy of ‘police technologies’ would be a continuation of his analysis of the history of governmentality that began with his lectures at the College de France in 1977-78 on Security, Territory Population and the Tanner lectures delivered at Stanford in 1979. In the latter, Foucault traces the political technologies of the individual to the Hebraic shepherd-ruler, the Christian pastorship, and finally the modern secular pastorate of police. For Foucault, the techniques of Christian pastorate became slowly integrated into the political apparatus of the modern state of the 16th century, giving birth to modern police government whose task will be “integrating the individual into the utility of the state”²³² by improving the lives of and ensuring the happiness and health of citizens.²³³ In *PTI*, Foucault traces the emergence of modern political rationality, which he defines as the fusion of the modern theories of *raison d’Etat* and *police*.

²³⁰ Foucault, ‘The Political Technology of Individuals’, 404

²³¹ Foucault, ‘The Political Technology of Individuals’, 410

²³² Foucault, ‘The Political Technology of Individuals’, 409

²³³ Foucault, ‘Omnes et Singulatim’, 322-23

Speaking of the role of the individual within this emerging political rationality, Foucault remarks that

the individual becomes pertinent for the state insofar as he can do something for the strength of the state...what is in question here is only political utility. From the state's point of view, the individual exists only insofar as what he does is to introduce even a minimal change in the strength of the state, either in a positive or in a negative direction. It is only insofar as an individual is able to introduce this change that the state has to do with him. And sometimes what he has to do for the state is to live, to work, to produce, to consume; and sometimes what he has to do is die.²³⁴

For Foucault, the analysis of police as a *political* form of pastorship illuminates the ways in which pastoral power was incorporated into the art of state government as a political technology of the individual described above. Thus for Foucault, a history of government will describe how the domain of conduct proper to the art of government was linked up to a political apparatus. The domain of conduct for Foucault, is important since it refers to the pastoral relations between shepherd and his flock which were transposed into a political art of governing populations. Thus for Foucault, the analysis of regimes of conduct is an analysis of how pastoral logic of 'individualization was appropriated [*etatisation*] in State rationality in the 18th century in order to make individuals useful for the world as living, working, consuming members of the nation/State.

It is in this context that Foucault will define police as a set of political technologies by which we come to recognize ourselves as living, working, consuming members of a city, community, nation, or State. In my own analysis, I identify the following four technologies of police, each of which corresponds to a political technology that links the individual to the city/state/nation. The four types of political technology I identify are: a *politico-military technology of war*, a *disciplinary technology of work*, a *biopolitical technology of health*, and a

²³⁴ Foucault, 'The Political Technology of the Individual', 409

juridico-political technology of law. These political technologies of police correspond in my own analysis to the following modes of recognition and self-recognition:

- i) *Recognition as citizen-soldier of nation* (politico-technology of war)
- ii) *Recognition as 'productive' member of society* (disciplinary technology of work)
- iii) *Recognition as 'healthy' member of population* (biopolitical technology of health)
- iv) *Recognition as member of 'the public'* (politico-juridical technology of law)

In this way, the series *war-work-health-law* corresponds to the series *nation-society-population-public*, where each technology (i.e. war) produces its object (i.e. *nation*). In this way, the political technologies of *war-work-health-law* refer to the series of processes through which we come to recognize ourselves and others as subjects and objects of a particular *nation-society-health-law*. Drawing upon the comparison of Althusser, we might say that these technologies of police 'interpellate' us as martial, disciplined, healthy, and law-abiding members of a particular polity. Through these technologies individuals are also made governable. This is the process Foucault calls the government of individualization, whereby the individual is interpellated, through the recognition of himself and others, as a subject and object of government. In this way, police as a set of political technologies refers to the ways that the individual and his identity is linked up with the mechanisms of the city, nation, society and State.

For Althusser, police represents a paradigm case of what he calls interpellation or "hailing" which ensures the ideological production of the subject. Indeed for Althusser, police is a paradigm case of ideology in general, whose main function is "...constituting concrete individuals as subjects" through processes of "recognition/misrecognition"²³⁵. Because for

²³⁵ Louis Althusser. "Ideology and Ideological State Apparatuses." In *Lenin and Philosophy, and Other Essays*. Trans. Ben Brewster. (London: New Left Books, 1971) 172

Althusser “...all ideology hails or interpellates concrete individuals as concrete subjects”²³⁶, we can understand ideological interpellation as that which

‘recruits’ subjects among the individuals (it recruits them all), or ‘transforms’ the individuals into subjects (it transforms them all) by that very process which I have called *interpellation* or hailing, and which can be imagined along the lines of the most common everyday police (or other) hailing: ‘Hey, you there.’ ...By this mere one-hundred-and-eighty-degree physical conversion, he becomes a subject. Why? Because he has recognized that the hail was ‘really’ addressed to him.²³⁷

Crucially for Althusser, it is through interpellation that the individual comes to recognize herself as *always-already* a subject. Althusser’s main distinction between Repressive State Apparatuses (Government, Administration, Military, Police) and Ideological State Apparatuses allows him to make the claim that the individual is always already inserted into the *ideological* system from birth. In this way the individual is “always-already”

inserted into practices governed by the rituals of the ISAs. They ‘recognize’ the existing state of affairs, that ‘it really is true that it is so and not otherwise’ and that they must be obedient to God, to their conscience, to the priest, to de Gaulle, to the boss, to the engineer, that thou shalt ‘love thy neighbour as thyself,’ etc.²³⁸

For Althusser then, the individual is from birth inserted into the network of Ideological State apparatuses which include the domains of Church, School, Family, Politics, Law, Communication, and Culture. These ISAs therefore operate not through *repressive* means of the police, prisons and court system but rather *ideological interpellation*, the recognition and ‘misrecognition’ of the individual as *always-already* a subject of State power.

There is *one* sense in which Foucault’s theory of the subject can be read as a mode of interpellation in Althusser’s sense. One could say that in the same way that one is interpellated

²³⁶ Althusser, ‘Ideology and Ideological State Apparatuses’, 173

²³⁷ Althusser, ‘Ideology and Ideological State Apparatuses’, 174

²³⁸ Althusser, ‘Ideology and Ideological State Apparatuses’, 181

by being hailed by a police officer on the street, for Foucault one can also be interpellated by being hailed by a physician in the doctor's office, by a judge in the courtroom, by a teacher in a classroom, by a social worker in a clinic. For Foucault, interpellation then might mean something like the examination, that technique of disciplinary power Foucault describes as the "ceremony of objectification" of the individual. Thus for Foucault, interpellation could be understood as the ceremony of objectification wherein the individual recognizes herself as normal/abnormal and at the same time is recognized as such by a judge of normality. Police would therefore refer to the technologies by which we are always-already objectified in a process or event that marks our normality/abnormality. By being marked as normal/abnormal, we are therefore re-cognizable by ourselves and others as always-already governable, as both subjects and objects of government.

However, as I hoped to show in Section One of this Chapter, this understanding of the subject is only a partial understanding of how subjectivity is produced, especially in the late Foucault. Speaking of the individual as always-already a subject of ideology in Foucault would be to speak of *subjectification*, that is, the analysis of the ways in which the subject is always-already a relay for a regime of power-knowledge. Thus one could say that in Foucault, *ideological interpellation* can be understood through the lens of *subjectification*, the various ways in which the individual is always-already a relay for a regime of power-knowledge. In his way one could analyze ideology, and perhaps even ideological state apparatuses, from a Foucaultian perspective. And, in fact, we might even understand Foucault's history of madness, or the birth of the clinic, as a study of ideological subjectification.

But, as I've argued in Section One of this Chapter, the analysis of *subjectification* for Foucault brackets the very autonomy of the subject, viewing the individual only insofar as that autonomy is itself a relay for a regime of power/knowledge or, we might say, an ideological state

apparatus. In this sense, ideological interpellation would correspond to Foucault's notion of *subjectification*, but *not* to the notion of *subjectivation*. As I argued earlier, *subjectivation* refers to the modes of self-relation through which we act upon ourselves as free beings. Subjectivation therefore refers to modes of self-relation which cannot be reduced to nodes within the relay of power/knowledge. Subjectivation, therefore, cannot be equated with the ideological interpellation, or, the recognition/misrecognition of ourselves as always-already subjects of State power. On the contrary, modes of subjectivation for Foucault refer to the modes of self-relation by which we recognize ourselves as agents of a certain practice of freedom.

In this way, a critical ontology of police will therefore study the ways that we come to recognize ourselves as subject-objects of police [*subjectification*] *as well as* subjects of certain practices of freedom, struggle and revolt [*subjectivation*]. In understanding police as a set of political technologies by which we come to recognize ourselves as part of a city/nation/state, we are not *merely* engaging in an analysis of ideological subjectification by which the individual always-already recognizes herself and others as subjects of police power or government. Indeed because for Foucault a *critical ontology* of ourselves involves the analysis of both the regimes of power and knowledge that constitute us as subjects *as well as* the modes of self-relation by which we practice freedom, the study of police will be a study of both ideology and freedom. It will be both an analysis of police as technology of state authority and obedience, as well as what Foucault will call critique or *the art of voluntary insubordination*. The critical ontology of police, therefore, will analyze police as a mode of state authority or relation of obedience, as well as a site of critique understood at once as a practice of freedom and an art of insubordination.

Indeed in a lecture given in 1978, Foucault defined critique as “...the art of voluntary insubordination”.²³⁹ Foucault in this way began to situate critique, as the practice of freedom, in opposition to the subordinating effects of pastoral power and governmentality. By showing how pastoral power and governmentality are always grounded in relations of obedience and subordination, Foucault increasingly sought to locate anti-pastoral or anti-ecclesiastical modes of subjectivation in his later work. This project, as I’ve argued, led Foucault to the investigations into modes of *parrhesia*, culminating in his last series of lecture courses at the College de France, where Cynic *parrhesia* is defined as a trans-historical mode of insubordination and existence. In this way Foucault makes a sharp distinction between the pastoral (or military-pastoral) relation of command-obedience from the *parrhesiastic* relation of insubordination and freedom. As Foucault concludes, “...where there is obedience there cannot be *parrhesia*.”²⁴⁰ For Foucault, the intransigence of the “will to not be governed” ensures that there will always be an insubordinate will, defined by the founding act that brings political subjectivities into existence: the act of insubordination. In this way, insubordination – itself understood as a practice of freedom – would thus become the *actual* work of critique.

In the following Chapter, I seek to apply the analysis of police as a set of political technologies to Foucault’s history of governmentality. To this end, I examine Foucault’s claims regarding police and bio-power in Ancient Greece. Through an analysis of police as *politeia*, I uncover a military-pastoral technology based on the relation between leaders [*hegemon*] and followers [*epistatae*]. This military-pastoral technology, I claim, will be developed into a form of political technology that can be traced to Ancient Sparta and the early American Republic. It will

²³⁹ Michel Foucault, ‘What is Critique’ in *The Politics of Truth* (LA: Semiotext(e). 2007) 47

²⁴⁰ Michel Foucault. *The Courage of Truth: Government of Self and Others II: lectures at the College de France 1983-84* (New York: Palgrave Macmillan 2012)

constitute, first, the military relations between *commander* and *soldier* and, second, the political relations between *leader-follower*, and between governor-governed. In this way, I seek to extend Foucault's trans-historical critique of pastoral modes of subjectivity and authority, and uncovering alternative modes of anti-pastoral subjectivity.

CHAPTER THREE

Foucault and Ancient police

“Everyone knows the outstanding obedience of the Spartans to their rulers and laws...they think that if they set an example of exaggerated obedience the rest will follow...They realized that obedience was of vital importance in the city, in the army and in the home...by watching each man’s conduct they exercise a restraining hand on all.”

– Xenophon, *The Politeia of the Spartans*

In this Chapter, I seek to apply the analysis of police as a set of political technologies developed in Chapter Two to Foucault’s history of governmentality, beginning with Foucault’s claims about governmentality in Ancient Greece. In the first section, by examining Foucault’s remarks on “The Political Technology of the Individual”, I trace his analysis of police to Hegel’s analysis of police as *politeia*. In the second section, I uncover a military-pastoral technology in the notion of *politeia*, a kind of male-dominated form of military-political life. In the final section, I seek to show how this military-pastoral technology is developed in Ancient Sparta, and suggest several avenues of research into the various ways that a military-pastoral technology has been developed in modern life.

Foucault, Hegel and *Polizei*

In May of 1973, Foucault gave a series of lectures at the Pontifical Catholic University in Rio de Janeiro titled ‘Truth and Juridical Forms’.²⁴¹ In those lectures, Foucault traces the emergence of “disciplinary society” as the condition of possibility of industrial capitalism in Europe. In that lecture, we get the suggestion that, in order to understand disciplinary society –

²⁴¹ Michel Foucault. ‘Truth and Juridical Forms’ in *Foucault: Essential Works, 1954-1984, VOL. 3, Power*. James Faubion (ed). (New York: New Press, 2000)

and thus the condition of possibility of capitalist society - we must first understand the development of the various technologies of social control he refers to there as police. This leads Foucault to give a short genealogy of police from 16th century religious and moral police to 17th and 18th century moral police to the *etatisation* of police in the state apparatus of 19th century England and France. Foucault's claim in that lecture is that the technologies of social control (police) developed from religious communities and moral societies of the 17th and 18th century respectively were eventually appropriated by the state administrative apparatus (*etatisation*) in order to protect the emerging accumulation of industrial and agricultural wealth and to prevent theft and control peasant revolts. This disciplinary analysis of police, drawing upon Marx's analysis and prefaced by Foucault in his 1963 History of Madness, remains relatively unmodified until the early 1970s. As I show in Chapter Five, Foucault's visit to Attica prison in 1972 changed his conception of police and the function of confinement in contemporary society. The visit to Attica prison would lead Foucault on a much more rigorous study of Enlightenment theorists of police such as Colquhoun, De LaMare, von Justi, Huhenthal, Turquet and Botero. Foucault's visit to Attica would lead him to revise his previous analysis of police, a project that would lead him directly to bio-politics and pastoral power, immediately thereafter, to the study of the emergence of liberalism, governmentality and, finally, to his unfinished project on the political technologies of modern political rationality.

By the time Foucault is giving his lectures on Security, Territory, Population, Foucault's analysis of police as it appears in The History of Madness and "Truth and Juridical Forms" has been significantly overhauled. In particular, his analysis of police as it appears in "Truth and Juridical Forms" represents a transition point between Foucault's previous analysis of police as a mechanism of social exclusion and confinement, and his later expanded conception of police as a

form of biopower, both administering and ‘eliminating’ threats to the purity, health and well-being of the population. Foucault’s analysis will thus be transformed, first through his visit to Attica prison (Chapter Five), and subsequently through his reading of Enlightenment theorists of police, his discovery of bio-politics, and then again through studying ‘the framework of bio-politics’, namely liberalism and the ‘art of government’. Indeed, as late as 1982 in a seminar on “The Political Technologies of Individuals”, Foucault will define biopolitics in terms of police, writing that police “...wields its power over living beings as living beings, and its politics, therefore, has to be a biopolitics.”²⁴² In this sense, police for Foucault will be re-formulated as not only contemporaneous with the emergence of liberalism, but with the emergence of ‘bio-politics’ as such, in that “...the true object of the police becomes, at the end of the eighteenth century, the population.”²⁴³ Biopolitics in fact will first appear as a form of police, *Medizinische polizei*.²⁴⁴ In fact for the post-1977 Foucault, police understood in the 18th century will not only share the same objects of liberal government - namely the objects of the population and the milieu – but police will also constitute an essential element in the entire “era of governmentality” in which we still live up to the present. Just as police is itself a bio-politics, police will constitute one of the central and permanent features of modern, political rationality. State police power, in Foucault’s final analysis, will present itself in liberal government as a natural element within the milieu of the population, while also constituting the non-juridical, ethical power of the State over the lives and populations of a nation.

²⁴² Foucault, ‘The Political Technology of Individuals’, 416

²⁴³ *ibid*

²⁴⁴ Michel Foucault. *Securite, territoire, population*, Annuaire du College de France, 78e annee, Histoire des systemes de pensee, annee 1977-1978, Dits et Ecrits Tome III texte n 255, pp. 445-449

Here an objection could be raised that liberalism, in Foucault's own analysis, dispenses with police rationality beginning with the 18th century Physiocratic critique of the policing of grains that Foucault documents in the lectures on The Birth of Biopolitics. The emergence of an "economic liberalism", this objection might go, restrains itself as an *internal* limitation of government, replacing disciplinary state policing of economic, social and moral processes with 'mechanisms of security' that act not in the domain of 'behavior' but in the domain of 'nature'.²⁴⁵ Whereas police, it might be said, is modeled on the logic of discipline and permanent regulation, liberal procedures of government are modeled on the logic of security which "allows things to happen" in the natural processes of the law, market, society, and population, while seeking a principle of equilibrium that maximizes the general utility of each and all²⁴⁶. Police, it might be objected, governs through the principle of discipline and centers on the body, whereas liberalism governs through the principle of utility and centers on population.²⁴⁷ As a result, liberal mechanisms of security, one might object, are simply incompatible with police rationality' in Foucault's analysis.

This objection, which seems to lay at the basis of several misunderstandings of Foucault's analysis of liberalism and police, is based I believe on a fundamental misconception about what government entails for Foucault, as well as a lack of attention to Foucault's re-working of the notion of police post-1973. In the following Section, I will show that government for Foucault not only relies upon police technologies of discipline and control²⁴⁸, but in his final

²⁴⁵ Foucault, *Security, Territory, Population*, 47

²⁴⁶ Foucault, *Security, Territory, Population*, 45

²⁴⁷ Foucault, *Security, Territory, Population*, 11

²⁴⁸ Indeed for Foucault, the disciplinary techniques of police will become more necessary with the emergence of government, and will also rely upon the juridical technologies of sovereignty in order to govern populations. Foucault, *Security, Territory, Population*, 107-8

analysis police is in fact an indispensable element in the emergence and exercise of bio-politics and liberalism, and should be understood as the non-judicial, unlimited power of the State over the lives and populations of a nation. By showing that police for Foucault, in his final analysis, constitutes a political technology of the individual utilized by liberal government, I hope to show how police constitutes one the fundamental elements even and especially within the “frugal government” of the early American republic.

In addition, by situating police as a political technology of the individual within Foucault’s own history of pastoral power, this will allow me to investigate and develop in my own way the ancient origins of police rationality in the idea of the “military pastorship”. Developing the idea of police [*politeia*] through the military pastorate, in turn, will allow me to illuminate the ways in which notions of military conduct, discipline and leadership came to shape ideas about political authority, legitimacy and power in the early American Republic. It will also illuminate more clearly the ways in which, in Foucault’s own history of governmentality, police constitutes a central and indispensable element in liberal government, even and especially in the frugal government of the early American *politeia*, understood as a military-economic pastorate.

In Chapter Three, I trace the modern political pastorate of police through Hegel’s analysis of *polizei* to the Greek derivative of *politeia*, situating the latter within Foucault’s history of governmentality as an ancient political technology of the individual exercised through ‘the ethical community’. Examining Plutarch’s *De Unius De Republica Dominatione*, I trace *politeia* to the *bios kai andros politikon*, the life of the political man (male), the orderly conduct of citizenship, and the notion of the *hegemonion*, the leader of military formations such as *epagoge*. I then turn to Xenophon’s *Lacedaemonion Politeia* where *politeia* refers to the conduct of

Spartan discipline and military way of life as handed down by the law-giver Lycurgus. Finally, I trace the term *epagoge* from a 2nd century AD text on military tactics by Aelian to Aristotle's transformation of *epagoge* as an epistemological term, based in the idea that knowledge is a kind of following [*epistatae*] of exemplary military leaders [*hegemonion*]. Aristotle's modeling of universal knowledge and experience on military conduct and discipline [*epagoge*], I argue, generalizes the nature of all human experience [*empeiria*] on the model of the particular *bios kai andros politikon* that defines the male-dominated politico-military life of a *politeia*, conflating 'experience' with male-dominated politico-military life. It is this conflation of the nature of human experience with the art of a 'military pastorate' that serves as the basis of the idea of *politeia*: a uniform way of life and conduct characterized by leaders [*hegemonion*] and followers [*epistataes*]. Through a genealogy of *politeia*, I define police rationality as the ethical power of the State over the lives of individuals, whose scope cannot be defined. This genealogy of *politeia* as the root of police shows, against Foucault, that a form of political pastorate existed but in Ancient Greece, one which we might refer to it as the birth of bio-politeia, a pastoral technology of "military pastorship".

Chapter Four begins by noting that Benjamin Franklin was widely referred to by his French officials and admirers as 'the Lycurgus of the new Sparta', referring to his role in manufacturing the American *Politeia*. This leads me to an investigation of the role of police (understood now as a kind of military pastorate) in the liberal political philosophy and economy of Benjamin Franklin. Drawing upon Franklin's *Papers*, letters, memoirs and correspondence, I show how Franklin drew upon many theoretical and practical police resources in his attempts to create perfect, orderly institutions and regimes of conduct that would reform the daily habits and

lives of individuals²⁴⁹. The distinct form of *politeia* that Franklin sought to produce in useful citizens utilized various political technologies of the individual such as the penitentiary, the hospital, public health schemes, temporary work contracting for the poor, military experience, and techniques of the self. The documentation of these political technologies of the individual, I claim, is a much needed addition to the dearth of literature on police in the early republic, and in particular in Foucault's own history of liberalism and bio-politics. In this way, I seek to correct the perception one gets from reading Foucault's The Birth of Biopolitics that Franklin was a proponent and practitioner of "frugal government" and was opposed to European techniques of police and reason of state. In doing so, I seek to show that Benjamin Franklin, contrary to Foucault's analysis, should be understood as a proponent and practitioner of a uniquely American form of police.

Such a genealogy likewise draws attention to the relation between police and republican ideals of civic virtue, conduct, and citizenship that bind and integrate the individual into the mechanisms of the city, nation or state. However, a genealogy of police through the lens of *politeia* will seek to show how republican political technologies of the individual are in fact part of a specific form of military pastorate developed from ancient conceptions of the "hegemon" or military commander as law-giver (e.g. Lycurgus) and his followers [*epistateia*]. By tracing the notion of *politeia* to ancient texts on politics and military tactics, such a genealogy will hope to show how a certain technology of military pastorate was developed from ideas about military tactics and knowledge being the foundation for understanding and ruling the political domain. It

²⁴⁹ Here I trace Franklin's conception of police to Montesquieu's *Spirit of the Laws*, where *la police* is the branch of administration charged with 'correcting' and 'reforming' the daily habits and lives of individuals, as opposed to the branch of law which is charged with punishing. Thus the role of *la police* is to prevent wrongs through discipline, whereas the role of law is to right wrongs through punishment. In this sense, *surveilleur et punir* ('Discipline and Punish') could easily be understood as the respective functions of 'police and law'.

will show how ‘politics’ was first modeled on the art of war, and thus demonstrate how a certain kind of political knowledge was constituted through the production of a certain art of discipline. The development of this military pastorate would in turn inform American founders like Franklin and Jefferson in their attempt to govern through “law and police”, the latter conceived as a task for themselves as founders and governors of the American *politeia*. This analysis of police rationality in the early Republic, I claim, illuminates the continuities between Enlightened liberal governmentality and the Mercantilist “police state”, correcting the assumption in governmentality studies that police is not a major technology of power in liberal government.

While Foucault claimed that bio-power, as a form of political pastorate, did not exist in Ancient Greece, he did take the view, following Hegel, that the Ancient “ethical community” [*sittlichkeit*] constituted a kind of “political technology of the individual”, an ancient form of police. In this section, I trace Foucault’s conception of police in his Tanner Lectures to Hegel’s analysis of *politeia* as the origin of the modern *polizei*. Through an examination of *politeia* in ancient political and military literature, I uncover a military-pastoral technology, founded on the relation not between shepherd-flock, but between leader [*hegemon*] and follower [*epistatae*]. I suggest two forms that a military-pastoral technology has taken shape, both in the *politeia* of the Spartans and in the early American Republic. This line of inquiry, I conclude, would not only suggest that a political pastorate existed in Ancient Greece, but would also force us to reconsider modern forms of police through the lens of a military-pastoral technology.

In the first section, I clarify Foucault’s claims that a form of political pastorate, including modes of bio-power, did not exist in Ancient Greece. In doing so, I raise the tensions these claims produce in light of his suggestion that the “ethical community” constituted a kind of “political technology of the individual”, or a technology of police. In the second section, I trace

Foucault's conception of police to Hegel's analysis of *politeia* as the origin of *polizei*. In the third section, I trace *politeia* through political and military literature of Ancient Greece and uncover what I call a military-pastoral technology. I conclude by suggesting two directions that a genealogy of military-pastoral technologies might take, one directed to the Spartan *politeia* and another to the early American Republic.

In 1982 Foucault delivered a lecture at the University of Vermont that was to become part of a new book he wished to develop on the 'technologies of the self'.²⁵⁰ This seminar lecture, titled "The Political Technology of Individuals", is a more thorough investigation of modern political reason through an analysis of police rationality. Distinguishing a study of the "technologies of the self" which constitute identities through ethical techniques applied to the self, Foucault announces that, "(T)here now is another field of questions I would like to study: the way by which, through some political technology of individuals, we have been led to recognize ourselves as a society, as a part of a social entity, as a part of a nation or of a state."²⁵¹ In this project then Foucault was primarily concerned with a specific technique of power developed in Western societies whose function is the integration of the conduct of individuals into the mechanisms of the city and/or nation-state. This would be a genealogy of police technologies, understood as 'the specific techniques by which a government in the framework of the state was able to govern people as individuals significantly useful for the world.'²⁵²

This genealogy of police technologies would be a continuation of his analysis of the history of governmentality that began with his lectures at the College de France in 1977-78 on

²⁵⁰ Michel Foucault. 1988. *Technologies of the Self: A Seminar with Michel Foucault*. University of Massachusetts Press, 3

²⁵¹ Michel Foucault. 'The Political Technology of Individuals' in *Essential Works of Foucault: 1954-1984, Vol. 3, Power*. James Faubion Ed. New York: New Press, 404

²⁵² Foucault, 'The Political Technology of Individuals', 410

Security, Territory Population and the Tanner lectures delivered at Stanford in 1979. In the latter, Foucault traces the political technologies of the individual to the Hebraic shepherd-ruler, the Christian pastorship, and finally the modern secular pastorate of police. For Foucault, the techniques of Christian pastorate became slowly integrated into the political apparatus of the modern state of the 16th century, giving birth to modern police government whose task will be integrating the individual into the utility of the state²⁵³ by improving the lives of and ensuring the happiness and health of citizens.²⁵⁴ Foucault traces the emergence of modern political rationality, which he defines as the fusion of the modern theories of *raison d'Etat* and *police*. Speaking of the role of the individual within this emerging political rationality, Foucault remarks that

the individual becomes pertinent for the state insofar as he can do something for the strength of the state... what is in question here is only political utility. From the state's point of view, the individual exists only insofar as what he does is to introduce even a minimal change in the strength of the state, either in a positive or in a negative direction. It is only insofar as an individual is able to introduce this change that the state has to do with him. And sometimes what he has to do for the state is to live, to work, to produce, to consume; and sometimes what he has to do is die.²⁵⁵

Just before going on to analyze the modern political technology of police [*polizei/la police*] Foucault states that “(A)pparently, those ideas are similar to a lot of ideas we can find in Greek philosophy. And, indeed, reference to Greek cities is very current in this political literature of the beginning of the seventeenth century.”²⁵⁶ Foucault, by way of contrast, then remarks that in in the Greek city-state the individual was also integrated in the state's utility but through ‘the

²⁵³ Foucault, ‘The Political Technology of Individuals’, 409

²⁵⁴ Foucault, ‘Omnes et Singulatim: Towards a Critique of Political Reason’ in *Essential Works of Foucault: 1954-1984, Vol. 3, Power*. James Faubion Ed. New York: New Press, 322-23

²⁵⁵ Foucault, ‘The Political Technology of the Individual’, 409

²⁵⁶ Foucault, ‘The Political Technology of the Individual’, 409

form of the ethical community.”²⁵⁷ In contrast to this ancient form of political technology, Foucault claims, modern political rationality obtains the integration of individuals into the state’s utility “...by a certain specific technique called then, and at this moment, police.”²⁵⁸

Thus Foucault claims that there existed in the Greek city-state a form of political technology of the individual, but that this was exercised through the form of the ethical community and *not* in the pastoral form of the “shepherd-ruler”. For Foucault, Plato’s *Statesman* shows how Plato entertained and rejected the notion of the ruler as shepherd of a population or flock. Plato’s *Statesman*, for Foucault, is the definitive articulation of the Greek separation of the *ethical* shepherding of the community and the political ordering of the city. For Foucault, the idea of the shepherd was restricted to the ethical community in the form of the physician, the farmer, the gymnasiarch, and the pedagogue.²⁵⁹ In the Greek city-state, then, Foucault says that Plato maintained that “...the men who hold political power are not to be shepherds. Their task doesn’t consist in fostering the life of a group of individuals. It consists in forming and assuring the city’s unity...the pastoral problem concerns the lives of individuals.”²⁶⁰ Indeed, according to Foucault, nowhere in Greek political literature does there appear the idea of the politician or statesman as someone who is or ought to be concerned with leading or guiding the daily lives and habits of individuals. The politician-statesman in Greek society, for Foucault, is concerned not with the “everyday life and habits” of citizens that Christian pastorship and police rationality would become obsessed with; rather, Foucault argues that “...the idea of the deity, or the king, or the leader, as a shepherd followed by a flock of sheep wasn’t familiar to the Greeks and

²⁵⁷ Ibid

²⁵⁸ Ibid

²⁵⁹ Foucault, ‘Omnes et Singulatim’, 306

²⁶⁰ *ibid*

Romans.” Pastoral power, according to Foucault, did not exist in Greek political thought. Greek political life centered on the ‘city-citizen’ game, while the ‘shepherd-flock’ game was restricted to ethical life. The politician-statesman in Greek political life, Foucault claims, was not concerned with the everyday life and habits of its citizens. In short: there was no *political* pastorate such as biopower or police in Ancient Greece.

Foucault reiterates his claim about the absence of a political pastorate in Ancient Greece in his 1978 lectures at the College de France. In those lectures, Foucault distinguishes “the art of politics” and the politician from the technology of pastoral power and the shepherd. According to Foucault, the art of politics in Greek thought “...is not concerned with everything overall, as the shepherd is supposed to be concerned with the whole flock.”²⁶¹ For Foucault, the art of the Greek politician-statesman is entirely distinct and separate from the technology of the pastorate and the shepherd. Foucault claims that for the Ancient Greeks, the pastoral technology of the shepherd is distinct and separate from the art of the politician in that , “...the essence of the political , or the politician’ will be ‘to join together’, to ‘bind the elements together, the good elements formed by education; he will bind together the virtues in their different forms...he will weave and bind together different contrasting temperaments, such as, for example, spirited and moderate men; and he will weave them together thanks to the shuttle of a common opinion.”²⁶² In Foucault’s account, the politician-statesman concerns himself not with an individual care for the everyday health, happiness and conduct of citizens; he is not concerned with the small, “trifling” things of individuals’ lives and their conduct. For Foucault, these minor activities that concern the life,

²⁶¹ Michel Foucault. 2007. *Security, Territory, Population: Lectures at the College de France, 1977-78*. New York: Palgrave Macmillan, 145

²⁶² Foucault, *Security, Territory, Population*, 146

habits and conduct of individuals are the province not of the politician-statesman but rather the concern of the various pastoral figures of the shepherd. Indeed,

if there is a pastorship, according to him [Plato] it can only be in minor activities that are no doubt necessary for the city-state, but that are subordinate with respect to the political order, such as the activities of, for example, the doctor, the farmer, the gymnast, and the teacher. All of these may in fact be likened to a shepherd, but the politician, with his particular and specific activities, is not a shepherd.²⁶³

Foucault sums up his argument in the *15Feb* lecture by saying that a specifically *political* form of pastoral power does not exist in the form of the Ancient Greek city-state²⁶⁴, and ‘really only begins with Christianity’.²⁶⁵ However, this intertwining of pastoral and political power in the Christian pastorate will not constitute a complete fusion of the art of politics and pastorship, but rather only the beginning of a process whereby the two forms of rationality begin to become intertwined. Thus, Foucault claims, pastoral power, “...its form, type of functioning, and internal technology, remains absolutely specific and different from political power, at least until the eighteenth century.”²⁶⁶ Indeed, it will not be until the emergence of police and biopower in the eighteenth century that pastoral power will be fully inserted into the political apparatus as the secular instruments of the modern state. Police power and biopower, as forms of secular pastoral power, therefore represent for Foucault the culmination of a process whereby a specifically *political* pastorate begins to emerge in the Christian pastorate that concerns itself with the everyday life and conduct of individuals.

Foucault’s denial of the existence of a political pastorate in Ancient Greece is also intimately related to his insistence that biopower did not exist in Ancient Greece. In *The*

²⁶³ Foucault, *Security, Territory, Population*, 146

²⁶⁴ Foucault, *Security, Territory, Population*, 147

²⁶⁵ Foucault, *Security, Territory, Population*, 147-8

²⁶⁶ Foucault, *Security, Territory, Population*, 154

History of Sexuality, Vol. 1 Foucault distinguishes the sovereign right of the *patria potestas* from the biopolitical right to foster life and disallow it. According to Foucault, sovereign power has both a modern and ancient form, the former residing in the juridical notion of the Sovereign and his subjects and the latter residing in the right of the *paterfamilias* to dispose of the life of his children and his slaves.²⁶⁷ For Foucault, the ancient form of sovereign power is absolute and unlimited in its right over life, whereas the modern form of sovereign power is ‘relative and limited’ by the natural rights of the individual and the right of self-defense of the Commonwealth.²⁶⁸ However, these forms of power are both *sovereign* forms of power because

In any case, in its modern form - relative and limited - as in its ancient and absolute form, the right of life and death is a dissymmetrical one. The sovereign exercised his right of life only by exercising his right to kill, or by refraining from killing; he evidenced his power over life only through the death he was capable of requiring. The right which was formulated as the ‘power of life and death’ was in reality the right to *take* life or *let* live.²⁶⁹

For Foucault, the essence of sovereign forms of power lies in the manner in which it is exercised “deductively” (*prelevement*) as ‘a right to appropriate a portion of the wealth, a tax of products, foods and services, labor and blood, levied on the subjects. Power in this instance was essentially a right of seizure: of things, time, bodies, and ultimately life itself’.²⁷⁰ Whether exercised through the juridical being of the *paterfamilias* or the Sovereign, sovereign power’s relation to life was essentially a negative. In contrast, Foucault claims that a new form of power emerged in the 17th century which is no longer negative or deductive but rather exerts “...a positive influence on life,

²⁶⁷ Michel Foucault. ‘The Right of Death and Power Over Life’ in *The Foucault Reader*, Paul Rabinow Ed. (New York: Pantheon Books, 1984) 258

²⁶⁸ Foucault, ‘The Right of Death and Power Over Life’, 258

²⁶⁹ Foucault, ‘The Right of Death and Power Over Life’, 259

²⁷⁰ Foucault, ‘The Right of Death and Power Over Life’, 259

that endeavors to administer, optimize, and multiply it, subjecting it to precise controls and comprehensive regulations.”²⁷¹ This new form of modern power, Foucault maintains, is not the mobilization of the negative, sovereign ancient right to kill but rather the invention of a positive, productive power that is exercised “...at the level of life, the species, the race, and the large-scale phenomena of population.”²⁷² Thus the sovereign form of power that began with the ancient *patria potestas* was eventually replaced “...by a power to *foster* life or *disallow* it to the point of death.”²⁷³ This was to be the emergence of biopower.

For Foucault, biopower emerged “(I)n concrete terms, starting in the seventeenth century’ in two distinct forms: an anatomic-politics of the body focused on discipline, utility and economization and a bio-politics of the population focused on the calculated management of life.”²⁷⁴ For Foucault, these forms of power were indispensable elements for the development of capitalism in the 18th century, ensuring that the accumulation of men and the explosion of population would become compatible with the accumulation of capital. The exercise of bio-power in both of these forms, Foucault claims, allowed the expansion of capitalist modes of production and the differential accumulation of profit. However, referencing Weber’s thesis on the role of Weber’s The Protestant Work Ethic, Foucault claims that the emergence of bio-power in its various forms should not be confused with the “new morality” of the capitalist work ethic. Foucault writes, “...what occurred in the eighteenth century...was a different phenomenon, having perhaps a wider impact than the new morality; this was nothing less than the entry of life into history, that is, the entry of the phenomena peculiar to the life of the species into the order of

²⁷¹ Ibid

²⁷² Foucault, *Right of Death and Power Over Life*, 260

²⁷³ Ibid

²⁷⁴ Foucault, *Right of Death and Power Over Life*, 261

knowledge and power, into the sphere of political technique.”²⁷⁵ Foucault then claims that this entry of life into political techniques represented the emergence of a new sort of *political* consciousness about the utility of life itself that did not exist prior to the 18th century. Indeed he claims that “(F)or the first time in history, no doubt, biological existence was reflected in political existence” and that “(F)or millennia, man remained what he was for Aristotle: a living animal with the additional capacity for a political existence; modern man is an animal whose politics places his existence as a living being in question.”²⁷⁶ With the emergence of biopower, politics will now for the first time in history draw upon political technologies that invest ‘the body, health, modes of subsistence and habitation, living conditions, the whole space of existence.’²⁷⁷ Thus Foucault is clear: bio-power, as a form of power to *foster* life or *disallow* it, did not exist in Ancient Greece and only developed in the 17th century with the development of capitalism and the economic-political problem of “population”.

These claims, however – that political forms of pastorship including biopower did not exist in Ancient Greece - present Foucault with a problem, since he also claims that a “political technology” of the individual did exist in the Greek city-states “in the form of the ethical community”. Because he does not specify exactly how the ethical community constituted a form of political technology of the individual, we are left unclear about which elements of the Greek “ethical community” he means to refer to, or what this could mean exactly. However we are led to rule out as elements of ancient “political technology” the roles of ethical shepherding that appear in the *Statesmen* as allegedly “non-political”: the physician, the farmer, the gymnasiarch,

²⁷⁵ Foucault, *Right of Death and Power Over Life*, 264

²⁷⁶ Foucault, *Right of Death and Power Over Life*, 265

²⁷⁷ *ibid*

the pedagogue. If Foucault is consistent here, then these ethical forms of shepherding cannot be thought of as part of a political technology of the individual, since for Foucault the idea of a *political* shepherding did not exist in Greek political thought - and when it was discussed by Plato, it was roundly rejected. Therefore we are left wondering exactly what elements of the ethical community constitute for Foucault an ancient political technology of the individual, if not the daily exercises and practices of Greek social life that shaped the daily life, health and happiness of individuals.

Thus we should ask whether Foucault is correct in claiming that Greek politician-statesmen were not concerned with “the everyday life and habits” of individual citizens, the very stuff of pastoral (and police) power. This is an important point for Foucault, because it amounts to the claim that in Greek societies there did not exist any form of *political pastorate*, such as police power or biopower. Foucault is clear that the aforementioned forms of power could only have developed in societies where the “shepherd-flock” game had become an explicitly *political* concern of an art of government which has discovered the economic-politico phenomena of population. Police and biopower, according to Foucault, are therefore strictly modern political technologies which depend upon the emergence of certain epistemological objects such as population, society and the market which become objects of *political* calculation for the State. For Foucault, police and biopower signal the emergence of an explicitly political pastorate concerned with the everyday life and habits of individuals as instruments for the utility of the State.

However, if it was discovered that there did in fact exist a kind of political pastorate in ancient Greek society, we would be forced to revisit our notions that police power and biopower are exclusively modern phenomena. This would not invalidate Foucault’s observations about the

epistemological objects that underwrite the *modern* political pastorate (population, market, society, etc), but rather it would force us to search for new epistemological objects that underwrite the ancient form of political pastorate. In addition, discovering the ways that a political pastorate is exercised in Ancient Greek societies might also help to clarify Foucault's remark that a "political technology" of the individual did in fact exist in Ancient Greece in the form of "the ethical community". However, since Foucault seems to situate political technologies of the individual as first and foremost technologies of *police*, the discovery of an ancient political technology of the individual would allow us to speak of an ancient form of police. In this way, the historical investigation of the political pastorate in Ancient Greece will illuminate Foucault's unfinished project of analyzing the origins of political rationality, as well as resolve issues regarding his claims about the origins of pastoral and police rationality.

If we look carefully at Foucault's remarks on the nature of political technologies of the individual, and the possible meaning of the "ethical community" in Greek political thought, we find a striking connection in Hegel's analysis of *polizei* and *Sittlichkeit*. For Hegel, the branch of the public authority he refers to as *polizei* is the ethical power of the State acting upon civil society to provide oversight and provisions for individual welfare within the system of needs. In Hegel's The Philosophy of Right, *polizei* is thus responsible for preventing crime, providing for the contingencies of the market that produce poverty (public welfare), limiting the encroachment of individual liberty upon the general welfare, as well as for all the unknown contingencies that could potentially harm the security and well-being of individuals. Thus for Hegel, *polizei* is essentially an ethical power of the State acting upon civil society, but as, "...an external order and arrangement for the protection and security of the masses of particular ends and interests which have their subsistence [*Bestehen*] in this universal; as the higher guiding authority, it also

provides for those interests which extend beyond the society in question.”²⁷⁸ As the “higher guiding authority” over civil society, *polizei* concerns itself with the protection and security of all particular individuals within civil society, “...with the result that *the ethical returns* to civil society as an imminent principle”²⁷⁹. Thus for Hegel, *polizei* is in fact the ethical power of the State concerning all individuals that derives its authority *not* from internally to civil society; that is, its authority is *not* founded or derived from the consent of individuals internal to civil society. *Polizei*, for Hegel, thus partly derives its authority over individuals in its claim to universality, as an ‘*external order*’ to the particular society which it supervises. *Polizei*, therefore, does not derive its authority from the internal order of civil society; rather, for Hegel it constitutes the supervisory, provisionary and preventative ethical power of the State whose authority derives externally to civil society, instead from its claim to universality as such.

Since this higher ethical guiding power of the State derives its authority externally to civil society, the scope of *polizei* then becomes particularly problematic for Hegel. For Hegel, defining the scope of *polizei* becomes subject to intractable difficulties because, reflecting on the nature of crime, contingency and the logic of prevention, it is especially difficult to specify *a priori* the limits of police authority and control over individuals. Since *polizei* is concerned with the security of every individuals’ particular well-being²⁸⁰, and potential wrongs or harm done to individuals are by definition indefinable and subject to contingency and the demands of expediency, then it follows that *polizei* must have authority over events, harms and wrongs that are indefinable in nature and cannot be specified in advance. Thus, because the nature of

²⁷⁸ Georg Wilhelm Friedrich Hegel. *Hegel's Philosophy of Right*. Knox, Thomas Malcom Ed. (Oxford University Press, 1973, P249

²⁷⁹ Hegel, *The Philosophy of Right*, ¶249

²⁸⁰ Hegel, *The Philosophy of Right*, ¶230

potential harm or wrong cannot be specified *a priori*, then the scope of police power cannot (and indeed *ought* not) be objectively limited or circumscribed. For Hegel, this problem surrounding *polizei* is just as ethical a question as an epistemological one. Hegel writes

The relations of external reality occur within the realm of the infinity created by the understanding, and have accordingly no inherent limit. Hence, as to what is dangerous and what not, what suspicious and what free from suspicion, what is to be forbidden, or kept under inspection, or pardoned with a reprimand, what is to be retained after pardon under police supervision, and what is to be dismissed on suspended sentence, no boundary can be laid down. Custom, the spirit of the constitution as a whole, the condition of the time, the danger of the moment, etc., furnish means for a decision.²⁸¹

Hegel continues in the Addition struggling with the problems of the police power, calling attention to the tension between its duty of ethical oversight of individuals and the unlimited power it wields over individuals' lives as an external order of State power. Indeed, when speaking of *polizei*, Hegel writes

No fixed definition can here be given, or absolute boundary drawn. Here everything is personal and influenced by subjective opinion. To the spirit of the constitution or the danger of the times are due any more decisive characteristics. In time of war e.g., many things morally harmless are looked on as harmful. Because of the presence of this aspect of contingency and arbitrary personality the police are viewed with odium. They can by far-fetched conclusions draw every kind of thing within their sphere; for in anything may be found a possibility of harm. Hence the police may go to work in a pedantic spirit, and disturb the moral life of individuals. But great as the nuisance may be, an objective limit to their action cannot be drawn.²⁸²

Thus for Hegel, *polizei* refers to the ethical power of the State for the supervision of and provision for individuals, whose scope or limits cannot and *should* not - because of its very nature - be objectively specified.

Hegel then clearly recognizes the intractable problems with *polizei*, and his attempts to come to terms with the nature and role of police in the ethical life of individuals can be seen in

²⁸¹ Hegel, *The Philosophy of Right*, ¶234

²⁸² Hegel, *The Philosophy of Right*, ¶249 Add.

his debate with Fichte. In his *Lectures on Natural Right and Political Science*, Hegel criticizes Fichte's conception of the role of police, according to which 'no persons can go without having their identity papers with them, and he deems this very important so as to prevent crimes.'²⁸³ Such a state, Hegel says, "...becomes a galley of slaves where each is supposed to keep his fellow under constant supervision."²⁸⁴ Instead, Hegel writes, "...police supervision must go no further than is necessary", adding that "...though it is for the most part not possible to determine where necessity begins here." However, while rejecting the Fichtean conception of police state as the ever-present visibility of police presence, Hegel writes that "(I)n this respect secret police would be best, for people ought not to see that they are exercising supervision even though such supervision is necessary"²⁸⁵, adding that "...the purpose of what is hidden is...that public life should be free."²⁸⁶ Thus the problem of police for Hegel is one of knowledge and visibility: police supervision should be conducted with as least public knowledge and as least visibility in civil society as possible. Hegel continues in *LNR* by claiming that, apart from a limit that should be set on police supervision of private property, "...no limit can be set within which this supervision must be confined" and that "...a good police force should not be noticed at all, and since it is not seen doing anything, it gains no praise either."²⁸⁷ Thus for Hegel, a good *polizei*

²⁸³ Georg Wilhelm Friedrich Hegel. *Lectures on Natural Right and Political Science: the First Philosophy of Right* Stewart, Michael and Peter Hodgson ed. (Oxford, Oxford University Press, 2012) 212

²⁸⁴ Hegel, *Lectures on Natural Right and Political Science: the First Philosophy of Right*, 212

²⁸⁵ Hegel, Georg Wilhelm Friedrich. *Lectures on Natural Right and Political Science: the First Philosophy of Right*, 212

²⁸⁶ Hegel, Georg Wilhelm Friedrich. *Lectures on Natural Right and Political Science: the First Philosophy of Right*, 212

²⁸⁷ Hegel, *Lectures on Natural Right and Political Science: the First Philosophy of Right*, 213

will operate surreptitiously, invisible to the public eye, without individuals knowing that they are being supervised and “policed”.

It is in this context that Hegel situates *polizei* as the third sphere of civil society, alongside political economy (*Staatsökonomie*) and the legal system (*Rechtsverfassung*), where *polizei* is that sphere of ethical life in where “the universal emerges as such”²⁸⁸. Speaking of the role of *polizei*, Hegel then makes immediate reference to Plato’s *Republic*, where he writes that, “(T)he *Politeia* teaches the form of government of the people. With us ‘the police’ may also mean something universal over against the particular citizen, but this universal has as its end the welfare of individuals as individuals, not, as in the *Politeia*, as a universality.”²⁸⁹ Thus for Hegel, Plato’s *Politeia* serves as an example of an external public power of universality over against the individual, and because of this *politeia* is linked directly to Hegel’s use of *polizei*. The ancient form of police referred to as *politeia* is thus for Hegel a kind of ethical power of the State over individuals, whom it treats not as particular individuals with specific interests and needs, but rather as a universality of homogenous identities. As Bykova explains, the Greek *polis* embodies police rationality on account of the fact that, “(P)eople live bonded by an ethical substance (*sittliche Substanz*), a set of shared practices and standards that undergird Greek social life. The rationality in question has no justificatory value, although it has a practical significance, because it is rational to do things in the customary way.”²⁹⁰ In short, the Greek *polis* for Hegel, according to Bykova, embodies police rationality because it embodies “...a form of social life in which the

²⁸⁸ Hegel, *Lectures on Natural Right and Political Science: the First Philosophy of Right*, 213

²⁸⁹ Hegel, *Lectures on Natural Right and Political Science: the First Philosophy of Right*, 213

²⁹⁰ Marina Bykova. ‘Spirit and Concrete Subjectivity in Hegel’s *Phenomenology*. The Blackwell Guide to Hegel’s *Phenomenology of Spirit*. Westphal, Kenneth ed. (UK: Blackwell Publishing, 2009) 282

individual could achieve his fulfillment in public roles.”²⁹¹ For Hegel, this form of social life in which individuals and the State are reconciled is *sittlichkeit*, or the ancient ethical community. However, the police of ancient *sittlichkeit* for Hegel was deficient in that, in its ethical power over individuals, it neglected individuality and the particularity whereas the modern ethical power of *polizei*, according to Hegel, takes into account the particular needs and interests of individuals through their mediation of all spheres of civil society. It is in this sense that, for Hegel, Plato’s *Politeia* embodies an ancient form of police. The Greek *politeia*, therefore, refers both to the ethical power of the State over against individuals, as well as the ethical substance (*sittliche Substanz*) that binds the common form of life and conduct in a community. *Politeia*, as a form of police rationality, thus presupposes an ethical substance that defines a way of life and conduct – indeed, also *politeia*.

From this examination of Hegel’s analysis of *polizei* and *politeia*, we can now understand Foucault’s remark regarding the political technology of the individual in the form of the Greek ethical community. The political technology of individuals that Foucault claims existed in Ancient Greece in the form of the ethical community can be understood as *politeia*, the form of government Hegel identifies as the origins of modern police power and public authority. The Greek *politeia* is therefore an ancient form of *polizei* for Hegel, as much as it constitutes for Foucault an ancient political technology of the individual. However, in order to better understand how *politeia* constitutes the derivative of police – and thus the source for an ancient political technology of the individual – I turn to an examination of Greek political and military texts which provide the historical and etymological context for the meaning of *politeia* in Ancient Greek thought.

²⁹¹ Marina Bykova. ‘Spirit and Concrete Subjectivity in Hegel’s *Phenomenology*, 282

Politeia, epagoge and the Military-Pastorate

In an early fragment meant as a commentary on Plato's *Republic*, Plutarch focuses on the various meanings of the word *politeia*. In that fragment, titled *De Unius de Republica Dominatione* (sometimes translated simply as 'Monarchy'), Plutarch gives the following five different meanings to the term *politeia*:

1. 'having a share of the rights in a State' (citizenship)
2. the *bios kai andros politikon*, or 'the life of the political man'
3. a 'radiant act' carried out for the public welfare
4. the order and constitution of a State, or "regime" (e.g. monarchy, democracy, or oligarchy)
5. the maintenance of *hegemonion* over the regime ("hegemony")²⁹²

Thus in Plutarch's *De Unius*, *politeia* at the same time refers to the qualifications of citizenship, the *bios andros politikon*, actions preserving the public welfare, the order or stability of the regime, and the maintenance of hegemony over that regime. Here, it is clear that the domain of the State and public authority is defined as the life of the *andros politikon*, a term both distinct to *anthropon* (the human opposition to 'beast') and opposed to *gune*, or 'woman' or wife. Thus *politeia* refers to the domain of male-dominated political affairs that preserves the public welfare and maintains the order of the regime and their (male heads of households) hegemony over it.

Plutarch then tells us that the *dominatio* established by the unity of a *politeia* (*de unius de republica dominatione*) is what best ensures that statesmen maintain *hegemonion*, or hegemony over "those from whom his strength is derived." In order to maintain his hegemony in a democracy, for example – where the many sometimes exert control over the statesman – Plutarch

²⁹² Plutarch. 'De Unius De Republica Dominatione' in *Moralia*, translation by Harold North Fowler (Cambridge, MA: Harvard Univ. Press, 1936) 10

tells us that the statesmen must learn when to loosen the reigns on the people, and when to tighten the reigns. Plutarch writes that the statesmen, “(W)ill also get on well in a democracy with its many sounds and strings by loosening the strings in some matters of government and tightening them in others, relaxing them at the proper time and then again holding fast mightily, knowing how to resist the masses and to hold his ground against them.”²⁹³ The best way therefore to maintain his place as the *hegemon* – literally the Greek term for the leader of a military formation – is to establish a republican *politeia* like the one Plato constructed in the *Republic*, where a class of guardians rule through the art of male-dominated Statecraft (*bios andros politikon*) and others are ruled. The name Plutarch gives to the kind of ideal form of *politeia* just described is *monarkhia*, or “rule by one”. Hegemony therefore is established through the maintenance of a good *politeia*, a regime of conduct modeled on the good military formation, where the *hegemon*, or class of military leaders, rules as sovereign and the flock obeys and follows (*epistatae*). The best way to maintain hegemony in a democratic State, for Plutarch, is thus to establish a republican form of democratic government ruled by male politicians who govern like military commanders, but knowing when to tighten the reigns and when to loosen them.

The term *hegemonion*, on closer inspection, reveals a broader meaning than simply “control” or “domination”. In a 2nd-century text on military tactics dedicated to the Roman Emperor Hadrian, Aelian gives an analysis of the ‘most useful’ branch of military art known as “tactics”. In this text on “The Greek Theory of Tactics”, Aelian begins by asserting the fundamental importance of the science of tactics for governing, placing its utility even as more fundamental than that of law. The science of tactics, according to Aelian,

²⁹³ Plutarch. ‘De Unius De Republica Dominatione’ in *Moralia*, translation by Harold North Fowler. (Cambridge, MA: Harvard Univ. Press, 1936) 10

excels all others in utility, any one may judge; even from what Plato says, in his book *de legibus*; that the Cretan legislator prescribed laws to men, on the supposition that they were ever prepared for hostilities; for that by nature all cities waged a concealed and unavowed war against each other; - and if this be the case, what science can be deemed more superior to that of Tactics, or what book can be more useful, or more necessary, than a work of this kind?²⁹⁴

The justification and rationality for good laws, we are told, is therefore a proper understanding of Tactics, a branch of military art that the author traces first to Homer. Thus, by implication, if we are to understand the art of the law-maker or politician – indeed the art of governing a *politeia* – we must study first the art of Tactics.

Commenting on the significance of Aelian’s treatise on Greek military tactics for understanding the principles of modern government, Augustus remarks that that Greeks considered such knowledge essential to “...the science of political government, the principal feature of which was the perpetuity of the State.”²⁹⁵ By studying the art of tactics as a part of the science of government, the Greeks saw to it that

education became a public duty; men were formed for the State rather than for themselves, and its system embraced as much as the exercise of the body as of the mind; and, above all, a spirit of exclusive patriotism, the nurse of every noble spirit...teaching nations to regard themselves as individual families; to live in union at home, that they might act with vigor abroad.²⁹⁶

The Greeks were able to achieve this, Augustus writes, through the dissemination of political knowledge through philosophers and founders, combined with the discipline of the military art. “To the influence of these sages”, Augustus writes, “...the most finished and elegant personal

²⁹⁴ Aelianus Tacticus, *The Tactics of Aelian: Comprising the Military System of the Grecians*. (London, Cox and Baylis, 1814), 3

²⁹⁵ See also Augustus, Henry. *A Commentary on the Military Establishments and Defense of the British Empire*. (E. Kerby, 1811); and Augustus, Henry. *Discourse Upon the Theory of Legitimate Government*. (Columbia University Press, 1817)

²⁹⁶ Aelianus Tacticus. *The Tactics of Aelian: Comprising the Military System of the Grecians*. (London: Cox and Baylis, 1814) xxvii-xxviii

accomplishments were united with the firmest martial habits.”²⁹⁷ The commentary ends by concluding that

The fall of the Grecian states crushed the most important science which mankind can aspire to obtain – the science of moral government; demonstrated not merely by statistical forms, or peculiar constitutions, which must vary in particular states...but by the habits which are formed, and the relative duties which are practiced by the governors and the governed. After that epoch we scarcely find anything deserving the name of scientific government.²⁹⁸

The “science of moral government”, we are told, was thus lost with the fall of Greece, and consisted in the habits and duties practiced by governors and governed. These habits and duties between governors and governed, for Augustus, can be learned by a study of the art of military tactics, such as Aelian’s treatise or Augustus’ previous *A Commentary on the Military Establishments and Defense of the British Empire* (1811).

Aelian’s text, introduced as “The Grecian Theory of Tactics”, begins by announcing that he will attempt to detail ‘the entire apparatus of war’. We are referred to the commentary on the use of “apparatus”, where we are told that the apparatus of war is a term that applies to all wise governments for the purposes of maintaining internal peace for nations: “(T)he causes of war can never be wanting; but the peace of nations must ever be liable to be disturbed by hostilities; and therefore all wise governments will ever preserve their states in a condition to repel aggression, and to secure their independence. Modern warfare differs in many circumstances from that of the ancients; it is however substantially the same.”²⁹⁹ The apparatus of war, we are told by Aelian, is a necessary feature of all independent, peaceful nations. Tactics, therefore, is the art internal to the apparatus of war that is necessary for the preservation of internal peace of a nation. Thus

²⁹⁷ Aelianus Tacticus. *The Tactics of Aelian: Comprising the Military System of the Grecians*. (London: Cox and Baylis, 1814) xxviii-xxix

²⁹⁸ Aelianus Tacticus, *The Tactics of Aelian: Comprising the Military System of the Grecians*, xxix-xxx

²⁹⁹ Aelianus Tacticus, *The Tactics of Aelian: Comprising the Military System of the Grecians*. 9

again, tactics becomes essential and fundamental, not only for an understanding of law and government, but for the very preservation of internal peace and order in a *politeia*. The apparatus of war, therefore, should be studied as a necessary part of the larger system of “wise government” which ensures internal peace in any independent nation, ancient or modern.

Aelian then give us an account of the minute details of the military conduct of the Emperor Hadrian, to which the treatise is dedicated, and the individualized care, concern and discipline he took with each soldier under his command. A good commander, we are told, he concerned himself not only with the physical health, diet and strength of his followers, but also the ‘moral’ and mental qualities of each soldier, taking into account the degree of bravery, courage, virtue each individual possessed. In the notes, we are given the following extraordinary account of the military conduct of Hadrian from a certain “Spartian”:

Although desirous of peace, he kept his soldiers in such perfect exercise as if war was immediately expected. He taught them by his own example to endure fatigue and the privation of luxuries. He partook of camp-fare; lard, and cheese, in the room of meat; and vinegar mixed with water for drink...He bestowed rewards upon some, and honours upon others, to induce all to obey his order with cheerfulness. He restored military discipline among the Romans, when it had begun to decline through the remissness of some of his predecessors. He regulated the rank and pay of the army. He suffered no one to be absent without leave. He estimated the character of the officers, not by their popularity, but by their military desert. He stimulated his soldiers to exertion, by his own perseverance in the discharge of military duty; often marching twenty miles on foot, completely armed. In the stationary camps, he put an end to all indulgences; he suffered no banqueting-rooms to stand, nor would he allow spacious galleries, or vaulted grottoes. He wore plain garb...He visited, in person, his soldiers in sick quarters. He himself marked the ground for encampments...he regulated the weight and form of their arms, and apportioned the quantity of baggage. He paid particular attention to the age of his men; not permitting any to serve who were too young to bear the fatigues of war, nor any whose age rendered them objects of humanity. He endeavored to gain a personal knowledge of them all, and to ascertain their actual number. He made himself acquainted with all matters in dispute betwixt man and man; and scrutinized the revenues of the provinces, in order to obtain the requisite supplies; at the same time, above-all, he took care that nothing should be purchased, nor any animals fed for the use of the army, which were not absolutely necessary. When his soldiers were thus trained and inured to service, after the example

which he himself set them, he passed into Britain...diving the Romans from the uncivilized people.³⁰⁰

Tactics, for Aelian, thus includes not only knowledge of military formations and organization, but also knowledge regarding the physical, biological medical, mental and “moral power” that goes into constituting and forming a good rank and file of soldiers in every particular battle situation. In this highly detailed account of military conduct, then, we see that the art of tactics in fact encompasses far more than knowledge of military formations and their organization – indeed, the art of tactics involves a knowledge of and acute concern for the health, well-being, discipline, virtue, frugality, and economy of each and all.

For this reason, we are told that the leader of any singular military troop formation must be the best, and is referred to as the *hegemonion*. One of the most basic battle formations, as Aelian describes in the treatise, is called the “right induction”, or the *epagoge*.³⁰¹ At the front is the most brave, courageous and most virtuous, who is called the *hegemon*, flanked in order by his followers, called the *epistatea*. The *epagoge*, the right induction, may only be formed with an *arche*, a first principle or starting point, who takes a stand as the most virtuous, courageous and bravest. Induction, the *epagoge* formation, may only be formed with the constitution of the ideal, virtuous soldier. The formation of an *epagoge*, therefore – just as the knowledge required to master the art of tactics in the manner of Hadrian - necessary includes the study of what constitutes the ideal, courageous and virtuous soldier. The *epagoge* - literally “a bringing-together” in order to defeat an enemy – is therefore a concept for a military formation, a term of war. It applies to the domain of experience known as tactics and refers to the physical, moral,

³⁰⁰ Aelianus Tacticus. *The Tactics of Aelian: Comprising the Military System of the Grecians*. (London: Cox and Baylis, 1814) lv-lvi

³⁰¹ Aelianus Tacticus. *The Tactics of Aelian: Comprising the Military System of the Grecians*. (London: Cox and Baylis, 1814) 101, 129

biological, economical, spatial, and disciplinary constitution of soldiers for the purposes of bringing them together, organizing them and leading them in order to defeat an enemy in battle. The art of tactics thus depends upon the knowledge required to constitute the formation of leaders [*hegemonion*] and followers [*epistatae*]; it refers to the knowledge required to constitute good, healthy, obedient, disciplined, frugal, and strong followers.

The detailed account of the military conduct of Hadrian shows a highly complex form of military pastorship whereby relations of individualized care, discipline and normalization are combined with the art of collective welfare and economy. As a military leader [hegemon] who sets the example for his followers [epistatae], the figure of Hadrian displays a complex ‘military pastorship’ in which mechanisms of individualization are combined with procedures of totalization. The figure of the *epagoge*, the military formation led by an exemplary leader of men, then seems to contradict, or at least provide an exception or correction, to Foucault’s claim that “(T)he idea of the deity, or the king, or the leader, as a shepherd followed by a flock of sheep wasn’t familiar to the Greeks and Romans.”³⁰² Indeed, depending upon our interpretation of what the essential elements of the ‘shepherd-flock’ game are that Foucault specifies in his Tanner lectures³⁰³, we can determine to what extent we are justified in speaking of a “military pastorate”.

In the Tanner lectures, Foucault specifies four essential themes of what he wants to call “the shepherd-flock” game that characterizes the pastoral power he identifies as coming out of the Hebraic tradition and which he does not find in Greek or Roman culture. First, “...the shepherd wields power over a flock rather than over a land”, as opposed to the power wielded by

³⁰² Michel Foucault. ‘Omnes et Singulatim’ in *Power: Essential Works of Foucault, 1954-1984*, Paul Rabinow Ed. (New York: New Press, 2000) 301

³⁰³ Michel Foucault. ‘Omnes et Singulatim’, 301-303

Greek gods or deities over land. Secondly, a shepherd “gathers together, guides, and leads his flock”³⁰⁴, as opposed to the Greek political statesmen who is charged with uniting individuals through written law. Instead, a shepherd “...gather together dispersed individuals. They gather together on hearing his voice...the shepherd’s immediate presence and direct action cause the flock to exist.”³⁰⁵ Thirdly, the shepherd’s role “...is to ensure salvation of his flock, not in a generalized and universal way, but in a matter of ‘constant, individualized, and final kindness...for the shepherd ensures his flocks food; every day he attends to their thirst and hunger.”³⁰⁶ Whereas Greek deities were viewed as providing for general resources of the land like abundant crops, they weren’t asked “to foster a flock day by day” like the shepherd, who “sees that all the sheep, each and every one of them, is fed and saved.”³⁰⁷ Finally, the shepherd’s power, unlike that of the Greek leader, “...implies individual attention paid to each member of the flock”, keeping watch over each and all at once. Pastoral power in this sense then implies that a leader must “...know his flock as a whole, and in detail...not only must he know where good pastures are, the seasons’ laws, and the order of things, he must also know each one’s particular needs.”³⁰⁸

If we compare the figure of Hadrian as the *hegemon* of a military unit of followers, we see striking similarities to the figure of the shepherd wielding pastoral power. First, we see that the *hegemon* wields power first and foremost over men as opposed to land – wherever he goes, his soldiers go. Secondly, not only does a *hegemon* like Hadrian gather together dispersed

³⁰⁴ Michel Foucault. ‘Omnes et Singulatim’, 301

³⁰⁵ Michel Foucault. ‘Omnes et Singulatim’, 302

³⁰⁶ Michel Foucault. ‘Omnes et Singulatim’, 302

³⁰⁷ Michel Foucault. ‘Omnes et Singulatim’, 302

³⁰⁸ Michel Foucault. ‘Omnes et Singulatim’, 303

individuals, but the very term *epagoge*, the military formation Aelian refers to as “right induction”, means literally “a bringing-together”. In fact, before Aristotle’s epistemological appropriation, the term *epagoge* was used as a military term designating a gathering of forces to defeat an enemy in battle. In his history of the Peloponnesian War, Thucydides uses the verb *epagogein* [ἐπαγωγᾶι] to refer to the ‘bringing-in’ of forces in preparation for battle:

... οὕτως ὠμῆ στάσις προυχώρησε, καὶ ἔδοξε μᾶλλον, διότι ἐν τοῖς πρώτῃ ἐγένετο, ἐπεὶ ὕστερόν γε καὶ πᾶν ὡς εἰπεῖν τὸ Ἑλληνικὸν ἐκινήθη, διαφορῶν οὐσῶν ἑκασταχοῦ τοῖς τε τῶν δήμων προστάταις τοὺς Ἀθηναίους ἐπάγεσθαι καὶ τοῖς ὀλίγοις τοὺς Λακεδαιμονίους. καὶ ἐν μὲν εἰρήνῃ οὐκ ἂν ἐχόντων πρόφασιν οὐδ’ ἐτοίμων παρακαλεῖν αὐτούς, πολεμουμένων δὲ καὶ ζυμμαχίας ἅμα ἑκατέροις τῇ τῶν ἐναντίων κακώσει καὶ σφίσι αὐτοῖς ἐκ τοῦ αὐτοῦ προσποιήσει ῥαδίως αἱ ἐπαγωγᾶι τοῖς νεωτερίζειν τι βουλομένοις ἐπορίζοντο.³⁰⁹ (‘So bloody was the march of the revolution, and the impression which it made was the greater as it was one of the first to occur. Later on, one may say, the whole Hellenic world was convulsed; struggles being everywhere made by the popular chiefs to bring in the Athenians, and by the oligarchs to introduce the Lacedaemonians. In peace there would have been neither the pretext nor the wish to make such an invitation; but in war, with an alliance always at the command of either faction for the hurt of their adversaries and their own corresponding advantage, opportunities for **bringing in the foreigner were never wanting to the revolutionary parties.**’³¹⁰

Here the bringing-in [*epagogein*] is specifically associated with both the bringing-in of Athenian forces by military leaders as well as the bringing-in of *the foreigner* for the purposes of recruiting them for defeating an enemy. In both cases, *epagoge* is a central and necessary part of what Aristotle calls strategy in war, whose final end is victory. *Epagoge* here is understood as a strategic accumulation of forces in rational preparation for battle. The same holds true for a text by Procopius (1914-1928) titled *De Bellis* describing the Persian invasion of the Romans. In that text, Procopius tells of the Persian general, “(A)nd bringing up [ἐπαγαγῶν] the whole army there, he opened the action [τό τε στράτευμα ὅλον ἐνταῦθα ἐπαγαγῶν ἔργου εἶχετο] commanding all to

³⁰⁹ Thucydides. *Historiae in two volumes*. (Oxford, Oxford University Press, 1942) Book III, Ch. 2. Perseus Digital Library, accessed 10/3/2014

³¹⁰ Thucydides. *The Peloponnesian War*. (London, J. M. Dent Trans. New York, E. P. Dutton. Book, 1910) III, Ch. 2. Perseus Digital Library, accessed 10/3/2014

shoot with their bows against the parapet. The Romans, meanwhile, in defending themselves, made use of their engines of war and all their bows.”³¹¹ This use of *epagoge* to mean “a bringing-together”, specifically of dispersed individual soldiers for the purposes of fighting and overcoming an enemy, is the same use we find in Aelian’s *Tactics*. The military leader or *hegemon* is therefore concerned with “bringing-together” individuals for a battle.

In analyzing the third theme of pastoral power – ensuring individual salvation through providing daily sustenance - we also find connections to the figure of the hegemon or military leader. Besides managing and regulating the import of food, animals and goods that were consumed and used for his soldiers, we are also told that Hadrian maintained supplies and arms for his troops, and “...visited, in person, his soldiers in sick quarters”. This provisionary, and individualized care, lacking some salvific elements of the theme of Christian salvation, is nonetheless striking as a characteristic of a certain kind of military pastorship. The final theme characteristic of the pastoral power of the shepherd – the individualized attention paid to each and all – is also, we find, an essential feature of the *hegemon* or military leader. Of the conduct of Hadrian, we are told that he not only ‘bestowed rewards upon some, and honours upon others’ and regulated the rank and pay of the army, but that he also “estimated the character of the officers”, “paid particular attention to the age of his men; not permitting any to serve who were too young to bear the fatigues of war, nor any whose age rendered them objects of humanity”, and that “He endeavored to gain a personal knowledge of them all, and to ascertain their actual number”, and “made himself acquainted with all matters in dispute betwixt man and man.”³¹²

³¹¹ Procopius. H.B. (Henry Bronson) Dewing. William Heinemann; The Macmillan Co.; Harvard University Press. London; New York; Cambridge, MA, 1914-1928. Book II, Ch. 17. Perseus Digital Library, accessed 10/3/2014.

³¹² Aelianus Tacticus. *The Tactics of Aelian: Comprising the Military System of the Grecians*. (London: Cox and Baylis, 1814) lv-lvi

From this analysis of the military leader or *hegemon* as viewed in the conduct of Hadrian, we can see the striking similarity in themes Foucault outlines as essential to the pastoral power of the shepherd-flock relation. These considerations, I conclude, warrant us to speak of a certain military pastorate developed in the idea of the *hegemon* as leader of men. This form of military pastorship, I want to argue, constitutes an ancient form of pastoral power that easily predates the Christian pastorate and its development into the modern political pastorate of police.

This military-pastoral technology, therefore, should be understood as an art constituted between leaders [*hegemonion*] and followers [*epistatae*], one which in Ancient Greek context has the additional element of defeating or facing off against an enemy that is far less emphasized in the Christian pastorate. This investigation of this military-pastoral technology allows new avenues of research into the nature, origins and various forms of pastorship and police that originate in Ancient Greek notions of military and political leadership. In particular, there are three distinct forms of a military-pastoral technology that might be traced to political forms of government. The first form of military-pastoral technology that might be analyzed in its ancient political form is that of the Spartan *Politeia*, documented by Xenophon and many other ancient political writers.³¹³ Modeled on the idea of the perfect and orderly military formation, one might analyze the ways that the Spartan *politeia*, led by the military-shepherd figure Lycurgus, utilized elements of a political technology of the individual in tandem with the military-pastoral power of Spartan state officials and military leaders. Indeed, the purpose of the *Politeia of the Spartans*, as one ancient historian writes, “was to produce the best possible military machine.”³¹⁴

³¹³ Xenophon. ‘The Politeia of the Spartans’ in *Aristotle and Xenophon on Democracy and Oligarchy*, translations with introduction and commentary by Moore, J.M. (Berkeley, University of California Press, 1983)

³¹⁴ J.M. Moore. ‘Commentary on The Politeia of the Spartans’ in *Aristotle and Xenophon on Democracy and Oligarchy*. (Berkeley, University of California Press, 1983) 113

The other form a military-pastoral technology might take is the modern form of republican ideas of military-political leadership in the early American republic. The Spartan *politeia*, in this context, was in fact a direct inspiration for founders like Benjamin Franklin, who himself was widely referred to as “the Lycurgus of the new Sparta”.³¹⁵ In this way, one might analyze a how the military-pastoral technology of Ancient Sparta served as an inspiration for the way that American founders both imagined themselves and the nation, while also incorporating ideas about military discipline and the importance of a republican constitution as a mechanism of social control. In doing so, one might trace out the ways in which ancient notions of republican harmony, order and virtue originate in ideas about the orderly military formation, and how these ideas influenced modern conceptions of social order, policing, political and economic obligation, legitimacy, and military-political leadership.

Finally, a third avenue of research into modern forms of military-pastoral technology would be to examine the ways that the relationship between worker and employer are imagined through military-pastoral forms of work, pensions, retirement and social insurance. This line of research would trace the discourse of the military-pastorate in its spiritual and economic transformations, for example in Erasmus’ *Spiritualia et Pastoralia*. Here, Erasmus imagines the ‘toilsome’ work of mortal life in terms of a military relationship to God who is conceived as a ‘General’ who rewards his flock-soldiers. Erasmus writes in the section on *The Explanation of the Creed*,

(O)nly someone who has competed according to the rules is crowned. What is irksome here below is of brief duration. The crown is eternal and unfading. The Spirit sweetens the toilsome part with so many consolations that the rest is borne not merely with

³¹⁵ ‘The Lycurgus of the new Sparta, the oracle of politics as well as physics, would have the influence to assure me success.’ Letter to Benjamin Franklin from Barthélemy-Pélagé Georgelin du Cosquer. ALS and American Philosophical Society. Paris, June 11, 1778

patience, but with alacrity. Whether we like it or not, this life is a warfare; we must do battle on the side of God or Satan.³¹⁶

Erasmus continues by conceiving God as the commander of his soldier-flock which toils below for heavenly rewards, writing that "...you are hearing the incomparable reward that our general has prepared for his soldiers if, following the example of their leader, they fight faithfully under his standards and conduct themselves with zeal until the moment of their death."³¹⁷ In this way, one might trace the various ways that work and the rewards of work (retirement plans, pensions, 401k's, worker's comp, insurance plans, etc) are conceived through a military-pastoral relation between employer and worker, the former leading and rewarding the latter in her mortal toil here below in order to gain the rewards of salvation.

Tracing a military-pastoral technology as a form of *political* pastorate will thus not only challenge Foucault's claims about the lack of a political pastorate in Ancient Greece, but such a task will also force us to reconsider the relationship between government and police, bio-power and discipline. Conducting a genealogy of a military-pastoral technology will in this way open us investigations into the various modes of military-pastoral relations that characterize modern political government. Rather than analyzing the authority and legitimacy of government through the lens of the shepherd-flock relation, one might analyze relations of political authority, legitimacy and obligation through the lens of the leader-follower relation of a military-pastoral technology. In this way, such a genealogy of the military-pastorate seeks to re-conceptualize the nature of police in ancient and modern governmentalities, and thereby open up new avenues of

³¹⁶ Erasmus, 'Explanation of the Creed', *Spiritualia and Pastoralia*, 245

³¹⁷ Erasmus, 'Explanation of the Creed', *Spiritualia and Pastoralia*, 251

critical inquiry into the many ways that we recognize ourselves and others through the relations of leader and follower, commander and his flock-soldiers.

From this analysis of the military leader or *hegemon* as viewed in the conduct of Hadrian, we can conclude that the themes Foucault outlines as essential to the pastoral power of the shepherd-flock relation are strikingly imminent. These considerations, I conclude, warrant us to speak of a certain military pastorate developed in the idea of the hegemon as leader of men. This form of military pastorship, I want to argue, constitutes an ancient form of pastoral power that easily predates the Christian pastorate and its development into the modern political pastorate of police.

However, there are certain other characteristics of this form of military pastorship that are distinct from the Christian pastorate that will develop later. One particular difference in the military pastorate led by the *hegemon* or military leader is the theme of the enemy. And while both Christian pastorship and military pastorship share the theme of battle or war – as in Erasmus' *Spiritualia et Pastoralia* – military-pastoral power will stress the act of defeating, harming or leading against an enemy. Once again, the concept of *epagoge* as the military formation must be analyzed to understand the role of war, and the relation that military-pastorship has to the enemy.

However, we cannot yet conclude that this ancient military pastorship is a properly *political* technology of the individual, because it is still unclear if and to what extent such military-pastoral power might have been integrated into the political apparatus of ancient Greece or Rome. Therefore, in order to discuss the *political* use of the military pastorate, I return to the idea of *politeia* as the political form in which the ancient city-state of Sparta incorporated the military pastorate. Identifying *politeia* as both the locus of a military pastorate and a political

technology of the individual will thus allow me to develop more fully my claim from Section One that *politeia* should be understood as an ancient form of ‘police/polizei’ and a political technology of the individual. In addition, developing a genealogy of *politeia* in this way will allow me to preface my claims in Chapter Four regarding the birth of the American *politeia* in the early republic.

Recalling Hegel’s tracing of police to the Greek *politeia*, and my claims in Section One about *politeia* being an ancient political technology of the individual, we can now examine in further detail precisely how *politeia* functioned in Sparta and what this means for the history of governmentality and police in particular. Modeled on the idea of the perfect and orderly military formation [*epagoge*], I will claim that the Spartan *politeia*, led by the military-shepherd figures such as Lycurgus, utilized elements of a political technology of the individual in tandem with the military-pastoral power of Spartan State officials. The purpose of the *Politeia of the Spartans*, as one ancient historian writes, “. . . was to produce the best possible military machine.”³¹⁸ The Spartan *politeia*, furthermore, would become a political model of military pastorship – embodied in the very idea of *politeia* – that would be emulated and praised by the American founders and replicated in attempts to police the early Republic. The trans-historical analysis of police as *politeia*, I conclude, also forces Foucault (and Coopman) to make a more careful distinction between the injustices of police and the “liberatory freedom” of political activity.

Spartan *Politeia*, Ancient Police & Genealogy as Critique

In his commentary on Xenophon’s *The Politeia of the Spartans*, ancient scholar J.M. Moore begins by observing his choice for maintaining the translation of *politeia* in the Latin transliteration rather than the standard English translation of “The Constitution of the Spartans”.

³¹⁸ J.M. Moore. ‘Commentary on The Politeia of the Spartans’ in *Aristotle and Xenophon on Democracy and Oligarchy*. (Berkeley: University of California Press, 1983), 113

Moore writes, “(I) have deliberately avoided the tradition word ‘constitution’, because there is very little here which we would normally class as constitutional history; rather, it is a discussion of the way of life of the Spartans, and only some aspects of it at that, a valid meaning for the word *politeia* which covers ‘how a *polis* (city) is arranged’ in the widest sense.”³¹⁹ The *politeia* of the Spartans, therefore, refers to the political and social arrangement of the city that guided the way of life of the Spartans. As Moore immediately notes, the *Politeia* of the Spartans during Lycurgus’ reign refers not to the “constitution”, but rather *politeia* here refers to “...a relatively small group of full Spartan citizens and their families, the Spartiates; they are the core of the army, the people with full rights in the Assembly, and those from whom magistrates and members of the *Gerousia* [elders] were drawn.”³²⁰ Thus the ‘Politeia’ referred to the military-political life, the *bios andros politikon*, of a class of male political equals. As Moore writes,

(T)hey were often referred to as *Homoioi*, ‘Equals’, which represents an important theoretical principle in Sparta. In practice, this equality was illusory...but also in the wide disparity of wealth, seen most clearly in contrast between a number of Spartans who were too poor to pay their compulsory contributions to the *sussitia* [communal barracks] and therefore lost the status of full citizens.³²¹

Thus Xenophon’s account of the Spartan *Politeia* can be described as the rigorous social engineering process through which a military-political class of equal male citizens was produced. As Moore notes, the *Homoioi* were brought up from birth through a rigorous training and education program, beginning in the *agoge*. This massive project of social and political engineering, Moore notes, could not have been achieved without the labor of the majority of the population of Helots, *Peroikoi* and inferiors who did not make it through training. As Moore

³¹⁹ J.M. Moore, “Introduction” to *The Politeia of the Spartans in Aristotle and Xenophon on Democracy and Oligarchy* (Berkeley: University of California Press, 1986) 67

³²⁰ Moore, “Introduction”, 69

³²¹ Moore, “Introduction”, 69

writes, “(W)ithout these people the elite few could never have loved the life which Xenophon so much admired.”³²²

Our view into the system of the Spartan *politeia* begins at birth. In *The Peloponnesian War: Athens, Sparta and the Struggle for Greece*, military historian Nigel Bagnall writes,

Selection for the Spartans began at birth; children belonged to the state, not to the parents, and to ensure that its future citizens only came from the best stock, they were examined by the elders and, if found wanting, despatched by exposure on a nearby mountain. The fit and healthy were let with their mothers until they were six, when they joined up with other boys and started an education that lasted until they were twenty. The emphasis was on the endurance of hardship, a general toughening up and strict discipline.³²³

Bagnall notes also that the inculcation of manliness and preparation for war was also combined with the teaching of boys to steal. However, the *paidonomos* in charge of punishing would do so “...not for stealing, but for having been stupid enough to be caught.”³²⁴ As Xenophon tells us, the *paidonomos* were given authority to punish the boys, with floggings if necessary.³²⁵ In order that the boys would never be without some higher authority to watch over them, Xenophon also tells us that Lycurgus placed “...the keenest of the *Eirens* [older Spartiates] in charge of each company; therefore the boys at Sparta are never without someone to control them.”³²⁶ The education of the Spartans however, as Bagnall writes, did not cease with adolescence. Rather, Spartians in training ate together in the *agoge* with carefully prescribed food rations, and outside the *agoge*, “...life in the city resembled that of a military camp, with its disciplined, orderly

³²² Moore, “Introduction”, 70

³²³ Nigel Bagnall, *The Peloponnesian War: Athens, Sparta and the Struggle for Greece* (New York: Macmillan, 2005) 65

³²⁴ Nigel Bagnall, *The Peloponnesian War: Athens, Sparta and the Struggle for Greece*, 66

³²⁵ Xenophon, *The Politeia of the Spartans*, 77

³²⁶ Xenophon, *The Politeia of the Spartans*, 78

routine and shared common tasks. All of which, it should be remembered, was only made possible because of the Helots who sustained the whole system.”³²⁷

Here, Moore notes the importance of the *Krupteia*, a selected group of Spartiates who were given the task of internal security.³²⁸ These rogue Spartiates had a fairly obvious function in the Spartan system. As Bagnall writes, the *Krupteia* “...would go out at night and murder any Helots they could find.”³²⁹ In this way, the Spartan *krupteia* constituted a kind of economic police force which helped sustain ‘internal security’ through intimidation, brute force and direct murder of the poorer classes. Xenophon then tells us of the *Ephor*, a council of five magistrates who retained the right to inflict punishments “at will”, require the payments of fines, to imprison other lower officials, and have them put on trial.³³⁰ Just below the *Ephor* there was the *Gerousia*, a council of elders selected by ‘nobility of character.’ As Moore clarifies, the *gerousia* served as “...the main advisory council in Sparta, consisting of the kings and twenty-eight members who were all over the age of sixty...Members of the *Gerousia* had a position of very great honour and probably considerable influence in day-to-day, informal discussions, though their political power ‘on paper’ was not very great.”³³¹ Along with the authoritative power of the *Ephorite* council, the *gerousia* also played a repressive role in regulating the ideas and influence of ‘younger men with good ideas’.³³²

³²⁷ Nigel Bagnall, *The Peloponnesian War: Athens, Sparta and the Struggle for Greece*, 66

³²⁸ Moore, “Glossary”, 66

³²⁹ Nigel Bagnall, *The Peloponnesian War: Athens, Sparta and the Struggle for Greece*, 66

³³⁰ Xenophon, *The Politeia of the Spartans*, 84

³³¹ Moore, “Commentary” on *The Politeia of the Spartans*, 113

³³² Moore, “Commentary” on *The Politeia of the Spartans*, 113

As Moore concludes, “(T)he main aim, one might say the only aim, of the Lycurgan system was to produce the best possible military machine”.³³³ However, at the same time, Moore warns against making too much of this as a way of distinguishing Sparta from our conception of the more democratic Periclean Athens. Indeed, Moore writes, “(T)he whole tenor of Pericles’ funeral speech in Thucydides is similar – the individual is subservient to the needs of the city. The difference in Sparta is one of degree, not of basic outlook.”³³⁴ Nonetheless, the Spartan *Politeia* stands as a model for a military-pastoral technology based on the *bios andros politikon*, male-dominated military-political life. In many ways, the organization of the Spartan *politeia* under Lycurgus can be described as a pyramid of military-pastoral power, with Lycurgus at the zenith, the *Ephor* and *gerousia* just below, the *homoioi* or Spartiates below them, and the Helots, *Peroikoi* and inferiors at the bottom. These military-pastoral relations of command-obedience, and the system which enforced those relations, can be understood as both the origin of police as *politeia*, and the origins of an ancient form of biopower and, we might add, State racism. Indeed, the Spartan eugenics³³⁵ described by Moore, Bagall and Xenophon’s own account attest to a kind of Spartan State racism *par excellence*, operating in what Foucault called ‘the biopower mode’.

This genealogy of the Spartan *politeia* has far-reaching implications for Foucault’s history of governmentality. First, this account disturbs the thesis that police, biopower and State racism are exclusively *modern* phenomena. And if, as Foucault says of its modern form, the *politics* of police has to be a *biopolitics*, then we can also say the same for the *politics of ancient police*; namely, the politics of Spartan *politeia* is also a bio-politics. In this way, we can see how

³³³ Moore, “Commentary” on *The Politiea of the Spartans*, 113

³³⁴ Moore, “Commentary” on *The Politiea of the Spartans*, 101-102

³³⁵ Moore, “Introduction”, 71

police and bio-politics have an internal relation both in ancient and modern forms of State governmentality. One result of this observation is that we are dealing here with a certain trans-historical thesis about the relation between police and bio-politics in Western governmentality. If we are warranted in speaking of the Spartan *politeia* as an ancient form of police, then we can understand Foucault's thesis that "the politics of police is a bio-politics"³³⁶ in a trans-historical sense with regard to Western governmentality. Here, the main operator however will be police, understood in ancient form as *Politeia* (male-dominated military-political life) and in modern form as police (in its bio-political, economic, and juridical forms). Thus, for Foucault, expanding the history of governmentality to include a history of police will include the investigation into the proliferation of the various military-pastoral technologies that might be teased out as elements of the Spartan *Politeia*. These military-pastoral technologies of police, in this expanded history of governmentality, might therefore encompass a military police of the population, an economic police, a biopolitical police of populations, and a legal-juridical police. Thus, in the following Chapters, I study these military-pastoral technologies in turn. In Chapter Four, I study the emergence of both a military and economic pastorate of police in the early American Republic through the figures of Benjamin Franklin and Captain Elam Lynds. In Chapter Five, I study the bio-political police of the prison and the legal-juridical technology of police as it develops in American police power jurisprudence. Together, I seek to understand police as a set of political technologies through which we come to recognize ourselves and others as members of a particular *politeia*.

However, before moving on to these modern forms of police technologies, the more needs to be said regarding the larger stakes of this trans-historical analysis of police for

³³⁶ Foucault, *The Political Technology of Individuals*, 416

Foucault's history of governmentality, Arendt's analysis of ancient Greece, and Coopman's account of genealogy as "abnormative problematization". What the history of *Politeia* reveals, I want to argue, is the need to distinguish between the "injustices" of the *politeia* as a *system of military-pastoral internal social control*, and the practice of politics as ethical universality, or what Foucault and Arendt identify as *politeuesthai*. That is, because Spartan (and Athenian) political equality was generated and maintained through a system of State racism and biopower *par excellence*, we may conclude one of two things: a) the idea of politics in the West as political equality and freedom has always been 'problematically' tied to discipline, biopower, and (male-dominated) Statecraft and war, or b) the idea of politics in the West as political equality and freedom has been *linked* to discipline, biopower, war and male-dominated Statecraft through certain military-pastoral technologies that we can call *police*.

My argument here is that *if* we accept Coopman's definition of genealogy as abnormative *problematization*, then a genealogy of Spartan *Politeia* would lead us to conclude (a), thereby "problematizing" the relation between politics as the realm of freedom and the murderous system of discipline, biopower and internal war through which it is produced and maintained. That is if, following Coopman, the genealogy of Spartan *Politeia* means studying ancient governmentality as an 'abnormative space' where "we cannot but see both good and bad", then we have rendered ourselves incapable of making normative judgments about the injustices through which that supposed abnormativity was produced. In other words, if we are forced, by Coopman's strategy, to locate the Spartan *Politeia* as *either* a "space of abnormativity" or a "site of injustice", then we are faced with the following undesirable consequences: first, if we view the Spartan *politeia* as a space of abnormativity and *not* a site of injustice, then we are prevented from taking a normative stand on how that space of abnormativity *was itself produced* through a site of injustice. That is,

if Coopman's distinction between genealogy as problematization and the normative evaluation of sites of injustice holds any water, we cannot claim that one is produced and maintained by the other without involving genealogy in the normative evaluation of sites of injustice. Therefore, if the genealogy of the *Politeia* is understood as a problematization of the abnormative space of Spartan social-political life, then such a genealogy renders normative evaluation of Spartan eugenics, biopower, discipline and male-dominated Statecraft impossible.

On the other hand, if we identify the Spartan *politeia* as a 'site of injustice' and *not* a space of abnormativity, then by Coopman's own definition, the Spartan *politeia* can only be understood as a space where we cannot but see only the bad. While this might be the strategy Coopman would prefer, this response also leads to undesirable consequences. First, identifying the Spartan *politeia* as a site of injustice would also mean, for Coopman, *that we cannot properly do a genealogy of the Spartan Politeia*. That is, because genealogy for Coopman does not study sites of injustice but rather spaces of abnormativity, the Spartan *politeia* as site of injustice is therefore not an object for genealogical inquiry. But if this is the case, wouldn't the same argument apply to Ancient Athens? The ancient world more broadly? If so, then Coopman would be forced to say that genealogy only becomes possible in the problematic spaces of modernity, and therefore does not apply to the ancient world, where sites of injustice abound.

However, if the *Politeia* of ancient *poleis* (Sparta/Athens/all?) are understood as sites of injustice and therefore not amenable to genealogical inquiry, then genealogy is rendered completely useless in our understanding and study of the ancient world. More importantly, for someone like Arendt or the late Foucault, describing the *poleis* of Ancient Greece as sites of injustice denies the validity of any sort of careful philosophico-historical reconstruction of the "good" normative dimensions of politics as a realm of freedom and political activity. In any case,

describing ancient *poleis* as sites of injustice both renders genealogies of ancient governmentality impossible, and prevents philosophico-historical reconstruction of the “good” elements we might find there.

If Foucault himself was *not* conducting a genealogy of ancient governmentality in his late work (The Courage of Truth, for example) on the assumption that his object of study was a site of injustice and *not* a space of abnormality, then what exactly was Foucault doing if not ‘genealogy?’ And, if Foucault was *not* engaging in a philosophico-historical reconstruction of the ‘good’ elements of freedom, *parrhesia* and ethical universality [*politeuesthai*] in the ancient world, then what was Foucault doing if not a normative reconstruction of the ‘good’ elements he saw in these notions of *parrhesia*, *politeuesthai* and Cynic subjectivity? Furthermore, if Foucault himself actually viewed the Athenian *polis* as *either* a space of abnormality *or* a site of injustice, then why would Foucault go to such great lengths to distinguish his trans-historical account of Cynicism from the history of Christian asceticism, pastoral power and governmentality? And, why would he link Christian asceticism, pastoral power and governmentality with the obedient subject of Western modernity, as opposed to the insubordinate subject of trans-historical Cynicism?

These are, I think, indications that the attempt to understand genealogy as abnormative problematization leads us to undesirable consequences for both Foucault’s own history of Ancient governmentality as well as for the philosophico-historical study of the ancient world in general. For again, if all one can say about the Spartan *Politeia* is *either* that it is an abnormative space where we cannot make normative judgments *or* that it is a site of injustice, then we are forced to say *either* that problematization for Foucault is in fact trans-historical and not exclusive to modernity *or* that that Foucault’s late work on the Ancient world was not genealogy after all.

The thesis that problematization (as Coopman defines it) is in fact not exclusive to modernity after all and that it applies to the Ancient world as well seems to go against Foucault's own remarks on the specificity of problematization to modernity. On this point, I agree with Coopman. Therefore, we are forced to accept, as *per* Coopman's distinction, that Foucault's philosophico-historical work on the Ancient world was not, after all, genealogy, but something else.

It is here that Eduardo Mendieta's reply to Coopman's book is particularly enlightening. Mendieta shows how we can avoid these undesirable consequences if we attend to the ways that Foucault's thought actually matures through the late-1970s and into his later period. As Mendieta reminds us, Foucault described his later critical ontology of ourselves in terms of three modes of genealogy that are possible: a genealogy of modes of veridiction, a genealogy of procedures of government, and a genealogy of forms of subjectivation or pragmatics of the self. Thus genealogy for Foucault here is *not* tied to the problematization of modernity. Rather, it allows trans-historical analysis, comparison and reconstruction of modes of veridiction, procedures of government and forms of subjectivation. Genealogy then will be reconfigured as the study of the ways that forms of truth, power and subjectivity constitute a given form of 'experience'. Therefore genealogy in the Ancient world, as Foucault will reconfigure it, will study the ways in which forms of *aletheia* (truth), *politeia* (power), and subjectivity (*ethos*) constitute certain experiences such as the *bios philosophikos* or Cynic mode of life. Genealogy then will be reconfigured within Foucault's critical ontology of ourselves.

Mendieta also draws our attention to other very important ways that Foucault's through shifts in his later work, some of which I've rehearsed in detail. Foucault's trans-historical account of Cynicism can also be seen as what Mendieta calls Foucault's Left Kantianism, which

seeks to reconstruct universalizable norms that have normative force but which are also revisable. In addition, we can also see in Foucault's history a fundamental opposition between the pastoral mode of subjectivity "typical" of Western modernity and the Cynic mode of subjectivity. For Foucault, the fundamental concept introduced into Western practices of the self by Christian asceticism is the relation of obedience. For Foucault, there will be a fundamental opposition between pastoral modes of subjectivity generated within the network of obedience and truth and Cynic modes of subjectivity generated by a life of permanent and militant self-sovereignty and insubordination. It is this fundamental opposition, I want to argue, that provides just the sort of 'dialectical' contradiction that Coopman seeks in Foucault's quasi-Hegelian reconstruction of universal norms. It is precisely this fundamental opposition that Mendieta speaks of as the Hegelian background that haunts Foucault's Left Kantianism. And, it is this opposition which also makes Foucault's trans-historical critical ontology of *parresia* and the principles of *parrhesia* a viable candidate for a normative Foucaultian critical theory.

In conclusion, I've argued that the military-pastoral technologies of police uncovered in the Spartan *politeia* can be understood as political technologies of police. This analysis leads us to the view that, in fact, there was a form of biopolitics and police in Ancient Greece and that we should analyze the various forms these pastoral technologies take in the history of governmentality. Thus, for example, whereas the epistemological object that underwrites modern biopower is population, we might say that the epistemological object that underwrites ancient biopower is *politeia*. In addition, I've attempted to show how the analysis of *politeia* as the ancient form of police reconfigures our conceptions of Foucault's work, and leads us to acknowledge the importance of his trans-historical account of *parrhesia* as oppositional figure to the history of governmentality and police. In the following Chapters, I study these military-

pastoral technologies in turn. In Chapter Four, I study the emergence of both a military and economic pastorate of police in the early American Republic through the figures of Benjamin Franklin and Captain Elam Lynds. In Chapter Five, I study new forms of a bio-political urban pastorate in the neoliberal “prison-in-reverse”, and the legal-judicial pastorate of police power jurisprudence.

CHAPTER FOUR

Benjamin Franklin & the Policing of the Early Republic

In this chapter, I study the military and economic pastorate of police that was developed in the early American Republic by studying the roles of two figures, Benjamin Franklin and Captain Elam Lynds. First, I re-situate the figure of Benjamin Franklin, contrary to Foucault's history of liberalism, as a practitioner and theorist of police. In the first section, I show how Benjamin Franklin was conceived as the "Lycurgus of the New Sparta" and developed practices and institutions of military and police that would come to be permanent institutions in the United States. In the second section, I situate the military-economic pastorate of police developed in the thought of Benjamin Franklin within Foucault's history of liberalism and the emergence of political economy. In the third section, I supplement Foucault's history of the prison by studying the role of Elam Lynds in developing prison discipline at Auburn penitentiary. From this study I conclude, against Foucault's later assertions, that the analysis of power understood as the "the art of conducting men" must take into account military or warlike relations.

Benjamin Franklin & the Military Constitution of a Nation

In his 1978-79 lecture course on The Birth of Biopolitics, Foucault attempts to make sense of the lingering paradox in the history of liberalism that in its attempts to rationalize frugal government it has produced a great *Leviathan* in liberal garb. For Foucault, this paradox can be expressed by the fact that Benjamin Franklin's "frugal government" will require a constant and sometimes obsessive intervention by government³³⁷. This constant intervention on behalf of frugal government, as Foucault shows, will lead to the growth and evolution of a State apparatus

³³⁷ The term frugal government will come to represent the entire "...epoch of frugal government, which is of course, not without a number of paradoxes, since during the eighteenth century and is no doubt still not behind us...along with the negative effects, with the resistances and revolts which we know are directed precisely against the invasive intrusions of a government which nevertheless claims to be frugal." Foucault, *The Birth of Biopolitics*, 28

whose purview will include the management and preservation of life itself in the progressive welfare era. As some constitutional scholars have argued, founders like Franklin specifically designed the Constitution in order that the unwieldy administrative apparatus of the liberal welfare State would not be possible³³⁸. A straight-forward interpretation of Foucault's history of liberalism in The Birth of Biopolitics would not be inconsistent with this line of argument. Indeed, Foucault portrays Franklin as a proponent of 'reason of least state' and frugal government, a theory that is also presented as a liberal, Physiocratic critique of *raison d'Etat* and police. One does get the impression from Foucault's history that, while certain problem-spaces emerged that forced constant government intervention and regulation, the theory and proponents of frugal government were themselves opposed to the intervention, regulation and policing of bodies, conduct and social processes.

This perception of Franklin as proponent of frugal government and critic of police begins to unravel when one considers his actual role in organizing, administering and governing in the early Republic as a national and international figure who wielded an impressive amount of political, diplomatic, institutional, economic and even military power. Indeed, the view that Franklin opposed the European methods and techniques of police and centralized administrative power becomes untenable when we consider Franklin's role in developing the institutions of police, military training, the prison, and international administration and retrieval of runaway slaves. In what follows, I seek to correct this perception of Franklin in Foucault's work, thereby

³³⁸ There is now an expansive body of literature on the constitutional 'crisis' of the administrative, post New-Deal State: see Chapter 4, *The Administrative State and the Complexities of Modern Governance* in American Constitutional Law, Vol. 1: Sources of Power and Restraint, Fifth Edition, Otis H. Stephens, Jr and John M. Scheb II eds (Boston: Wadsworth, 2012), 250-311

complicated our conceptions of liberalism as a theory of least government, and forcing us to re-think the nature, function and forms of police within liberal governmentality.

As Foucault's notes indicate in The Birth of Biopolitics, Benjamin Franklin was heavily influenced by Physiocratic doctrines of population and the analysis of idleness. In fact, Franklin not only had regular correspondence with the main figures of Physiocratic economics, but he regularly traded treatises on economics and population with figures such as Samuel DuPont. In a letter written by Franklin in 1768, Franklin writes to DuPont, saying,

I received your obliging letter of the 10th May, with the most acceptable present of your *Physiocratie*, which I have read with great pleasure, and received from it a great deal of instruction. There is such a freedom from local and national prejudices and partialities, so much benevolence to mankind in general, so much goodness mixt with the wisdom, in the principles of your new philosophy, that I am perfectly charmed with them, and wish I could have stayed in France for some time, to have studied in your school, that I might by conversing with its founders have made myself quite a master of that philosophy.³³⁹

Franklin is of course here referencing DuPont and Quesney's *Physiocratie*, which outlined the doctrine of Physiocratic economics which would come to influence economic thought so heavily throughout the 19th and 20th century. Through his correspondence with the French *economistes* and other English political and economic theorists, Franklin would come to accept some of the basic tenets of physiocratic conceptions of population and the analysis of idleness. As the Englishman Richard Price would write to Franklin during this time,

Every one knows that the strength of a state consists in the number of people. The encouragement of population, therefore, ought to be one of the first objects of policy in every state; and some of the worst enemies of population are the luxury, the licentiousness, and debility produced and propagated by great towns.³⁴⁰

³³⁹ Benjamin Franklin, Letter to DuPont de Nemours, London, 28 July, 1768 in *The Works of Benjamin Franklin*, Vol. 5 (Knickerbocker Press, 1904), p. 25-26

³⁴⁰ Richard Price, "Observations on the Expectations of Lives, the Increase of Mankind, the Influence of Great Towns on Population, and Particularly the State of London with Respect to Healthfulness and Number of Inhabitants. In a Letter...to Benjamin Franklin, Esq; LL.D. and F.R.S." Printed from the Royal Society,

Franklin would eventually compose a short treatise on the analysis of population, with the unwieldy title, *The Interest of Great Britain Considered, With Regard to her Colonies, And the Acquisitions of Canada and Guadaloupe, To which are added, Observations concerning the Increase of Mankind, Peopling of Countries*. In that short piece, Franklin writes that

The human body and the political differ in this, that the first is limited by nature to a certain stature, which, when attain'd, it cannot, ordinarily, exceed; the other by better government and more prudent police, as well as by change of manners and other circumstances, often takes fresh starts of growth, after being long at a stand; and may add tenfold to the dimensions it had for ages been confined to. The mother being of full stature, is in a few years equal'd by a growing daughter: but in the case of a mother country and her colonies, it is quite different. The growth of the children tends to encrease the growth of the mother, and so the difference and superiority is longer preserv'd...but sure experience in those parts of the island where manufactures have been introduc'd, teaches us, that people increase and multiply in proportion as the means and facility of gaining a livelihood increase; and that this island, if they could be employed, is capable of supporting ten times its present number of people. In proportion therefore, as the demand increases for the manufactures of Britain, by the increase of people in her colonies, the numbers of her people at home will increase, and with them the strength as well as the wealth of the nation.³⁴¹

However, as the Revolution neared, Franklin faced the question of how one thinks about and manages population in the context of imminent war. To this end, Franklin began reading treatises on military tactics and military discipline as a supplement to his readings on population and economics. For Franklin, the reflection on population became not merely an economic reflection on scarcity and numbers. Rather, as the urgency of raising and training a national militia became more pressing, Franklin came to view the analysis of population from not only an economic but also a military and even sociological and psychological point of view. Indeed, for Franklin, the survival of population in the colonies, he would conclude, depended upon the inculcation of

Philosophical Transactions, LIX (for 1769; London, 1770), 89-125. *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

³⁴¹ Benjamin Franklin. "The Interest of Great Britain Considered, With Regard to her Colonies, And the Acquisitions of Canada and Guadaloupe. To which are added, Observations concerning the Increase of Mankind, Peopling of Countries, &c. London: Printed for T. Becket, at Tully's Head, near Surry-Street in the Strand. MDCCLX. (Yale University Library); draft (five scattered pages only): *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

certain economic, military, and civic virtues. In this way, Franklin linked the issue of national security and military discipline to the analysis of population. Writing in 1773, Franklin declares that

But our great Security lies, I think, in our growing Strength both in Wealth and Numbers, that creates an increasing Ability of Assisting this Nation in its Wars, which will make us more respectable, our Friendship more valued, and our Enmity feared; thence it will soon be thought proper to treat us, not with Justice only, but with Kindness; and thence we may expect in a few Years a total Change of Measures with regard to us; unless by a Neglect of military Discipline we should lose all our martial Spirit, and our western People become as tame as those in the eastern Dominions of Britain, when we may expect the same Oppressions: For there is much Truth in the Italian Saying, *Make yourselves Sheep and the Wolves will eat you.*³⁴²

Franklin became fond of the ‘italian saying’, reiterating the importance of military discipline and conduct, not only for soldiers, but for the martial spirit of the Western peopling of the continent.³⁴³

Equally important for Franklin was not only raising a national militia and inculcating a martial spirit in the population, but also raising a municipal defense force for his city of Philadelphia. In Franklin’s proposal to raise funds for military training for a city-wide defense Union for Philadelphia, Franklin’s analysis of population was inseparable from his view that martial spirit and military discipline were variable characteristics or traits of populations themselves. And, while populations could of course be trained to increase their martial spirit and military discipline, Franklin was clear that certain populations naturally had more martial spirit and discipline than others. Franklin writes in his proposal,

³⁴² Benjamin Franklin, letter to Thomas Cushing, Jan 5, 1773. *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

³⁴³ See also Benjamin Franklin, Letter to Jane Mecom, Nov. 1, 1773; Letter to Humphrey Marshall, May 23, 1775. *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

If this now flourishing City, and greatly improving Colony, is destroy'd and ruin'd, it will not be for want of Numbers of Inhabitants able to bear Arms in its Defence. 'Tis computed that we have at least (exclusive of the Quakers) 60,000 Fighting Men, acquainted with Fire-Arms, many of them Hunters and Marksmen, hardy and bold. All we want is Order, Discipline, and a few Cannon. At present we are like the separate Filaments of Flax before the Thread is form'd, without Strength because without Connection; but UNION would make us strong and even formidable: Tho' the *Great* should neither help nor join us; tho' they should even oppose our Uniting from some mean Views of their own, yet, if we resolve upon it, and it please GOD to inspire us with the necessary Prudence and Vigour, it *may* be effected. Great Numbers of our People are of BRITISH RACE, and tho' the fierce fighting Animals of those happy Islands, are said to abate their native Fire and Intrepidity, when removed to a Foreign Clime, yet with the People 'tis not so; Our Neighbours of New-England afford the World a convincing Proof, that BRITONS, tho' a Hundred Years transplanted, and to the remotest Part of the Earth, may yet retain, even to the third and fourth Descent, that *Zeal* for the *Publick Good*, that *military Prowess*, and that *undaunted Spirit*, which has in every Age distinguished their Nation. What Numbers have we likewise of *those brave People*, whose Fathers in the last Age made so glorious a Stand for our Religion and Liberties, when invaded by a powerful French Army, join'd by Irish Catholicks, under a bigotted Popish King! Let the Memorable SIEGE of LONDONDERRY, and the signal Actions of the INSKILLINGERS, by which the Heart of that Prince's Schemes was broken, be perpetual Testimonies of the *Courage* and *Conduct* of those *noble Warriors!* Nor are there wanting amongst us, Thousands of *that Warlike Nation*, whose Sons have ever since the Time of Caesar maintained the Character he gave their Fathers, of joining the most *obstinate Courage* to all the other military Virtues. I mean the *Brave* and *steady* GERMANS. Numbers of whom have actually borne Arms in the Service of their respective Princes; and if they fought well for their Tyrants and Oppressors, would they refuse to unite with us in Defence of their *newly acquired* and most precious *Liberty* and *Property*? Were this Union form'd, were we once united, thoroughly arm'd and disciplin'd, was every Thing in our Power done for our Security, as far as human Means and Foresight could provide, we might then, *with more Propriety*, humbly ask the Assistance of Heaven, and a Blessing on our lawful Endeavours. The very Fame of our Strength and Readiness would be a Means of Discouraging our Enemies; for 'tis a wise and true Saying, that *One Sword often keeps another in the Scabbard*. The Way to secure Peace is to be prepared for War.³⁴⁴

Franklin's championing of the raising of a municipal and national militia, and his education in military tactics and discipline, eventually earned him international recognition as an authority on matters of not only economic analysis but also in military matters concerning national security and diplomacy.

There was good reason why Franklin came to be seen as an authority on military matters of national security and order. Franklin's library was extensive. In 1785, Franklin read De La

³⁴⁴ Benjamin Franklin, 'Plain Truth: or, Serious Considerations On the Present State of the City of Philadelphia, and Province of Pennsylvania'. By a Tradesman of Philadelphia. Printed in the Year MDCCXLVII. 1747 (Yale University Library) *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

Cour's *Dissertation on the Laws of Lycurgus*, which he requested and received by mail.³⁴⁵ De La Cour's dissertation was first published in 1767 with the title, *Par quelles causes et par quels degres les lois de Lycurgue se sont alterees chex les Lacedemoniens jusqu'a ce qu'elles ayent ete aneanties*.³⁴⁶ Franklin considered the work of De Le Cour's an invaluable contribution to his thought. Franklin's interest in Sparta, in particular the figure of Lycurgus in developing the idea of 'unwritten law' [*rhetra*], eventually gained Franklin the reputation of "(T)he Lycurgus of the new Sparta".³⁴⁷ Both his French diplomats and his British correspondents would refer to the "...sagacity of Dr. Franklin or the American Lycurgus".³⁴⁸ In addition to studying the laws of Sparta during the reign of Lycurgus, Franklin became much more involved in knowing the standard being applied in military discipline both in the continental army and abroad.

Franklin's international reputation as diplomatic to Paris, *gouvernor* of Pennsylvania, and *de facto* authority placed Franklin in direct contact with the heads of state and Lieutenants of police in France. In what was likely one of the first international policing efforts, Franklin coordinated with the Lieutenant of the French police, Jean-Charles Pierre Lenoir, to "recover" a runaway slave that had escaped from an American naval officer while stationed in France. At the officer's request, Franklin wrote to Lenoir to assist in the "recovery" of the runaway slave.³⁴⁹

³⁴⁵ Benjamin Franklin, Letter to Mathon De La Cour, 9 July, 1785 in *The Works of Benjamin Franklin: Autobiography. pt. 2.*, p. 209-210

³⁴⁶ Mathon De La Cour. *Par quelles causes et par quels degres les lois de Lycurgue se sont alterees chex les Lacedemoniens jusqu'a ce qu'elles ayent ete aneanties*. Lyon & se trouve a Paris: chex Durand; et Vallet-la-Chappelle, 1767

³⁴⁷ "(T)he Lycurgus of the new Sparta, the oracle of politics as well as physics, would have the influence to assure me success." 'To Benjamin Franklin From Barthélemy-Pélage Georgelin du Cosquer'. 11 June, 1778. ALS and D: *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

³⁴⁸ 'Letter To Benjamin Franklin, from Richard Brocklesby (unpublished), London 12th March 178. ALS and *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

³⁴⁹ Franklin writes, "(L)e Capt. Robinson au Service des Etats Unis que J'ai l'honneur de vous presenter a besoin de l'autorité de votre Excellence pour recouvrer un Nègre qui s'est évadé de son service et qui lui appartient. Je

This experience established Franklin as a trusted ally in matters of police, particularly when it came to issues of “recovering” property of American military officers, who themselves employed slaves in their entourage. In this way, Franklin built his reputation as not only a trusted diplomatic, but also a trusted authority on military and police matters, issues which were often linked, as demonstrated in this case.

One of Franklin’s most lasting legacy’s would be his role in creating and training men to organize an obscure society, but one which plant the seeds for military training in the United States to this day. Franklin, along with his disciple Charles Williams and Thomas Jefferson, would together form the *United States American Military Philosophical Society*, which was formed as an academic and scientific society for the organization and diffusion of military science and the art of military discipline. The AMPS would have a short history, dissolving with the rise of the war of 1812. However, through Jefferson and Williams’ training – mostly framed by Benjamin Franklin – the AMPS would return after the war in a different form, the West Point Military Academy.

One of the major treatises that was regularly read at meetings of the AMPS was a short treatise titled “The Military Constitution of Nations”. In that treatise, originally authored anonymously but revealed later as a French military tactician, many of the same themes that appear in Franklin’s thought between military discipline, security and citizenship appear here. On the front cover of the treatise appears the motto, *Scientia in Bello, Pax*, or, “science in war brings peace.” This was of course also Franklin’s motto, declared many years before that “(T)he

ressentirois particulièrement l’assistance que vous voudrez bien lui accorder et que les Loix et L’Equité reclament en sa faveur.” From Benjamin Franklin to Jean-Charles-Pierre Lenoir, 22 July 1780. *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

Way to secure Peace is to be prepared for War.³⁵⁰ The central argument of the treatise begins with a fascinating passage:

In a country where every man should have been brought up a soldier, where he was familiar with a military life, military tactics and military discipline, no encroachment on power from within, no successful invasion from abroad could ever be feared.³⁵¹

The treatise continues, arguing that the only certain defense against the fall and collapse of government and empire is to build a “nation of soldiers”:

By a nation of soldiers is not meant here a nation whose only trade is war, whose only pleasures are the tumults of arms, and warlike achievements; ruled by the harsh laws of Lycurgus, or living as the wild inhabitants of the deserts; nothing is meant but such a nation as has been described above, where the most peaceful citizen, when called by necessity, can at the first signal be changed into the most skillful warrior; in a word, where every man, while enjoying the sweets of peace, all the comforts of ease and society, and following all the usual occupations of the most pacific people, may be looked upon as an image of Mars sleeping, whom the least noise will rouse.³⁵²

The treatise proposes that all male citizens be trained in military discipline, such as “...no inhabitant of the cities would be a stranger to the fatigues of the camp.”³⁵³

This military-pastoral technology developed in the early Republic, and its role in policing, must be situated within Foucault’s longer history of police. To this end, I aim in the next section to situate the military-pastoral technology of the early Republic within Foucault’s history of the emergence of liberalism from *raison d’Etat* and police. In doing so, I seek to reconceptualize and complicate the relationship Foucault establishes between the frugality of liberal government and the disciplinary aims, functions and theories of police that it claims to

³⁵⁰ Benjamin Franklin, ‘Plain Truth: or, Serious Considerations On the Present State of the City of Philadelphia, and Province of Pennsylvania’. By a Tradesman of Philadelphia. Printed in the Year MDCCXLVII. 1747 (Yale University Library) *The Franklin Papers*, American Philosophical Society (APS), Digitally Accessed 12/6/2014

³⁵¹ ‘A Short Essay on the Military Constitution of Nations, communicated to the United States Military Philosophical Society, and published by their order’. New York: Cambell & Mitchell, 1808, p. 11

³⁵² Ibid 18-19

³⁵³ Ibid 20

critique and replace. First, I rehearse Foucault's history of police, followed by a clarification of how the analysis of police I am developing fits in with Foucault's analysis of police. Secondly, I clarify the role Franklin played in policing Philadelphia as 'leader' and governor, thereby complicating the sharp distinction between *raison d'Etat/police* and the actual exercise of "frugal" American government. In the third and final section, I show how ideas about American government and governing were fused with ideas about discipline, obedience and subjection in the organization and administration of the penitentiary.

The emergence of a unique liberal governmentality in the 18th century as a specific form of Western political rationality was for Foucault the single most significant transformation in the theory of *raison d'Etat* and police that had dominated European interstate politics since the Treaty of Westphalia. In an important sense, liberal government signaled the emergence of a new era: the end of absolutism and the divine right of Kings, the critique of omnipotent and omniscient monarchical rule and police power, and the birth of new political ideals which placed sovereign power and legislative authority in the hands of the people. In a more important sense, however, this new era of liberal governmentality was heralded in by new forms of knowledge, procedures of government and new forms of subjectivity that were re-configured according to the new demands and obligations of liberal modernity and a new political-economic order. *Raison d'Etat* and police, the two poles of political rationality which sustained the European interstate order, therefore began a complex process of decomposition, reconfiguration and recalibration beginning with the emergence of liberal government.

However, as Foucault suggests, it would be a great mistake to suppose that reason of state and police merely faded away under the advance of liberal modes of governance and pragmatics of self-rule. Instead, Foucault made clear that liberal governmentality was in many ways a

continuation of *raison d'Etat* and police by other means, a continuation which modified the terms and conditions of their exercise, without fundamentally challenging their basic premises: namely, the sovereignty of the State and the preservation of internal order.³⁵⁴ In fact, Foucault maintains in the lectures of 1978-9 that liberal government sustains itself by using its own internal formula as a principle for organizing the basic elements of *raison d'Etat*. That internal formula of government, according to Foucault, is the one he cites from the utilitarian and founding father of American government, Benjamin Franklin – what he calls frugal government³⁵⁵, or *raison du moindre Etat*, or again as *raison du moindre gouvernement*.³⁵⁶ However, as Foucault makes clear, the formula of frugal government – which at the same time constitutes the very question of liberalism³⁵⁷ - will be riddled with the paradox of always seeking ‘invasive intrusions’ which are met with resistance and revolt, all in the name of frugal government. These “invasive intrusions” of frugal government which will produce all the great revolts, resistances and social movements against the disciplinary-industrial order of the nineteenth century, as Foucault suggests, will however operate not through the exhaustive, unitary apparatus of a police state, but rather through the ‘natural’ mechanisms of government

³⁵⁴ Michel Foucault, *Naissance de la biopolitique* (Paris: Gallimard, 2004), 30

³⁵⁵ In the Course Summary of the lectures on *Naissance de le biopolitique*, Foucault says that “...liberalism arose in a very precise context as a critique of the irrationality peculiar to excessive government, and as a return to a technology of frugal government, as Franklin would have said.” Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978-79* (New York: Palgrave Macmillan, 2008), 322. As the editors to the English edition note, Franklin develops the economic principles of ‘least government’ in his *Principles of Trade* (London: Brotherton and Sewell, 1774, 2nd edition). The term frugal government, however, will encompass far more than economic principles and indeed will come to represent the entire “...epoch of frugal government, which is of course, not without a number of paradoxes, since during the eighteenth century and is no doubt still not behind us...along with the negative effects, with the resistances and revolts which we know are directed precisely against the invasive intrusions of a government which nevertheless claims to be frugal.” Foucault, *The Birth of Biopolitics*, 28

³⁵⁶ Foucault, *Naissance de la biopolitique*, 30

³⁵⁷ “...the frugality of government is indeed the question of liberalism.” Foucault, *The Birth of Biopolitics*, 29

that seek to regulate the exercise of freedom in the name of security³⁵⁸. Thus for Foucault, the emergence of ‘reason of least state’ in the 19th century which seeks to produce freedom through mechanisms of security will also lead to the emergence of the security state of the 20th century which, like reason of least state, will be organized around the management of freedom through security.

It is the emergence of this new form of governmental reason, *raison du moindre gouvernement*, which for Foucault signals the departure from the Mercantilist-Cameralist police state of the 17th century, which was characterized by limited external objectives governed by the European interstate balance and unlimited internal objectives governed by police. It is in this context of the Mercantilist police state of the 17th century that Foucault locates, even as early as his History of Madness, the unlimited internal objectives of police as a form of social control distinct from late 18th and 19th century forms of social control which he will define as part of the emergence of “disciplinary society”.³⁵⁹ At this stage (History of Madness), Foucault’s examples of police are centered around the French system of police, and in particular around the problem of idleness, vagrancy and peasant revolts that faced the regime of Louis XIV and which fell under the jurisdiction of his interior ministry of police, Jean-Baptiste Colbert. It is in this context which Foucault defines the Mercantilist workhouse for the confinement of the idle and the poor, which was put to use in the Hopital General in 1666, as quintessentially a police matter – one

³⁵⁸ The ‘unitary project of police’ of the 17th century Mercantilist state, according to Foucault, undergoes a process of decomposition by which the positive functions of police that increase the strength of the state are devolved into mechanisms of ‘incentive-regulation’ centered on the economy and population, and the negative functions of police devolve into the ‘preventative’ police force we know today which is focused on the repression of social disorder, illegality, delinquency, etc. Michel Foucault, *Security, Territory, Population* (New York: Palgrave Macmillan, 2007), 353-4

³⁵⁹ Michel Foucault, “Truth and Juridical Forms” in *Power: Essential Works of Foucault 1954-1984 Vol. 3*, edited by Paul Rabinow (New York: The New Press, 2000), 69

which, as we will see, will differ greatly in form but not in function from the liberal exercise of police in the late 18th and nineteenth centuries.

As Foucault recounts, the Royal Edict of 1656 which created the Hopital General for the confinement and correction of the unemployed, the vagabond and the idle marks the major transition for the first time in history from purely negative measures of exclusion – such as the banishment of the beggars of Paris in 1606/7- to the positive task of policing and “taking in charge” of undisciplined individuals and populations, who are to be corrected at the expense of the nation but at the cost of their subjection to bourgeois discipline. This implicit system of obligation between the rich and poorer classes of the bourgeois nation-state, Foucault explains, was directed at a “rather undifferentiated mass... a population without resources, without social moorings, a class rejected or rendered mobile by new economic developments.”³⁶⁰ During the series of economic crises that shook the Western world in the 17th century – ‘reduction of wages, unemployment, scarcity of coin’ – cycles of poverty occurred across Europe, each time with correlative uprisings in Paris (1621), in Lyons (1652), and in Rouen (1639). During each period of high unemployment and poverty, there was a renewed moral condemnation of idleness which in turn fueled a reabsorption of the idle into these new houses of correction as social protection against agitation, uprising and social upheaval. The new houses of correction, therefore absorbed the unemployed and the idle in order to mask their poverty, “and to avoid the social or political disadvantages of agitation.”³⁶¹ Therefore, Foucault concludes, “It was in a certain experience of labor that the indissociably economic and moral demand for confinement was formulated.”³⁶²

³⁶⁰ Michel Foucault, “The Great Confinement” in *The Foucault Reader*, edited by Paul Rabinow (New York: Pantheon, 1984), 130

³⁶¹ Foucault, “The Great Confinement”, 135

³⁶² Foucault, “The Great Confinement”, 135

And for the first time in history, madness was included in this great confinement, now perceived as one form, among others, of ‘social uselessness’³⁶³ which needed to be reformed and corrected. Therefore the great confinement was made necessary, not through the concern to cure the sick, but indeed through the bourgeois imperative of labor.

However, Foucault’s major insight in History of Madness regards the rationality, justification and the significance behind the bourgeois ‘imperative of labor’ that made the experience of confinement – understood as a “metaphysics of government” as well as a “politics of religion”³⁶⁴ - necessary in the first place. For Foucault, the bourgeois ‘imperative of labor’ which led to widespread practices of confinement must be understood and located in the context of the 17th century theory of police and specifically the centralization of the French police force under the reign of Louis XIV. Under the direction of his interior minister Jean-Baptiste Colbert, a council was established to draw up a comprehensive plan for the centralization and administration of “...police powers and procedures which restricted the private ownership of arms, and created the Lieutenant of Police for the City of Paris, which by the mid-1700s had the most advanced system of police of any city in Europe.”³⁶⁵ Under Louis’ reign, the Lieutenant was granted seven different areas of authority:

1. The security of Paris, including the repression of civil disorders, making arrests, and surveillance of foreigners
2. The cleaning and lighting of streets, firefighting and prevention, and flood control
3. Regulating and upgrading the moral behavior of the citizens
4. Regulating social affairs in matters of abandoned children, unfaithful wives, organization of hospitals, and inspection of prisons and jails

³⁶³ Foucault, “The Great Confinement”, 136

³⁶⁴ “In this sense, ‘confinement’ conceals both a metaphysics of government and a politics of religion: it is situated, as an effort of tyrannical synthesis, in the vast space separating the garden of God and the cities which men, driven from paradise, have built with their own hands. The house of confinement in the classical age constitutes the densest symbol of that police which conceived of itself as the civil equivalent of religion for the edification of a perfect city” Foucault, “The Great Confinement”, 139

³⁶⁵ James Conser et al, *Law Enforcement in the United States*, 3rd edition (Burlington: Jones & Bartlett, 2013) 35

5. Assuring adequate food supplies for the city
6. Protecting the city in times of epidemic and general maintenance of health conditions
7. Regulating the economy, which included surveillance of worker's associations and policing the marketplace. (Arnold, 1979, 14-15)³⁶⁶

It is in this context that Foucault shows how the problem of the idle poor was inscribed first and foremost as a police matter regarding the regulation of morals as a justification and means to force the poor to work for the rich. Foucault aims to show how “the very requirement of labor was instituted as an exercise in moral reform and constraint, which reveals, if not the ultimate meaning, at least the essential justification of confinement.”³⁶⁷ Citing a report by the Board of Trade and the Edict of 1656, Foucault shows how, in the attempt ‘to render them useful to the public’, the poor were clearly presented as a problem due not to scarcity of commodities or unemployment, but rather to “the weakening of discipline and the relaxation of morals.”³⁶⁸ Emphasizing the moral libertinage of the poorer classes, the regime made clear that the Hôpital General would become a place where these undisciplined populations would be confined and re-trained in the virtues of family, marriage, religion, Christian education and civic virtue; or in other words, the ‘laws of the State’. Thus the prisoner who “could and who would work would be released, not so much because he was again useful to society, but because he had again subscribed to the great ethical pact of human existence”³⁶⁹, which meant adhering to the laws of the State in exchange for a guarantee of existence.

Foucault thus situates the question of idleness, vagabondage and poverty in the 17th century under the jurisdiction of Colbert's police centralized system of police powers which had

³⁶⁶ Conser et al, *Law Enforcement in the United States*, 35

³⁶⁷ Foucault, “The Great Confinement”, 138

³⁶⁸ Foucault, “The Great Confinement”, 137

³⁶⁹ *ibid*

as their aim the increasing of the nation's workshops and households. It is precisely in the context of Foucault's discovery of the doctrine of police in The History of Madness - much earlier than his return to police in the Tanner and Vermont Lectures of 1979 and 1982, respectively – that the imperative of labor must be situated as the driving force behind confinement. “Confinement”, he states unequivocally in History of Madness, “that massive phenomenon, the signs of which are found all across eighteenth-century Europe, is a police matter; police, in the precise sense that the classical epoch gave to it-that is, the totality of measures which make work possible and necessary for all those who could not live without it”³⁷⁰

The justification *behind* the obligation to work and the condemnation of idleness, therefore, originates in the first instance not from the demands of production, but rather from the authoritarian demand for internal discipline, virtue and good order for which the police is primarily responsible. Thus the ‘republican dream and preoccupation in the classical age’, according to Foucault, is to adjust ever so carefully, once and for all, “the laws of the State” which make one a virtuous and obedient citizen, with ‘the laws of the heart’, which spring forth from one’s own moral convictions.³⁷¹ It is in this context that the imperative of labor, driven by the police dream of a perfectly orderly and virtuous Republic, should be situated. Thus “(I)n this sense”, Foucault adds, “...confinement’ conceals both a metaphysics of government and a politics of religion: it is situated, as an effort of tyrannical synthesis, in the vast space separating the garden of God and the cities which men, driven from paradise, have built with their own hands. The house of confinement in the classical age constitutes the densest symbol of that police which conceived of itself as the civil equivalent of religion for the edification of a perfect

³⁷⁰ Ibid

³⁷¹ Foucault, “The Great Confinement”, 139

city.”³⁷² Thus in The History of Madness, police represents – as it will in “Truth and Juridical Forms” and even as late as *SMD* – a mechanism of social control within the 17th century Mercantilist police state. Thus within The History of Madness, police refers to the vision of a virtuous and orderly Republic where the conduct of individuals conforms to the laws of the State.

By the time Foucault is giving his lectures at the University of Sao Paulo in 1973, Foucault had firmly distinguished the 17th century police era of Mercantilist confinement based in the idea of a virtuous, orderly republic from the 18th century ‘enlightenment’ era of “sequestration” based in the productive techniques of capitalist discipline. The 17th century idea of moral and spiritual reform through confinement, Foucault states unequivocally, is a police idea of the Mercantilist-Cameralist police state modeled on the virtuous, orderly Republic. For Foucault, the 18th century explosion of population and accumulation of industrial and agricultural wealth demanded new forms of social control that gave rise to new, capitalist forms of discipline. The transformation in penal law in response to the “dangerous masses” produced by the industrial system, Foucault shows, gave rise to a new police idea, that of correcting and reforming through the techniques of imprisonment, culminating in the American invention of the ‘penitentiary’.³⁷³ The new police ideas and forms of social control that emerged in the 18th century, therefore, would emerge as a result not of moral or religious problems but as a problem of labor and the dangerous urban masses. Thus appeared, Foucault writes, “(T)he idea of a penalty that was not meant to be a response to an infraction but had the function of correcting individuals at the level of their behavior, their attitudes, their dispositions, the danger they

³⁷² Ibid

³⁷³ Foucault, ‘Truth and Juridical Forms’, 67

represented – at the level of their supposed potentialities.”³⁷⁴ However this new form of social control, “...this penal regime that sought to correct them through hard labor and confinement, did not in truth originate in the juridical theory of crime, did not derive from the great reformers such as Beccaria. This idea of a penal sanction that sought to correct by imprisoning was a police idea.”³⁷⁵ Thus for Foucault in “Truth and Juridical Forms”, the 17th century police idea of confinement organized around the juridical infraction would be replaced in the 18th century by the police idea of ‘sequestration’ organized around a vast series of disciplinary institutions for the correcting and reforming of the potentialities of individuals and populations, and attaching them to the industrial apparatus of production. In this regard, Foucault cites Montesquieu as one representative of this ‘new’ idea in penal thought of attempting to control individuals by molding and reforming their future behavior. Thus the “great separation” made by Montesquieu in the new theory of police of the 18th century was that between the law or judiciary whose function was to punish criminals who transgressed civil law, and *la police*, whose function was to correct and reform the daily habits of individuals. Thus the

control of individuals, this sort of punitive penal control of individuals at the level of their potentialities, could not be performed by the judiciary itself; it was to be done by a series of authorities other than the judiciary, such as the police and a whole network of institutions of surveillance and correction – the police for surveillance, the psychological, psychiatric, criminological, medical, and pedagogical institutions for correction...a vast series of institutions that would enclose individuals in their bounds throughout their existence: pedagogic institutions such as the school, psychological or psychiatric institutions such as the hospital, the asylum, the police, and so on. This whole network of nonjudicial power was designed to fulfill one of the functions that the justice system assumed at this time: no longer punishing individuals’ infractions, but correcting their potentialities.... We thus enter the age of what I would call ‘social orthopedics. I’m talking about a form of power, a type of society that I term ‘disciplinary society’, in contrast to the penal societies known hitherto. This is the age of social control.”³⁷⁶

³⁷⁴ Ibid

³⁷⁵ Ibid

³⁷⁶ Foucault, ‘Truth and Juridical Forms’, 57

Thus for Foucault, the age of social control or ‘disciplinary society’ should be understood as the result of the emergence of the 18th century idea of police, not as the virtuous Republic, but as a nonjuridical network of disciplinary sequestration of individuals and populations, as Foucault calls it. police, in this 18th century sense, will thus refer to the moral and social power of society over the potentialities, and the ‘everyday life and habits’ of individuals. Whereas law will refer to power of the judiciary to the punishment of crime, police will refer to the prevention and control of the daily life and habits of individuals through moral and spiritual reform and correction.

In The Spirit of the Laws, Montesquieu in fact makes an even sharper distinction between the two orders of a state, ‘law and police’, that Foucault leads on. Whereas the judiciary refers to crimes against civil law, police refers to crimes against the internal “tranquility”.³⁷⁷ Police, for Montesquieu, will also mean the good ‘police, manners and mores’ of a civilized people necessary for trade, commerce and industry; it will be said to be lacking in those ‘barbarous’ peoples where money is not institutionalized, and where the virtue of ‘industry’ and ethos of work is not cultivated. Thus a “...state with a good police...teaches others to work, which already makes work.”³⁷⁸ In Ch. 24, Montesquieu addresses the “regulations of police [which] are of another order than the other civil laws.”³⁷⁹ Montesquieu writes, “(T)here are criminals whom the magistrate punishes; there are other whom he corrects; the former are subject to the power of the law, the others to its authority; the former are withdrawn from society, one obliges the latter

³⁷⁷ Montesquieu, *The Spirit of the Laws*. Anne Cohler, Basia Carolyn Millder and Harold Samuel Stone eds. (Cambridge: Cambridge University Press, 1989) 191

³⁷⁸ Montesquieu, *Spirit of the Laws*, 455

³⁷⁹ Montesquieu, *Spirit of the Laws*, 517

to live according to the rules of society.”³⁸⁰ Thus for Montesquieu, individuals are to be corrected by a power distinct from the order of civil law, by the ‘authority of the law’. police in this sense, then, refers to the techniques of normalization that obliges men to live according to the rules of society. For Montesquieu, the authority of the law who corrects and punishes individuals is the magistrate, rather than the law itself. As for the jurisdiction of police power of magistrates,

Matters of police are things of every instant, which usually amount to but little; scarcely any formalities are needed. The actions of the police are quick and the police is exerted over thing that recur every day; therefore, major punishments are not proper to it. It is perpetually busy within details; therefore, great examples do not fit it. It has regulations, rather than laws. The people who belong to it are constantly under the eyes of the magistrates; therefore it is the fault of the magistrates if they fall into excess.³⁸¹

It is in this context of Montesquieu’s great separation between “law and police” as the two orders of state rationality that Foucault locates the emergence of 18th century police as a network of surveillance, control and disciplinization of individuals and populations (beginning with the urban poor) within the productive apparatus of the industrial order. This great separation between the two state rationalities of ‘law and police’ would be passed down and reproduced in the American Republic as the two forms of state rationality used by founders like Benjamin Franklin and Thomas Jefferson, the latter who established the first Chair of ‘Law and Police’ at the College of William and Mary in 1779 as the governor of Virginia.³⁸²

Foucault therefore would begin to trace, after 1973, the emergence of the 18th century theory of police that lay at the heart of disciplinary society and the age of social control. In fact, the title

³⁸⁰ Ibid

³⁸¹ Ibid

³⁸² Christopher Tomlins. *Law, Labor and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993) 36

of his great work Surveilleur et Punir reflected precisely the great separation between, respectively, the functions of *la police* (surveillance and control) and the functions of law (punishment and civil adjudication) that Montesquieu lists in *The Spirit of the Laws*. ‘Discipline and Punish’, therefore, would be a continuation of Foucault’s history of police as the ‘heart’ of disciplinary society. Foucault’s analysis of police in *DP* would be filtered through his encounter with many theorists of police, including De Lamare’s *Traite de la police*, Patrick Colquhoun’s Treatise on the Police of the Metropolis, Blackstone’s Commentaries on the Laws of England, Des Essarts’ Dictionnaire universel de police, and Le Trosne’s Memoires sur les vagabonds. Through a reading of these texts, Foucault’s analysis of police would be illuminated by an understanding of, respectively, French police administration, English police science, English common law, French bourgeois police³⁸³, and Physiocratic policing of idleness and popular crime.

Thus in Discipline and Punish, Foucault would expand his analysis of police beyond the Mercantilist police state based in ideas of confinement and exhaustive discipline to the police and economic theorists of the 18th century concerned with the problem of vagabondage, delinquency, urban health and dangerousness, and the minor illegalities of the poor. As Foucault documents in Discipline and Punish, the Physiocratic analysis of idleness focused attention on the policing of popular illegality, and sought to expand police powers over the lives and populations of a new (under)class of undeserving poor. For Foucault, the Physiocratic or

³⁸³ As Heller (2009) notes, Des Essarts proposed a plan “...to establish bureaucratic control over [workers] by the establishment of a systematic registry of workers. Des Essart’s scheme combined the old corporatist notion of control with the penchant for classification of the new social science of Enlightenment.” (Heller, Henry. *The Bourgeois Revolution in France, 1789-1815* (Berghahn Books, 2009), 52; also Kete (1994) documents how “...in eighteenth century France, rabies was perceived as a problem of policing”, and thus Des Essarts called for “...measures prohibiting poor people from owning dogs”. Kete, Kathleen. *The Best in the Boudoir: Petkeeping in Nineteenth Century Paris* (University of California Press, 1994), 162n

‘utilitarian decomposition’ of idleness in the 18th century thus gave way to a reconfiguration of the objectives and powers of police, at a time when

The struggle for the delimitation of the power to punish was articulated directly on the need to subject popular illegality to a stricter and more constant control...It was because the pressure on popular illegalities had become, at the period of the Revolution, then under the Empire, and finally throughout the nineteenth century, an essential imperative, that reform was able to pass from the project stage to that of an institution and set of practices. That is to say, although the new criminal legislation appears to be characterized by less severe penalties, a clearer codification, a marked diminution of the arbitrary, a more generally accepted consensus concerning the power to punish...is sustained in reality by an upheaval in the traditional economy of illegalities and a rigorous application of force to maintain their new adjustment. A penal system must be conceived as a mechanism intended to administer illegalities differentially, not to eliminate them all.³⁸⁴

Thus Foucault marks the separation between the 17th century theory of police as an exhaustive disciplinary elimination of all illegalities and evil within the city or republic, and the 18th century theory of police as an ‘economic rationality’ with powers over the minor illegalities of the urban poor.

Foucault traces this transition from 17th to 18th century police in more detail in ‘The Politics of Health in the Eighteenth Century’, where Foucault notes how the figure of the pauper is eventually decomposed into a “...whole series of functional discriminations (the good poor and the bad poor, the willfully idle and the involuntarily unemployed, those who can do some kind of work and those who cannot”³⁸⁵ This re-evaluation and decomposition of ‘the idle’, Foucault notes, is brought about through the critique and transformation of certain ‘immobilizing’ modes of investment and capitalization that kept the poor from being inserted into circuits of production and labor. In other words, the poor, in the eyes of the Physiocrats and Utilitarians like Bentham and Benjamin Franklin - by being supported through the social pact of government to provide

³⁸⁴ Foucault, *Discipline and Punish*, 88-89

³⁸⁵ Foucault, “The Politics of Health in the Eighteenth Century” in *The Foucault Reader*, 276

social assistance in the form of almshouses, charities and lazarettos - had become a stagnant population, rendered immobile and thus idle by these state-sponsored forms of capital investment in their well-being. Through the expansion and liberalization of modes of labor and production in the 18th century, the figure of the pauper is decomposed into ever more efficient categories of mobile labor and, along with larger transformations in criminal reform, demographics and public health, a comprehensive analysis of idleness is finally achieved which

Tends to replace the somewhat global charitable sacralization of ‘the poor’. This analysis has as its practical objective at best to make poverty useful by fixing it to the apparatus of production, at worst to lighten as much as possible the burden it imposes on society. The problem is to set the ‘able-bodied’ poor to work and transform them into a useful labor force, but it is also to assure the self-financing by the poor themselves of the cost of their sickness and temporary or permanent incapacitation, and further to render profitable in the short or long term the educating of orphans and foundlings. Thus, a complete utilitarian decomposition of poverty is marked out and the specific problem of the sickness of the poor begins to figure in the relationship of the imperatives of labor to the needs of production.³⁸⁶

For Foucault, this de-composition of the idle and the expansion of population and capital accumulation that accompanied it thus helped re-configure the objects of 17th century police into a new kind of ‘governmental rationality’ between the rich and poor in the 18th century. The development of form of governmental rationality being developed in England and France in the 18th century which focused on the natural utility of the poor for capitalist accumulation is documented by Foucault in The Birth of the Clinic. In that work, Foucault uncovers the class contract of “utility-docility”, negotiated by the State and enforced by police powers of a centralized apparatus, which re-appears both in The Birth of the Clinic and Discipline and Punish as a reinforcement of a “government rationality” of 18th century police.³⁸⁷ This emerging 18th

³⁸⁶ Ibid

³⁸⁷ Foucault, “Space, Knowledge, Power” in *The Foucault Reader*, 241

century form of police, developed more fully in Napoleon's imperial regime, also signaled a further transition from the Mercantilist police state to the 'reason of least state' of the 19th century.

However, as Foucault makes clear, this new relationship of 'utility-docility' between the individual and the State which links the utility of the governed to the strength of the State (18th century police) was only made possible and intelligible through a series of transformations in certain medical, moral, pedagogical and military practices. For Foucault, it was only through the 18th-century 'utilitarian rationalization of morality and political control'³⁸⁸ that occurred through the great moral, political and scientific reformers, that a new 'micro-physics' of government becomes possible "for the control and use of men."³⁸⁹ Obsessed with the scientific description and classification of natural beings, the 18th-century adopted – partly from the domain of theology and asceticism - the attention to the 'detail of man', "since, in the sight of God, no immensity is greater than a detail, nor is anything so small that it was not willed by one of his individual wishes."³⁹⁰ Since God is the constant and permanent observer of one's entire life, "for the disciplined man, as for the true believer, no detail is unimportant".³⁹¹ La Salle's attention to the minute details of man's body and soul became the obsession of Frederick II, covering pedagogy, medicine, military tactics and economics, which was finally received by the 'Newton of small actions', Napoleon Bonaparte who wished "to arrange around him a mechanism of power that would enable him to see the smallest event that occurred in the state he governed."³⁹²

³⁸⁸ Foucault, "Docile Bodies" in *The Foucault Reader*, 183

³⁸⁹ Ibid

³⁹⁰ Foucault, "Docile Bodies" in *The Foucault Reader*, 184

³⁹¹ Ibid

³⁹² Foucault, "Docile Bodies" in *The Foucault Reader*, 185

The Napoleonic Empire, in this sense, was the political and social manifestation of the panoptic aspirations Bentham had for the completely transparent, legible and therefore just ideal society. Even under the reign of Louis XIV before him, the dream of a completely transparent and legible social body was being pursued under the direction of the interior ministry of Jean-Baptiste Colbert in what has been called the birth of ‘the information State’.³⁹³ Through the penetration of knowledge and light throughout the entire social body, the dangerous internal elements could be identified, contained and regulated - governed at the least possible cost, both politically and economically. And, in the 18th-century, it was social reformers in England, France and America – like Benjamin Franklin – who would implement schemes to put the idle to work, not as punishment, but as correction and reform of the ‘daily lives and habits’ of individuals. In short, the decomposition of the idle in the 18th century by Utilitarians, Physiocrats, political economists and penal theorists would turn on the new definition of police that appears in Montesquieu as the supplement to the governmental rationality of law: the corrective, ethical power of government over the daily lives and habits of individuals.

In Discipline and Punish Foucault shows that once the poor were reconceived in the 18th century as ‘useful’ within the bourgeois disciplinary apparatus that underwrites capitalist economies of the 18th century, the ‘mass criminality’ of the 17th century gives way to a ‘marginal criminality’ of the 18th century which increasingly targets the minute illegalities of the everyday life of the poor, such as laws regarding theft. Here, Foucault shows how laws against vagabondage in the 18th century follow a more general pattern at the time for the increasing disciplining of the everyday life of individuals and populations, beginning with the poor, who are

³⁹³ Jacob Soll, *The Information Master: Jean-Baptiste Colbert's State Intelligence System* (University of Michigan Press, 2009), 140

described with increasing internal moral animosity at the time: “enemy troops”, “swarming locusts”, “voracious insects”.³⁹⁴ The severity of laws targeting the illegalities of the poor – such as theft - in turn, according to Foucault, reflect the larger structural transformations in the 18th century in the development of “production, the increase of wealth, a higher juridical and moral value placed on property relations, stricter methods of surveillance, a tighter partitioning of the population, more efficient techniques of locating and obtaining information”³⁹⁵ The increase in population, popular revolt and the importance of property relations therefore increases the importance on behalf of the bourgeoisie for the demand of security against theft which, in turn, justifies the tightening of the penal and disciplinary hold on the life, conduct and behavior of the poor. This attention to the detailed life of the poor in the 18th century was part of a much larger effort to

adjust the mechanisms of power that frame the everyday lives of individuals; an adaptation and a refinement of the machinery that assumes responsibility for and places under surveillance their everyday behavior, their identity, their activity, their apparently unimportant gestures; another policy for that multiplicity of bodies and forces that constitutes a population. What was emerging no doubt was not so much anew respect for the condemned...as a tendency towards a more finely tuned justice, towards a closer penal mapping of the social body.³⁹⁶

For Foucault, the 18th century re-organization of police objectives from a mass criminality to the minor illegalities of theft aimed at the daily control and surveillance of the urban poor constituted a new era of police characterized by an ‘economic rationality’ whose purvey and scope would be co-extensive with society itself. And, as Foucault would remark in 1976, the power to punish wielded by this new police over the daily lives and habits of the urban poor

³⁹⁴ Michel Foucault, Discipline and Punish (New York: Random House, 1977), 76

³⁹⁵ Foucault, Discipline and Punish, 77

³⁹⁶ Foucault, Discipline and Punish, 77-78

would, with the constitution of the figure of the delinquent, become co-extensive with the population and its milieu.³⁹⁷

By tracing the birth of 18th century police as an economic rationality internal to society's power to punish, Foucault in *DP* was already documenting the emergence of the 'reason of least state' that he would describe in his lectures on The Birth of Biopolitics. Police understood within the governmental rationality of liberalism and political economy, Foucault would argue, would in *STP* be re-configured into the dual mechanisms of law enforcement and repression of criminality on the one hand, and 'natural' mechanisms of incentive-regulation on the other. The latter – police mechanisms of incentive-regulation – would for Foucault become described in The Birth of Biopolitics as the "liberogenic" technologies of reason of least state which seek to produce freedom through introducing regimes of (self)control, (self)discipline, constraint and limitation. These liberogenic technologies of the reason of least state, based on police as an economic rationality co-extensive with society's power to punish, constitute the productive, positive function of police power in the 18th century era of governmentality.

Thus Foucault's tracing of police would lead him from the police of the 17th century idea of the virtuous, orderly Republic of laws and justice to the 18th century idea of police that underpinned the emergence of disciplinary society and the micro-physics of power first applied to the problem of the poor in the reason of least state that he documents in *DP*. However, it would not be until the publication of The History of Sexuality Vol. 1 that Foucault would come to associate the governmental rationality of police with an explicitly bio-political mission

³⁹⁷ Michel Foucault. 'Points de vue', *Photo*, nos 24-25, été-automne 1976, p. 74. (Extrait de la conférence donnée le 29 mars 1976 à l'université de Montréal, dans le cadre de la Semaine du prisonnier, sur le sujet des alternatives à la prison'). *Dits et Ecrits*, Tome III, texte n. 177, pp. 93-94

focused on the problem of population as an *economic* problem for the State. By the publication of *HS Vol. 1*, Foucault had read *Elements de police* by von Justi, and would write in the introduction that sexuality in the 18th century became for the first time a ‘police matter’. Indeed, by 1976, the 18th century idea of police as economic rationality co-extensive with society had for Foucault already become synonymous with bio-power, whose very birth Foucault will trace as *Medizinische polizei*, or a the medical police or social medicine of the 18th century.³⁹⁸ Thus for Foucault, 18th century police will become not only the organizing principle of disciplinary society and part of the state rationality’ of law and police that we find in Montesquieu and the American founders, but also the organizing principle for the birth of bio-politics.

In fact, at a conference on prisons at the University of Montreal in 1976, Foucault had already come to the conviction that the invention of delinquency and criminality in the 18th and 19th centuries “...naturalized the presence of the police within the milieu of the population.”³⁹⁹ Police, Foucault recognized even as early as ’76, would become in the 18th century inseparable from the milieu of the population, operating not through the law and an administrative apparatus, but through non-juridical technologies targeting the body and the population, focused on problems of criminality, delinquency and the biopolitical problems of the urban poor.

In 1976, police for Foucault was then already understood as a non-juridical, disciplinary and bio-political power over the life and labor of man developed within capitalist societies of the 18th and 19th century. Police, it could be said, is the name of techniques and technologies of

³⁹⁸ Michel Foucault. *Securite, territoire, population*, Annuaire du College de France, 78e annee, Histire des systemes de pensee, annee 1977-1978, Dits et Ecrits Tome III texte n 255, pp. 445-449

³⁹⁹ Michel Foucault. ‘Points de vue’, Photo, nos 24-25, ete-autmne 1976, p. 74. (Extrait de la conference donnee le 29 mars 1976 a l’universite de Montreal, dans le cadre de la Semaine du prisonnier, sur le sujet des alternatives a la prison’.). *Dits et Ecrits*, Tome III, texte n. 177, pp. 93-94

power over the life of individuals and populations which made capitalist accumulation and governing of populations in the 18th and 19th century possible. In particular, through his reading of Colquhoun, Montesquieu, DeLaMare and Le Trosne police would, by 1975, become synonymous with disciplinary society. And, by 1976, police would become synonymous with *medizinische polizei*, the first form of bio-politics that would be exercised as a natural presence within the milieu of the population. However, it remained unclear for Foucault how liberalism and the state figured within the history of the politicization of life and its processes that Foucault had traced from the 16th to the 18th century. To this end, Foucault recognized that in order to understand how life and the generic processes of life came to be integrated into the political calculations of state rationality, he must study how life became objects of political calculation in the first place. He must, therefore, study the framework of bio-politics, the governmental naturalism of liberalism.

By 1977 then, Foucault understood that, in order to understand how police functions in liberal government as a power over life and its processes, and inserts itself as a natural presence within the milieu of the population, he must study the art of government from which liberal governmental reason emerged. To this end, Foucault faced the question of how a liberal art of government centered on ‘frugality’ and self-limitation could be compatible with the power of police, understood as the techniques by which life and its processes are taken into political calculations of the State. Thus, in *STP*, Foucault traces how the 17th century Mercantilist-Cameralist idea of the ‘police state’ is critiqued by the Physiocrats such as Turquet, Le Trosne and DuPont, resulting in the reflection of governmental practice upon itself, a self-limitation of state police objectives. This critique of the role of the State in economic processes and the emergence of a certain governmental naturalism in the works of Physiocrats, utilitarians and

others meant that the unitary project of police of the 17th century Mercantilist state will undergo a process of decomposition by which the positive functions of police that increase the strength of the state are devolved into mechanisms of ‘incentive-regulation’ centered on the ‘liberogenic’ production of freedom through the economy, market and population, and the negative functions of police devolve into the preventative police force we know today which is focused on the repression of social disorder, illegality, delinquency, etc.⁴⁰⁰ Police, within the art of liberal government forming in the 18th century, will operate through regulated capacities or freedoms instead of juridical decrees, and work with natural processes and spaces of circulation instead of fabricated and exhaustively controlled spaces of confinement; it will primarily utilize mechanisms of security (economy, population management, law) instead of techniques of discipline, and deal with processes and phenomena of population instead of bodies, things, goods and morals.

Thus in 1977, Foucault would come to analyze the role of police in liberalism through examining the Physiocratic idea that the aims of government are not to be achieved through law and the mechanisms of sovereignty, but through tactics of government.⁴⁰¹ The “tactics of governmentality”, therefore, call for techniques and technologies of government that may be juridical, disciplinary or biopolitical. In fact, the emergence of population as the object of government at the end of the 18th century, Foucault notes, means also that population becomes the object for juridical, disciplinary and biopolitical techniques as well. Thus for Foucault, the

⁴⁰⁰ Michel Foucault, *Security, Territory, Population* (New York: Palgrave Macmillan, 2007), 353-4

⁴⁰¹ Foucault, governmentality in *Power: Essential Works of Foucault, 1954-1984, Vol. 3*. James Faubion ed. (New York: New Press, 2000) 211

“...notion of a government of population renders all more acute the problem of the foundation of sovereignty...and all the more acute equally the necessity for the development of discipline.”⁴⁰²

Thus by 1977, Foucault would recognize that, since the emergence of the ‘state of government’ that characterizes governments since the 18th century, power is exercised over a population using the tactics of government which include juridical, disciplinary and biopolitical techniques. This state of government, Foucault writes, replaced the administrative state of the 15th and 16th centuries founded on regulations and discipline, which in turn replaced the state of justice based in a feudal territory and founded on a society on laws. The emergence of the state of government, or state rationality in the era of government, therefore was made possible by the development of the Christian pastorate, the diplomatic-military model, and the idea of police: “(T)he pastoral, the new diplomatico-military technics, and finally the police, I believe, were the three elements from which the phenomenon of the governmentalization of the state, so fundamental in the history of the West, could be produced.”⁴⁰³

For Foucault, the ‘state of government’ that emerged in the 18th century thus combines the administrative apparatus of the diplomatico-military model, the pastoral functions of seeing to the individual well-being and welfare of each and all, and the idea of police as a political technology of the individual. Police, as an element of governmentality, will thus become for Foucault a political technology of individuals, the principle and mechanism for the integration of individuals into the order of the State. Whether in the context of the “virtuous, orderly Republic”, the reform of individuals daily lives and habits, or liberal mechanisms of incentive-regulation or regulated capacities or freedoms, police for Foucault will become, by 1982, a political

⁴⁰² Foucault, *Governmentality*, 219

⁴⁰³ Foucault, *Governmentality*, 222

technology of individuals which integrates the conduct of individuals into the political apparatus of the republic, the city, the nation or the state. In this regard, police as a political technology of integration and unity will be indispensable for the state of government as the technology that integrates individuals into the mechanisms of government so that they may enjoy the liberty that is provided to them under conditions of security.

In this respect, I wish to analyze the technologies of police in liberal government (economy, population management and law) as technologies of military-pastorship. Technologies of 'liberal police', in this analysis, seek to establish and maintain certain relations of authority and obedience by introducing a form of power/knowledge (economic, medical, juridical). Analyzing technologies of police in this way allows us to understand the various ways that the frugal government of liberalism deploys certain technologies of police in order to establish relations of authority and obedience. Towards this end, I turn to the power/knowledge of political economy developed in early liberalism as a tactic of police which aims at establishing relations of authority and obedience between the idle and the industrious. Police in this sense will be understood therefore as an economic pastorate that aims at establishing a relation of subordination of the idle to the industrious.

Political Economy & the Economic Pastorate of Police

In The Constitution of Poverty, Mitchel Dean elaborates on the subtle differences Foucault wants to point out between the Mercantilist police state under Louis XIV and the policing that goes on in disciplinary societies of the 18th and 19th centuries. The Mercantilist workhouse, Dean explains, was "rooted in everyday mercantilist concerns with increasing

numbers of the trading households in the nation, and converting the idle into the industrious Poor.”⁴⁰⁴ These forms of confinement for the poor were, Dean says,

less a place for the reform of individuals than the site of the metamorphosis of the idle into the industrious, or dross into sterling, as Bentham might say. It was neither a protected workshop in which the Poor learned the skills for the supersession of their condition nor a reformatory in which they became normalized individuals, but a kind of switching mechanism. In it, the Poor would remain the Poor. That was their earthly lot. They would be transformed, but not as individuals so much as categories. The mercantilist workhouse, unlike later the prison, asylum, and reformatory, which were to be characterized by the regime of discipline described by Foucault (1977a), did not attempt to act on the ‘soul’ of the individual.⁴⁰⁵

In addition however, the policing of the idle involved not only the inculcation of the Mercantilist work ethic through confinement, but also included early version of ‘public works’ projects for the poor, “farming out the poor” to private contractors, labor colonies, and the increasing targeting of vagrancy in criminal law.⁴⁰⁶ These governmental tactics, Dean makes clear, were part of “the mercantilist vision of the patriarchal role of the heads of the nation’s households in its political oeconomy...the latter, however, would be relatively unrefined compared to those which would posit a private realm for the liberal governance which was to follow.”⁴⁰⁷ Indeed, as Dean documents, the political economy of the poor that was to emerge in 18th century liberal political theory would constitute a drastic break in the governance of the poor and their re-calibration to an emerging liberal economic order and the demands of industrial capitalism. The Mercantilist discourse of the poor, Dean argues,

corresponds to the particular mode of government formed in the epoch prior to the emergence of industrial capitalism. This police was neither the reformatory police of the period of the decline of the order of estates, nor the preventative police force of the

⁴⁰⁴ Mitchel Dean, *The Constitution of Poverty: Towards a Genealogy of Liberal Governance* (New York: Routledge, 2013), 64

⁴⁰⁵ Dean, *The Constitution of Poverty*, 64

⁴⁰⁶ Ibid

⁴⁰⁷ Dean, *The Constitution of Poverty*, 65

liberal mode of government, although it shares with both the problem of securing the good order of the state... While certainly the most dense instrument of industrial police, the workhouse formed only one node within a network of techniques and strategies projected on to the laboring population to promote work-discipline by increasing their motivation to follow a continuous and regular course of labour, and hence to liberate them from the 'taint of slothfulness' and make them profitable, above all, to the nation.⁴⁰⁸ The Mercantilist *police* of 17th century and the industrial workhouse, Dean concludes, thus should be distinguished from the later liberal 'preventative' police conceived by 18th century English theorists of police (Colquhoun, Bentham, Chadwick) and, I would argue, as well as the nineteenth century American theorists of police (Tiedeman, Cooley, Freund). However, Dean concludes, what the later liberal, preventative police 'could not resend' was, "...the desire to render the Poor useful to the nation or the implication that it was the duty of the rich, articulated throughout the national and local arms of the state, to see to it that the Poor were made to work and inserted into patriarchal relations."⁴⁰⁹

Joseph Townsend's *Dissertation on the Poor Laws by a Well-wisher* (1787) represents for Dean one of the foundational texts in 18th century political economic theory which made possible the new form of liberal governance in the 18th and nineteenth centuries. In that work, Townsend put forth a new theory of class relations, which he stated were guided by a "biological model" governed by 'a putative Natural Law'. Quoting Dean,

The discovery of biological laws of the regulation of the population by the available food resources meant that 'the biological nature of man appeared as the given foundation of a society that was not of a political order' (115). This 'naturalism' justified poverty and indigence among the majority of the population by removing such items from the agenda of the state. Poverty was thus consigned to the ungovernable order of the natural by virtue of the fact that it was the poor who were the bearers of the operation of these laws through the mechanism of hunger.⁴¹⁰

⁴⁰⁸ Dean, *The Constitution of Poverty*, 66

⁴⁰⁹ Dean, *The Constitution of Poverty*, 67

⁴¹⁰ Dean, *The Constitution of Poverty*, 69

Townsend's *Dissertation* is for Dean both a political economy of poverty as much as a metaphysics of government – much like the Mercantilist theory of confinement. However, unlike the Mercantilist theory of police and confinement, the naturalistic interpretation of Townsend viewed population as being governed by processes which were natural and had to be respected, even and perhaps because of the motivations, fears and sufferings which were found in nature herself (such as 'hunger'). Indeed, Dean says, one of the central themes of the *Dissertation* is that 'labour' is the result of a motive or 'spur' which is natural, namely hunger:

In this respect, Townsend is at once with the mercantilist low-wage theory of industry. Labour is not a means for the creation of wealth, nor for the transcendence of poverty. Rather, it is the service rendered by the poor to the community. Poor relief can be criticized not because it interrupts the production of wealth or nullifies the Poor's motives to overcome their poverty through labour, but because it fails to promote their 'cheerful compliance with the demands which the community is obliged to make on the most indigent of its members 'and thereby destroys the 'harmony and beauty, the symmetry and order of that system, which God and nature have established in the world' (Townsend 1971: 36). He might have added that it destroys the proper police between ranks of the community.⁴¹¹

Townsend's political economy of the poor, as I mentioned, forms a part of a metaphysics of government in which he divides "natural society" into two classes, "the industrious" and the idle. These class divisions give rise to the bonds of servitude and duty in society which are also natural. As Dean remarks, "The dissertation presents a coherent conception of nature which can cover both the relation between populations and food and that of masters and servants. Poor relief not only destroys the police which is established by the natural bonds of service. It also destroys the delicate equilibrium between numbers and food."⁴¹² Because of these natural relations of dependence established by the processes of population, which are at the same time

⁴¹¹ Dean, *The Constitution of Poverty*, 70

⁴¹² Dean, *The Constitution of Poverty*, 72

inherent to the notion of population as such, there is a “natural division between the active and indolent”. For Townsend, this natural division of the classes of the industrious and the idle constitute an entire metaphysics of government from which flows a program of liberal government whose task is to observe those very processes which constitute the natural laws of population. Therefore, Dean says,

the state of the Poor is doubly necessary: it provides members of the servile class and helps maintain their proper attitudes; it also ensures, through the fear of not being able to feed one’s future offspring, and the premature death of present members, that the advance of population will be kept within the limits of subsistence. The poor laws fail to attend to the requirements of the natural laws which, if obeyed, promote happiness.⁴¹³

A governmental reason which takes as its formula the observance of the natural law and order inherent to the processes of population and society is, of course, the model of government based on *raison du moindre gouvernement* that Foucault credits to Benjamin Franklin. And, indeed, Franklin – along with his utilitarian English counterpart Jeremy Bentham with whom he had correspondence – were among the engineers of the kind of political economy Townsend was developing. In The National Charity Company: Bentham’s Silent Revolution, Bahmueller recites Bentham’s own political economy and its implications for a theory of government. In that illuminating treatment of Bentham’s political economic views, Bahmueller shows how Bentham – committed to a utilitarian metaphysic of pain and pleasure – aggressively endorsed Townsend’s views on the ‘naturalness’ of populational processes such as the pains of hunger and the pleasures associated with avoiding that hunger. Rehearsing Townsend’s views, Bahmueller remarks:

With a population greater than one can feed...some additional check was ‘absolutely needful’...the fear of hunger. This was not to be hunger directly felt by the pauper but as feared for his immediate offspring...Fear of hunger would force men to persevering industriousness and an uncompromising frugality...The means of turning up the heat

⁴¹³ Dean, *The Constitution of Poverty*, 73

was turning down to a trickle the gushing flood of legally enforced public assistance. The poor should depend on the rich for relief, relief which must be limited and precarious... 'Hunger', he remarked, 'will tame the fiercest animals, it will teach decency and civility, obedience and subjection, to the most brutish, the most obstinate, and the most perverse.' ...a good system of poor relief must 'in the first place, encourage industry, oeconomy and subordination; and, in the second place, regulate population by the demand for labour.' In any case, under Townsend's plan, 'the subordination of the poor would be more effectually secured'".⁴¹⁴

Townsend's *Dissertation*, since it divided the population between the idle and industrious classes, came very close to a sort of evolutionary endorsement of hunger, poverty and starvation. "The frugal, not the profligate", as Bahmueller summarizes his views, "should be given the primary attention of charity; others might share the leftovers, if any. Townsend seemed very close to saying that some would – and should- be left to starve; his entire argument seemed to point to that conclusion."⁴¹⁵

Bentham's reception of Townsend's views came in the context of his various projects, which spanned from the Panopticon to the Pannomion, to create a 'House of Industry' which would "usurp the place of the church", signaling "the decline of the church and the rise of a more Utilitarian institution. In all but name the parish church poor-box would move to the local branch of the National Charity Company."⁴¹⁶ In this vein, Bentham's utilitarianism extended to his entire worldview, particularly in the case of political economic theory, religion, and their mutual implications for government. As Bahmueller explains,

In 1786 he embraced the biblical definition of poverty, a definition which had by then gained a measure of acceptance. All those are poor who must live as Adam and Eve were obliged to live after their expulsion from the Garden of Eden: 'Taken in the gross to live by the sweat of his brow has always been man's sentence, and is become man's

⁴¹⁴ Charles Bahmueller, *The National Charity Company: Bentham's Silent Revolution* (Berkeley: University of California Press, 1981), 79

⁴¹⁵ Bahmueller, *The Constitution of Poverty*, 78

⁴¹⁶ Bahmueller, *The Constitution of Poverty*, 85

nature.’ To labor from necessity is to be poor....poverty is the ‘natural, the primitive, the general, and the unchangeable, lot of man.’⁴¹⁷

In this respect, Bentham regarded both the acquisition and distribution of the necessities of life

“not as a communal activity, but first and foremost as an activity of particular individuals.”⁴¹⁸

Bahmueller summarizes Bentham’s metaphysics of government, which incorporated theories regarding human psychology, religious belief and action, and a theory of sovereignty:

‘He who does not work shall not eat.’ This Pauline moral revelation was a guiding beacon through everything Bentham wrote on the relief of poverty. Even in the garb of his secularized Protestantism, it is shot-through with the psychology of sin. Idleness was an evil on its face, a *malum in se*; and we will see over and over again how seriously he took the adage that ‘the devil finds work for idle fingers’.⁴¹⁹

In *The First American: the Life and Times of Benjamin Franklin*, Brands rehearses

Franklin’s political economic thought by observing that, unlike like Bentham, Franklin thought that aiding the poor was in fact a morally virtuous act which pleased God. In this, Franklin and Bentham parted ways. However, the differences in their political economy, it seems, stop there.

Indeed, Franklin

did not question the morality of aiding the poor, only the efficacy. ‘To relieve the misfortunes of our fellow creatures us concurring with the Deity; ‘tis Godlike, but if we provide encouragements for laziness, and supports for folly, may it not be found fighting against the order of God and nature, which perhaps has appointed want and misery as the proper punishments for, and cautions against as well as necessary consequences of, idleness and extravagancy’.⁴²⁰

⁴¹⁷ Bahmueller, *The Constitution of Poverty*, 86

⁴¹⁸ Ibid

⁴¹⁹ Bahmueller, *The Constitution of Poverty*, 87

⁴²⁰ Franklin, quoted in H.W. Brands, *The First American: The Life and Times of Benjamin Franklin* (New York: Random House, 2010), 220

In addition, much like Townsend, Franklin agreed that “certain groups of people were less inclined to toil than others”⁴²¹, and that this natural division between the idle and industrious classes determined power relations in a political society. Franklin, for example, was convinced that Native Americans, since they were ‘naturally’ less inclined to submit to the discipline of work and industry and live in cities, were destined for that reason to be ‘extirpated’ from New England. The natural division between the idle and the industrious, for Franklin, was also the “...the reason that so many, and such numerous, nations, as the Tartars in Europe and Asia, the Indians in America, and the Negroes in Africa, continued a wandering careless life, and refused to live in cities, and to cultivate the arts as they are practiced by the civilized part of mankind.”⁴²²

Thus for Franklin, the *ethos* of Industry that inclined one to productive labor (the ideal of which for Franklin was agriculture) was a sort of natural characteristic within the human species. However, this characteristic was distributed unevenly within the species, such that some races were simply ‘more inclined’ towards the virtues of industrial life in the city than other races. This biological fact of the species – that some races were more biologically more inclined towards productive labor and industrial life than others – in turn justified the existence of the races. Indeed, because the emerging industrial city was seen as the just and natural order of things through the lens of liberal governmentality, it would be only natural that races that did not or could not conform to this new order would be “extirpated” by Nature herself. Alexis de Tocqueville, commenting on the fate of the “Three Races” in Anglo-America in the early 19th century would echo the sentiment that, while it was unfortunate that Native Americans were dying and being dispossessed of their land by Anglo-Europeans, this fact was nonetheless simply

⁴²¹ Brands, *The First American*, 222

⁴²² Franklin quoted in Brands, *The First American*, 223

the march of the progress of ‘Civilization’. This unfortunate fact was, for Tocqueville, due to a certain fact about the Native Americans as a population: their “spirit”, their “patriotism”, their ethos of independence. Thus the extirpation and subjugation of Native Americans is to be understood not as a result of European conquerors and colonization, but rather as a result of the ‘natural’ economic processes involved in barter, exchange and competition. And if, as Tocqueville predicts, these processes lead to general relations of dependence and even starvation, this too will be explained by reference to the modern economic concept of “famine”.

For Tocqueville, the European arrival and implementation of exchange and barter based on the fur trade meant that the subsistence lifestyle of the Native Americans was now directly disturbed and threatened. European settlers, by driving away buffalo populations and demanding certain objects for commercial barter, drove Native American tribes towards relations of dependence, scattered their tribes and dispossessed them of their land. Hunting was no longer only to fulfill the communal needs of the tribe but now “in order to obtain the only objects they could barter with us.”⁴²³ Citing a Congressional Report of 1829, Tocqueville rehearses how exchange-based European settlements, in driving away the game populations crucial for tribal needs, made it almost impossible to find objects to barter for exchange in commercial markets that were entirely out of their control. As a result, the ability to control their own means of subsistence is all but destroyed, leaving the existence of Native populations in a relation of strict dependence on the exchange-based social order of European settlements. However, “(S)trickly speaking”, “(I)t is not the Europeans who drive away the native races of America, but famine: a lucky distinction which had escaped the casuists of former times but which has been discovered

⁴²³ De Tocqueville, Alexis. *Democracy in America* (New York: Penguin Books, 2004) 377

by modern scholars.”⁴²⁴ Famine, therefore, is understood as the natural process that results from the prior natural processes which tend towards the progress of European civilization, a process that requires certain “vital preliminary” conditions. For Tocqueville, just as for Franklin, the “vital preliminary” requirements of European civilization begin with the ability and will to cultivate agriculture as productive labor.⁴²⁵ In the political economy of Tocqueville and Franklin, the Native Americans “(N)ot only do not possess this vital preliminary for civilization, but they find it very difficult to acquire.”⁴²⁶

In some cases, however, Native tribes were occasionally forced into farming and ‘civilization’ by the force of “necessity”. Citing the example of certain Cherokees and Creeks, Tocqueville says that these tribes found themselves “virtually surrounded” and “entrapped” by European colonizers between the Ohio and Mississippi rivers. By the force of “necessity” then, these tribes, “...standing between civilization and death, found themselves reduced to a shameful existence, living by their labor like the whites; they thus became farmers and, without giving up entirely their habits or customs, sacrificed only what was absolutely necessary for their existence.”⁴²⁷

Thus, in the eyes of the ‘native races’, Anglo-European society and its political-economic system of exchange and competition results in a particularly base and humiliating conception of life that inheres in the requirement that man “must earn his bread by demeaning hard labor” – a brute necessity which is always unsure and precarious.⁴²⁸ Life, defined by the necessity of labor,

⁴²⁴ Tocqueville, *Democracy in America*, 379

⁴²⁵ Tocqueville, *Democracy in America*, 383

⁴²⁶ Tocqueville, *Democracy in America*, 383

⁴²⁷ Tocqueville, *Democracy in America*, 385

⁴²⁸ Tocqueville, *Democracy in America*, 389

is not a life worth living. By entering into the political-economic sphere of ‘natural competition’ of Anglo-European social orders, native tribes often cannot find buyers for the fruits of their labor, “while the European farmer discovers a market with ease and the Indian produces only at considerable expense what the European can sell very cheaply.”⁴²⁹ All of this is further evidence for Tocqueville of what ‘by necessity’ occurs “when the most complete European civilization comes into contact with the barbarous Indian civilization.”⁴³⁰

In this sense, the relation between life and labor enforced by Anglo-European civilization on the American continent is consistent with 18th century theories of police as they crossed the Atlantic into the American context. The “Atlantic Crossing” of theories of police - and the relations between life and labor they presupposed - became an important factor therefore in how American political economy rationalized the suffering, starvation and famine resulting from colonization and the subjugation of native and black populations in the early republic. As Foucault rehearses in the course lectures on Security, Territory, Population, liberal political economy in the 18th century drew heavily upon European treatises of *la police* on economic and political issues. Citing Delamare’s Traite de la police, Foucault explains how liberal political economy incorporated the police notion that scarcity and famine were “natural” mechanisms of Providence that restore the just and natural order of things. Citing Delamare, Foucault notes that scarcity and famine are here conceived as, “...one of those salutary scourges that God employs to punish us and make us return to our duty...God often makes use of secondary causes in order to exercise his Justice here below...Also, whether they are sent to us by men’s malice, in

⁴²⁹ Tocqueville, *Democracy in America*, 389

⁴³⁰ Tocqueville, *Democracy in America*, 390

appearance they are always the same, but always part of the order of Providence.”⁴³¹ However, unlike the ‘disciplining’ of grain and scarcity that occurs in the Mercantilist ‘police state’ of the late 17th and early 18th century where scarcity and famine are ‘evils’ to be prevented and prohibited, the mechanisms of security that develop in liberal political-economic analysis will focus not on the prevention or prohibition of scarcity and famine but rather on their management, regulation and control. As Foucault shows, liberal political economy will no longer attempt to prevent and prohibit the scarcity scourge of grain and foodstuffs, but rather will ‘let things happen’ such that scarcity and famine might become useful to the State as mechanisms of security themselves; scarcity and famine become, in liberal political economy, mechanisms of security themselves. As opposed to disciplinary police, liberal police mechanisms ‘let things happen’, “...allowing prices to rise, allowing scarcity to develop, and letting people go hungry so as to prevent something else happening”⁴³². Whereas disciplinary technologies of the ‘police state’ view hunger, starvation and famine as ‘evils’ to be eradicated by the State and its police, in a liberal rationality of State, “...the function of security is to rely on details that are not valued as good or evil in themselves, that are taken to be necessary, inevitable processes, as natural processes in the broad sense...in order to obtain something that is considered to be pertinent in itself because situated at the level of the population.”⁴³³

In the liberal political economy developed by Townsend, Bentham and Franklin, the idle and the poor were thus conceived as a permanent feature of the increasingly urban population. And, while there was much disagreement on the moral status of the poor, idle and vagrant

⁴³¹ Foucault, *Security, Territory Population*, 50

⁴³² Foucault, *Security, Territory, Population*, 48

⁴³³ Foucault, *Security, Territory, Population*, 45

populations, there was perfect agreement within the new governmental reason being developed that the poor, because they formed a part of the natural order of things, could and should be “put to use” in the springs and mechanisms of a well-ordered, efficient system of city, state and national government. Especially within the utilitarian camp, the poor would be viewed as the population of the politically useful, to be inserted into the apparatus of smooth and efficient State government. The necessary complement to the emerging capitalist industrial order, as Foucault states, will therefore be the liberal mechanisms of security that take up the problem of the idle populations as a problem of management, control and regulation. However, as Foucault shows in Discipline in Punish, a new knowledge of “the idle” population had to first be developed which would be used and inserted into the legal, criminal, economic and political machinery of emerging industrial cities of the 19th century.

The “naturalness” of population conceived in Franklin’s political-economic analysis Franklin’s particular insistence on the utility of the poor for the commercial enrichment of the city of Philadelphia was clear, at times even arguing for the “...erection of workhouses, where the indigent would be ‘obliged to work at the pleasure of others for a subsistence and that too under confinement (Franklin 1959-, 15:148-57)”⁴³⁴ For Franklin, “not just poverty, but grinding poverty would be required to ensure the accumulation of capital.”⁴³⁵ Indeed, much like his English utilitarian counterpart Bentham, Franklin came to realize that confinement would in fact be necessary in order to subdue the poor, who would of course resist at times. Hence because the

⁴³⁴ Michael Perelman. *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation* (Durham: Duke Univ. Press, 2000), 277

⁴³⁵ Ibid

poor would not come to the workhouses willingly, they must be persuaded by other means: charity, philanthropy and the promise of salvation, either religious or civic.

Franklin modeled this workhouse for the poor not after the Mercantilist workhouse of the police state, but after the “disciplinary” institutional model that was being proposed, once again, by his English utilitarian counterparts. In his companion piece to his Panopticon letters titled *Pauper Management Improved*, “(B)entham proposed a National Charity Company modeled after the East India Company – a privately owned, joint stock company partially subsidized by the government. It was to have absolute authority over the ‘whole body of the burdensome poor.’”⁴³⁶ This absolute authority and confinement of the poor was necessary because the poor lacked precisely the kind of virtues that made one fit for subjection. Indeed in Bentham’s words, because “human beings are the most powerful instruments of production... each man therefore meets with an obstinate resistance to his own will, and this naturally engenders antipathy toward beings who thus baffle and contravene his wishes.”⁴³⁷ For Bentham, it was the control over and use of human beings as instruments of production that gave rise to the “universal thirst for power” as well as the “...equally prevalent hatred of subjection”.⁴³⁸

As Foucault points out in *Discipline and Punish*, this transformation in moral and legal reform around the ‘problem’ of the poorer classes occurred, most famously, in “the Philadelphia model” of punishment in America at the end of the 18th century.⁴³⁹ It is in this context that Benjamin Franklin became one of the primary negotiators of the new utilitarian contract between

⁴³⁶ Perelman, *The Invention of Capitalism*, 21

⁴³⁷ Bentham quoted in Perelman, *The Invention of Capitalism*, 21

⁴³⁸ Perelman, *The Invention of Capitalism*, 21

⁴³⁹ Foucault, *Discipline and Punish*, 123, 237-38

the natural populations of the industrious and the idle of the American colonies. Franklin, along with other members of the Philadelphia Society, became the architects of the new institutions that would transform and ‘reform’ the moral, spiritual and social landscape of the rapidly expanding diverse population of the American colonies, which were confronted with new problems such as ineffective government, political factions, labor strikes, smallpox, waste management, fire protection, theft, madness, insurance, and a myriad of problems associated with urban planning. Franklin, acutely aware of the problems a rapidly expanding industrial city would face, would lay the foundations of a unique form of urban social control. Alongside his comprehensive regime self-improvement and self-examination, Franklin was determined, as he was in all his scientific endeavors, to discover the secret motivations and springs of civic virtue and vice, and to build institutions that would inculcate virtuous, useful citizens for the city and the state. “Men”, Franklin held, “if one understood their motives, could be managed as easily as smoky chimneys.”⁴⁴⁰

In The First American: the Life and Times of Benjamin Franklin, Brands states that, “For nearly two decades Franklin had lamented the lack of safety on the streets of Philadelphia after dark.”⁴⁴¹ It was well known, after all, that the Quakers’ “aversion to violence” could well be to blame for the lackluster criminal code in Philadelphia as compared to other colonies and that, “quite possible for this reason, Philadelphia had a higher crime rate than other colonial cities.”⁴⁴² However, as Brands explains, “Franklin detected another reason as well: an inattention to policing that in itself was almost criminal.” (ibid) Franklin openly criticized the current system

⁴⁴⁰ Walter J. Black, *The Autobiography of Benjamin Franklin* (New York: Classics Club, 1941), xi

⁴⁴¹ Brands, *The First American*, 213

⁴⁴² Ibid

of the nightwatch which existed, in which, “(H)ouseholders in the city were liable for watch duty after dark but might buy their way out of this responsibility by paying the ward constable six shillings a year, with the fee ostensibly to be used to hire substitutes. In practice the money was more than necessary, and the watch fees became a profitable perquisite of the constables’ office. They also undermined the security of the city.”⁴⁴³ Franklin thus went about proposing a complete reform of the nightwatch system of Philadelphia which would become in time the first proper police force in American history. After proposing and gaining approval of his police reform idea to the *Junto* society, the proposal floundered in the Assembly. As Brand explains, “Not until the early 1750s, following a continued deterioration of street safety” was police reform approved by the Assembly enabling Philadelphia “to raise the tax required to light the streets and pay constables and watchmen sufficiently to make them their jobs seriously.”⁴⁴⁴ Brands, in his biography of Franklin, explains the details of this new proposal for the creation of America’s first true ‘preventative’ police force in the sense we understand it today:

The orders specified the hours of duty for constables (ten at night till four in the morning from March to September, nine at night till six in the morning from September to March). They identified the precise street corners on which the watchmen were to stand and the rounds they were to walk... They listed the sorts of trouble-makers the constables and watchmen should be on the lookout for (‘Night walkers, malefactors, rogues, vagabonds, and disorderly persons, who they shall find disturbing the public peace, or shall have just cause to suspect of any evil design’). And they characterized the duties of the watch (‘To prevent any burglaries, robberies, outrages, and disorders and to apprehend any suspected persons who, in such times of confusion, may be feloniously carrying off the goods and effects of others’). In addition the watchmen should immediately raise the alarm ‘in case of fire breaking out or other great necessity’⁴⁴⁵

⁴⁴³ *ibid*

⁴⁴⁴ Brands, *The First American*, 214

⁴⁴⁵ *Ibid*

These then were the basic terms for informing the duties and obligations of police in the streets of Philadelphia, which were to become extremely influential in modeling how other post-colonial cities conceived what the police power was, what its scope was, and what its aims, objectives and targets were. However, as Brands explains, while this new police force gave a new vigilance to the watch of the city, it faced one of the most intractable problems in the governance of ever-increasing numbers of persons flocking to the cities of New England:

the proliferation of criminals. Since the seventeenth century the American colonies had been forced to serve as a dumping ground for criminals convicted in England. Colonial legislatures protested the practice of transpiration of felons, only to have their protests ignored. Colonial editors denounced the policy, appending to their editors lurid description of what the policy produced. The *Gazette* did its part in April 1751: “From Maryland we hear that a convict servant, about three weeks since, went into his master’s house, with an axe in his hand, determined to kill his mistress; but changing his purpose on seeing, as he expressed it, *how d- innocent she looked* , he laid his left hand on a block, cut it off, and threw it at her, saying, *Now make me work, if you can*. (N.B. ‘Tis said this desperate villain is now begging in Pennsylvania, and ‘tis thought he has been seen in this city; he pretends to have lost his hand by an accident. The public are therefore cautioned to beware of him.⁴⁴⁶

Franklin, who managed the *Pennsylvania Gazette*, regularly used the newspaper precisely for announcing threats, dangers and nuisances to the public safety, health and civic order such as this one, which denounced and warned against one of the most well-recognized threats to public order: a runaway servant who must resort to begging. Thus, not only was the newly organized police force patrolling the streets for the public nuisances of begging, vagrants and vagabonds, but the official newspaper of Philadelphia also acted in concert as a sort of public watch information system, such that the entire community was both put on alert for the criminal, as well as alerted to what exactly constituted a ‘public nuisance’ and threat to the community. In this way, the public perception of danger and threat to the *salus populi* was adjusted to the actual

⁴⁴⁶ Brands, *The First American*, 215

objectives, aims and targets of the police, who worked in tandem with one another and with the community at large to keep vigilance over the city.

Franklin's bottom-up, comprehensive approach to implementing social order and the institutions to ensure them encompassed both the construction of civic institutions and mechanisms of restraint that would direct and reform the daily habits, thoughts and conduct of individuals and the public (the penitentiary, hospital, police, newspaper, free societies) as well as the idea of individual liberty through 'self-improvement', or what he called the practice of "the art of virtue". Franklin, aware of the fundamental importance of inculcating the 'public virtue and spirit' at an early age, recognized that "it is in youth that we plant our chief habits and prejudices; it is in youth that we take our party as to professions, pursuits, and matrimony...in youth the private and public character is determined."⁴⁴⁷ To this, Franklin added that in order to achieve his "bold and arduous project of arriving at moral perfection"⁴⁴⁸, one must engage in a rigorous daily practice of 'self-examination' in order to eliminate the vices of character and 'unclean' habits of conduct and in their place inculcate the 'habitude' of what he called the 'thirteen virtues'⁴⁴⁹. The thirteen virtues [Temperance, Silence, Order, Resolution, Frugality, Industry, Sincerity, Justice, Moderation, Cleanliness Tranquility Chastity and Humility] were to be mastered, one at a time, until all of them acquired. This regimen was to be carried out as specified:

Conceiving then that agreeably to the advice of Pythagoras in his Golden Verses daily examination would be necessary, I contrived the following method for conducting that examination. I made a little book in which I allotted a page for each of the virtues. I ruled each page with red ink so as to have seven columns, one for each day of the week,

⁴⁴⁷ (Letter to Franklin from Benjamin Vaughn, from Black, *The Autobiography of Benjamin Franklin*, p.111)

⁴⁴⁸ Black, *The Autobiography of Benjamin Franklin*, 128

⁴⁴⁹ Black, *The Autobiography of Benjamin Franklin*, 129

marking each column with a letter for the day. I crossed these columns with thirteen red lines, marking the beginning of each line with the first letter of one of the virtues, on which line and in its proper column I might mark by a little black spot, very fault I found upon examination to have been committed respecting that virtue upon that day...Proceeding thus to the last, I could go through a course complete in thirteen weeks and four courses in a year. And like him who, having a garden to weed, does not attempt to eradicate all the bad herbs at once, which would exceed his reach and his strength, but works on one of the beds at a time, and, having accomplished the first, proceeds to a second, so should I, I hoped, the encouraging pleasure of seeing on my pages the progress I made in virtue by clearing successively my lines of their spots till in the end by a number of courses I should be happy in viewing a clean book after a thirteen-weeks daily examination.⁴⁵⁰

To this rigorous practice of self-examination using his book of tables [Figure 1], Franklin added a rigorous daily schedule, partitioning his time into the following schema: ‘The Morning.

Question. What good shall I do this day?’; 5am-7am: ‘Rise, wash and address *Powerful Goodness!* Contrive days business and take the resolution of the day; prosecute the present study, and breakfast’; 8am-11am: ‘Work’; 12pm-1pm: ‘Read, or overlook my accounts, and dine; 2pm-5pm: ‘Work’; ‘Evening. Question. What good have I done today?’; 6pm-9pm: ‘Put things in their places. Supper. Music or diversion, or conversation. Examination of the day’; 10pm-4am: ‘Sleep’.⁴⁵¹

Together with the new utilitarian institutions of civic order and self-discipline, Franklin was constructing the framework of a self-regulating city where individuals policed themselves and others. By a daily, constant regime of self-improvement and self-examination, one adjusted one’s thoughts, behavior and conduct to the objectives of the city and the state: order, industry, work, health, cleanliness, frugality, etc. This *ethos* of self-regulation, however, had as its dual objectives the concrete, daily happiness of the individual and the improvement of the efficiency

⁴⁵⁰ Black, *The Autobiography of Benjamin Franklin*, 134

⁴⁵¹ Black, *The Autobiography of Benjamin Franklin*, 137

of the city and government; the two objectives – the happiness of the individual and the efficiency of the city and government affairs – were intimately linked. As Esmond Wright summarizes, Franklin’s regimen of “... (s)elf-improvement led inevitably to the improvement of city and state”⁴⁵². Remarking on Franklin’s mutual aid society which he named the Philadelphia *Junto*, Wright remarks that “(W)hat the Philadelphia *Junto* inculcated was the art of civic virtue, a code of municipal improvement for Philadelphia.”⁴⁵³ Wright continues,

(T)he mutually constitutive impulses of self-improvement, social advancement, and civic – the creation of social capital – and the combination of private virtue and public service ran through Franklin’s entire adult life... Franklin... wanted people to say about him that ‘He lived usefully, [rather] than he died rich.’⁴⁵⁴

In his Proposals Relating to the Education of Youth in Pennsylvania (1749), Franklin posited as the objective of all education the inculcation of ‘public spirit’ and not religion to foster an inclination and ability to serve mankind, one’s country, one’s friends and family.⁴⁵⁵

⁴⁵² Esmond Wright. *Franklin’s Philadelphia* (Cambridge: Harvard Univ. Press, 1988), 39

⁴⁵³ Ibid

⁴⁵⁴ Ibid

⁴⁵⁵ David Waldstreicher. *A Companion to Benjamin Franklin*, (Oxford: Blackwell Publishing, 2011), 341

FORM OF THE PAGES.

TEMPERANCE.

Eat not to dulness: drink not to elevation.

	Sun.	M.	T.	W.	Th.	F.	S.
Tem.							
Sil.	*	*		*		*	
Ord.	*	*	*		*	*	*
Res.		*				*	
Fru.		*				*	
Ind.			*				
Sinc.							
Jus.							
Mod.							
Clea.							
Tran.							
Chas.							
Hum.							

Figure 1: Franklin's Tables of Examination⁴⁵⁶

Besides actively lobbying the city council for the creation of a night watch police and other public safety initiatives, Franklin was endlessly obsessed with dirt and the disorder and obstruction it represented to city commerce. In his autobiography, Franklin rehearses his detailed prescriptions of how to remove the dirt from main thoroughfares of the city so as to make the city more conducive to commerce and business. In one passage, Franklin describes how he came up with his initial idea:

After some inquiry, I found a poor, industrious man, who was willing to undertake keeping the pavement clean by sweeping it twice a week, carrying off the dirt from before all the neighbors' doors for the sum of sixpence per month to be paid by each house. I the wrote and printed a paper setting forth the advantages to the neighborhood that might be obtained by this small expense; the greater ease in keeping our houses clean, so much dirt not being brought in my people's feet; the benefit to the shops by

⁴⁵⁶ Black, *The Autobiography of Benjamin Franklin*, 133

more custom, etc, etc as buyers could more easily get at them; and, by not having, in windy weather, the dust blown in upon their goods, etc, etc.⁴⁵⁷

Franklin continues with a story about a poor woman whom he found sweeping in front of his door in the morning. The woman, who “appeared very pale and feeble, as just come out of a sickness” was then asked by Franklin to sweep the entire street for a shilling, and she agreed. When Franklin sent his servant to check up on her progress, he was delighted to report that “all the dust placed in the gutter, which was in the middle,; and the next rain washed it quite away, so that the pavement and even the kennel were perfectly clean”.⁴⁵⁸ From these encounters, Franklin drew up a proposal for “the more effectual cleaning and keeping clean the streets of London and Westminster”. The proposal stipulated that “several watchmen be contracted with”, since they are more ‘strong’ and ‘active’, to serve as employers of ‘poor people’, which these watchmen will hire to sweep up the dust in dry seasons and rake up mud in wet seasons.⁴⁵⁹ The watchmen, in Franklin’s proposal, were to be supervisors and employers over the poor. In this way, such public health initiatives would come to inculcate the two fundamental values of disciplinary enclosures: Work and the Gaze.

Addressing the purpose of public health initiatives such as these, Franklin says that while “some may think these trifling matters not worth minding”, such initiatives gain great importance over time with such a great city population⁴⁶⁰, “its frequent repetitions giving it weight and consequence”. Invoking again the constant and permanent attention to detail to the daily life of man, Franklin says that, “(H)uman felicity is produced not so much by great pieces of fortune

⁴⁵⁷ Black, *The Autobiography of Benjamin Franklin*, 200

⁴⁵⁸ Ibid

⁴⁵⁹ Black, *The Autobiography of Benjamin Franklin*, 201

⁴⁶⁰ Black, *The Autobiography of Benjamin Franklin*, 203

that seldom happen as by little advantages that occur every day. Thus if you teach a poor young man to shave himself and keep his razor in order, you may contribute more to the happiness of his life than in giving him a thousand guineas.”⁴⁶¹ The reason for this, Franklin says, is that the thousand guineas will of course be ‘foolishly spent’ by the young poor, whereas teaching and training young poor men a regimen of self-care gives him independence, since “he shaves when most convenient to him and enjoys daily the pleasure of its being done with a good instrument”.⁴⁶² Through a regimen of self-care, the daily, minute attention to one’s habits, pleasures and conduct are one of the best means of contributing to the happiness of the poor. The other and most sure means of ensuring the happiness and tranquility of men, however, was hard labor. Recalling his oversight of a company of men on military business, Franklin observed that “when men are employed they are best contented. For on the days they worked they were good-natured and cheerful, and with the consciousness of having done a good day’s work they spent the evening jollily. But on or idle days they were mutinous and quarrelsome...which put me in mind of a sea captain, whose rule it was to keep men constantly at work.”⁴⁶³ These observations reinforced Franklin’s conviction of the fundamental utility of the virtue of “Industry”, which he defined by the axiom, “Lose no time; be always employed in something useful; cut off all unnecessary actions.”⁴⁶⁴ Franklin extended the virtue of Industry far beyond sea-faring, applying it to the entire life of man. In particular war and military matters, Franklin understood, were one domain in which the virtue of Industry was indispensable, if only for the simple reason that

⁴⁶¹ Black, *The Autobiography of Benjamin Franklin*, 203

⁴⁶² Ibid

⁴⁶³ Black, *The Autobiography of Benjamin Franklin*, 234

⁴⁶⁴ Black, *The Autobiography of Benjamin Franklin*, 130

military excursions needed to be highly organized and managed. In this way, ‘Men’, Franklin held, “if one understood their motives, could be managed as easily as smoky chimneys.”⁴⁶⁵

Franklin’s careful concern for the “sick poor” led him to establish, via the originating idea of Thomas Bond, the Philadelphia Hospital for the “the reception and cure of poor sick persons”⁴⁶⁶. First, Franklin himself used his own paper, *The Pennsylvania Gazette*, to convince readers how much the poor really needed a hospital.⁴⁶⁷ Franklin’s ideas were truly innovative, in that he proposed a model of cure and care whose aim exceeded the older model of alms-houses which only provided shelter and food. In contrast, Franklin’s goal was thoroughly reformative and curative, aiming to restore individuals to working, productive selves again. By modeling the Hospital on the Edinburgh infirmary, Franklin sought to treat “worthy charity patients with physical or mental illness’ and to reduce the welfare rolls by allowing many of these people to become productive again.”⁴⁶⁸ Before the opening date of the Hospital on Jan 23, 1751, “almshouses and workhouses took in sick paupers, but their primary concerns were to provide shelter and sustenance, not medical care, for men and women who could not take care of themselves.”⁴⁶⁹ Franklin’s concern for the poor stemmed from the recognition that the poor, unable to go to do productive work when sick, stand to contribute most from improvements in medicine. And, in turn, these poor sick persons could then be employed as cheap labor, made ‘useful’ for street sweeping, mud-raking, and other menial jobs to improve the commercial and civic environment of the city of Philadelphia.

⁴⁶⁵ Black, *The Autobiography of Benjamin Franklin*, xi

⁴⁶⁶ Black, *The Autobiography of Benjamin Franklin*, 193

⁴⁶⁷ Black, *The Autobiography of Benjamin Franklin*, 75

⁴⁶⁸ Stanley Finger. *Dr. Franklin’s Medicine* (Philadelphia: Univ. of Pennsylvania Press, 2006), 72

⁴⁶⁹ Finger, *Dr. Franklin’s Medicine*, 70

However, putting the poor to work, for Franklin, was not merely a good in itself. The virtues of Industry and work were good because, left to the devices of idleness, the poor would backslide into crime, poverty, sickness, unhappiness not to mention the dangers of faction and political insurrection. For Franklin, these things – crime, poverty, sickness, faction, insurrection and unhappiness – were not only costly but dangerous. Whatever means one could employ to control the vices of Idleness were therefore justified on the basis that preventing the spread of these vices was necessary for the security of the State. Idleness, the enemy of Industry, became therefore the enemy of the city, government and the State. In this sense, frugal government simply meant the promotion of Industry and the policing of Idleness; it concerned the question of how one could maximize the ratio of industry to idleness at the least possible cost with the least possible means.

Of course by the time the governmental reason of Franklin, Bentham and Townsend began to materialize in 19th century urban life, cities such as Philadelphia became quite unruly places. As Franklin said himself in a letter to Congressman Charles Carroll in 1789, “We have been guarding against an evil that most old States are liable to, excess of power in rulers, but our present danger seems to be defect in obedience in the subjects.”⁴⁷⁰ By 1800, labor strikes and trade union organizing became commonplace and, between the upheavals of the War of 1812 and the economic recession that followed from 1816-1822, the working class as well as an ‘underclass’ of vagrants, beggars and ‘discontents’ were rapidly becoming a permanent fixture of city life in Philadelphia. And while the courts decidedly ruled that working-class strikes - such as the Shoe and Boot-makers union strike of 1806 - were an obstruction and ‘conspiracy against

⁴⁷⁰ Benjamin Franklin and William Temple Franklin, *Memoirs of the Life and Writings of Benjamin Franklin*, (London: H. Colburn 1818), 396

trade' and commerce, this only seemed to fuel the movement towards shorter working days, free public education, and a living wage. Indeed, the working class movement of the 1820s in Philadelphia produced the nation's first city-wide trade union and, on June 3, 1835, the first general strike in America's history, uniting skilled and unskilled workers in a strike against "the grievous and slavlike system of labor" which was emerging in the industrial cities of America.⁴⁷¹

Auburn Prison Discipline, or, The Art of Conducting Men

It was in this context that the debates over the two 'systems' of punishment in American penal theory took hold. As Foucault notes in Discipline and Punish, the harsher Auburn system and the lighter Philadelphia system would constitute the two poles around which debates over moral reform, punishment and social control would revolve. For Foucault, the penitentiary would over time become a 'natural' element of a much comprehensive biopolitical administration of populations, one which would constitute a sort of 'racial' police'. In the final section of this Chapter, I return to Foucault's analysis of the birth of the prison in Discipline and Punish in order to emphasize a neglected aspect of Foucault's history, namely the significance of military-style discipline established at Auburn prison and its influence on the development of the prison industry as well as on "the art of conducting men". Finally, I review Foucault's remarks on his visit to Attica prison in 1972, and argue that this visit influenced his views on the prison as mechanisms of biopolitics and state racism.

One of the central tasks of Foucault's Discipline and Punish was to demonstrate how the 'humane' techniques of penal reform and correction that replaced the violence of sovereign punishment and torture were utilized by the State as techniques of internal social control. In

⁴⁷¹ Gary Nash. *First City: Philadelphia and the Forging of Historical Memory*, (Philadelphia: Univ. of Pennsylvania Press, 2005), 163-65

choosing this narrative, Foucault was making a certain methodological choice in emphasizing that the older techniques of sovereign violence and punishment directed on the body of the criminal had been replaced by the more subtle, surreptitious and calculated coercions of disciplinary power. Indeed one of Foucault's main tasks in Discipline and Punish is to show how the prison operates primarily not through mechanical means of violence but rather through 'the workings of the conscience'. In the same way, Foucault would argue, disciplinary techniques focused on the reform and correction of the soul were transposed from the military, to the school, the factory and so on, which functioned primarily not through the threat of violence but through the daily, permanent inculcation of moral and physical habits of the body and mind.

However, as Foucault learned from his visit to American prisons, evidence of this smooth and subtle submission of bodies through space could often be hard to find. In fact, Foucault himself learned well before Discipline and Punish just how important physical punishment and the threat of violence directed at the body was for the maintenance of discipline. Even still, Foucault's analysis of the differences between the harsher Auburn system and the 'lighter' 'Philadelphia system' of punishment sometimes falls short of appreciating the role that physical punishment, violence, humiliation and techniques of dehumanization played in the birth of the American prison, in either of its originating forms. However, one continuity Foucault does establish between the 'spectacle' of sovereign violence and disciplinary punishment is the element of dehumanization integral to both regimes of punishment. Indeed, both in the sovereign display of the condemned as a kind of "beast" and in the disciplinary reform of bestial habits of the delinquent, Foucault establishes a continuity of dehumanization central to the punishment of "society's enemies". In this sense, Foucault's thesis is *not* that subtle disciplinary coercions have replaced sovereign violence or torture, but more precisely that sovereign violence, torture and

techniques of dehumanization have been sequestered behind the stone walls and within the dark solitary cells of the penitentiary, hidden from public eye. Seen in this way, we can appreciate Foucault's thesis in light of the actual history of the American prison, and his remarks and observations on his visit to Attica prison.

In Discipline and Punish, Foucault references the long, drawn out debate in American penal theory between the "Auburn system" and Philadelphia system" of punishment, the former known for its 'congregate' system of silent labor by day and solitary by night and the latter for its exclusive solitary confinement and emphasis on moral-spiritual reform. Foucault's main source for the American debate was the study commissioned by the French government conducted by Alexis de Tocqueville and Beaumont's, Systeme Penitentiare de Etat-Unis.⁴⁷² In that study, Tocqueville and Beaumont begin by declaring that the "old societies" of alms-giving and religious charity have failed to relieve the misery and evils of pauperism and criminality, writing that "(A)lms, however well distributed, tend to produce poverty".⁴⁷³ And, since the evils of pauperism and criminality cannot be entirely eliminated, institutions and means must be found to reduce their effects. After reviewing the failures of European experiments with the agricultural colony and penal colony, the authors set out to determine the success of the penitentiary system in achieving this goal, beginning with the Auburn system in 1821.

Unlike Foucault, Tocqueville and Beaumont note that the Auburn system was in fact the first true 'penitentiary' system established, making the partial solitary confinement of the Walnut Street Prison into a principle of absolute and total solitary confinement. Tocqueville and

⁴⁷² Alexis De Tocqueville and G. de Beaumont. *On the Penitentiary System in the United States and its Application in France, with an Appendix on Penal Colonies, and also Statistical Notes*. Trans. Francis Lieber. (Philadelphia: Carey, Lee & Blanchard, 1833)

⁴⁷³ De Tocqueville and Beaumont. *On the Penitentiary System in the United States*, "Preface", xlvi

Beaumont note that for the first two years of the Auburn system [1821-1823], solitary confinement was absolute and total, and without day labor or congregation. Inmates experienced total and complete silence and isolation. Remarking on the horrific failure of the first full implementation of ‘the penitentiary idea’, Tocqueville and Beaumont write, “...absolute solitude...is beyond the strength of any man; it destroys the criminal without intermission and without pity; it does not reform, it kills.”⁴⁷⁴ They note that, within a single year, five inmates had died, one rendered insane, and the remaining majority in a state of depression “...so manifest, that their keepers were struck with it.”⁴⁷⁵

The system of exclusive solitary confinement at Auburn was dismantled in 1823, but only to be replaced by the system of partial solitary and congregate labor that Auburn is known for today. As Tocqueville and Beaumont note, the task of warden for this new system was given to Captain Elam Lynds, who served as infantry commander in the War of 1812. Lynds was notorious for bringing military-style discipline and forced labor to the administration and control of the prison. As Welch notes in his history of American corrections, Lynds is known in American penal history for his use of a rawhide whip and a cat-o’-nine-tails in regular floggings⁴⁷⁶, a practice he would later tell Tocqueville and Beaumont was necessary for the art of conducting men.

Lynds’ military-style discipline, while slowly gaining critical outcry from the public, began to become beneficial to the State. As Welch recounts, his projects at Auburn and then Sing Sing would be noticed by state legislators, who became “...reluctant to terminate Lynds because

⁴⁷⁴ De Tocqueville, Alexis and G. de Beaumont. *On the Penitentiary System in the United States*, 5

⁴⁷⁵ Ibid

⁴⁷⁶ Michael. Welch. *Corrections: a Critical Approach*. (New York: Routledge, 2011) 63

the state was benefiting from inmate labor.”⁴⁷⁷ Indeed, during the construction of Sing Sing prison, the marble that convicts would break up at Mount Pleasant along the Hudson would become an extremely valuable building material. As Tom Lewis writes in *The Hudson: a History*, “(C)ustomers knew they could depend on Sing Sing marble for its purity and on the prisoners for their enforced attention to exacting specifications. Today we can see their stones in New York City’s Grace Church, New York University, and the United States Treasury Building, as well as Albany’s City Hall and State Education building.”⁴⁷⁸

In this way, Lynds’ military-style discipline and efficiency led to the realization that prison labor could be profitable to the State. Indeed, as Roth concurs, the prison industrial model established by Lynds “...exceeded the profits of the competing solitary Pennsylvania system.”⁴⁷⁹ The prison industrial model Lynds established was produced through a rigorous system of military-style discipline. Lynds implemented a military-style marching formation for convicts called ‘lockstep’, in which “(P)risoners walked in perfect, military order with their arms held tight to their chests or with one hand down and the other resting on the arm or shoulder of the prisoner ahead of him Prisoners moved in this formation at the sound of a keeper’s whistle. In lockstep lines and at workshop benches, inmates were held to strict silence.”⁴⁸⁰ Lynds’ system of military discipline and forced labor relied upon what McLennen calls a “countercommunicative”

⁴⁷⁷ Welch, *Corrections: a Critical Approach*, 64

⁴⁷⁸ Tom Lewis. *The Hudson: a History* (Harrisburg: Yale University Press, 2005) 223

⁴⁷⁹ Mitchel P. Roth. *Prisons and Prison Systems: a Global Encyclopedia* (Westport: Greenwood Publishing, 2006) 18

⁴⁸⁰ Jennifer Graber, Jennifer. *The Furnace of Affliction: Prisons & Religion in Antebellum American* (Chapel Hill: University of North Carolina Press, 2011) 82

strategy in which communicative acts of any kind between inmates were punished severely and swiftly. McLennen writes

Captain Lynds (as he was known) instructed the keepers that any and all instances of convict communication were to be instantly punished. He strictly prohibited talking, grimacing, signaling by hand, singing, and even attempting to make eye contact with anyone other than the guards. Communicative acts such as these were to be rewarded with a swift application of the lash (which had been legalized in 1819)⁴⁸¹

Lynds' program of industrial discipline quickly gained attention not only from state legislators but from the private sphere as well. Indeed, as McLennen writes,

Manufacturers began to show interest in setting up shop in the prison. A handful of private manufacturers brought machinery and materials into the prison, paid a fixed daily rate for the labor of prisoners...and began production. Before long, Auburn was a humming factory producing thousands of tools, rifles, shoes, clothing, combs, furniture and barrels."⁴⁸²

Thus in this way, the military-pastoral technology developed and implemented by Lynds in the Auburn prison contributed to the development of what we now know as the prison-industrial complex, linking the existence of the prison to the profit motive of private industry.

In their study of the Auburn prison, Tocqueville and Beaumont also interviewed Elam Lynds and recorded in the report a series of question and answers. In that discussion, Lynds states that, because different "races" have varying levels of 'animality' and 'savageness', some races more readily submit to prison discipline than others.⁴⁸³ Much like his contemporaries who believed in a racialized physical anthropology, Lynds held that, for example, the hardest 'race' to subdue is the "Spaniards of South American", while "...the most easy to be governed were

⁴⁸¹ Rebecca McLennen. *The Crisis of Imprisonment: Protest, Politics and the Making of the American Penal State, 1776-1941* (New York: Cambridge University Press, 2008) 59

⁴⁸² McLennen, *The Crisis of Imprisonment: Protest, Politics and the Making of the American Penal State, 1776-1941* (New York: Cambridge University Press, 2008) 60

⁴⁸³ De Tocqueville, Alexis and G. de Beaumont. *On the Penitentiary System in the United States*, 200

Frenchmen.”⁴⁸⁴ When asked about the “secret” of his disciplinary methods at Auburn and Sing Sing, Lynds replies that “(T)he point is, to maintain uninterrupted silence to watch incessantly the keepers, as well as the prisoners; to be at once inflexible and just.”⁴⁸⁵ And, when asked whether ‘bodily chastisement might be dispensed with’, Lynds responds that

I am convinced on the contrary. I consider the chastisement by the whip the most human which exists; it never injures health, and obliges the prisoners to lead a life essentially healthy...I consider it impossible to govern a large prison without a whip. Those who know human nature from books only, may say the contrary...prisons, on the contrary, are filled with coarse beings, who have had no education, and who perceive with difficulty ideas, and often even sensations.⁴⁸⁶

Finally, when asked what quality is ‘most desirable in a person destined to be a director of prisons’, Lynds replies, “(T)he practical art of conducting men.”⁴⁸⁷

The military-pastorate developed by Elam Lynds in the Auburn system of punishment contributed in a significant way to the emergence of the prison as site of private industry, manufacturing, and investment. In this sense, the military discipline of the prison led to the economic importance of prison discipline for both State revenue and private industry. For Lynds himself however, this endeavor was conceived not as first and foremost a capitalist enterprise for extracting the time and labor of inmates for maximum profit. Rather, it was the latter that was a consequence of his regime of military-style discipline and his views on the art of conducting men. In this respect, “the art of conducting men” for Lynds referred to an art that could be applied in any domain to achieve order and discipline. For Lynds therefore, the art of conducting

⁴⁸⁴ De Tocqueville, Alexis and G. de Beaumont. *On the Penitentiary System in the United States*, 200

⁴⁸⁵ De Tocqueville, Alexis and G. de Beaumont. *On the Penitentiary System in the United States*, 201

⁴⁸⁶ De Tocqueville, Alexis and G. de Beaumont. *On the Penitentiary System in the United States*, 201-2

⁴⁸⁷ De Tocqueville, Alexis and G. de Beaumont. *On the Penitentiary System in the United States*, 203

men was coextensive with military-style discipline, efficiency, silence and order, or, simply what Foucault describes as ‘discipline’.

Here we return to a central problem in Foucault’s later work on governmentality. For Foucault, the domain of conduct or government will be that domain of ‘action upon other’s actions’ which presupposes the freedom of both partners in a relation where violence, struggle and relations of war and subordination are excluded. Indeed, Foucault’s insists in his 1982 essay *The Subject and Power* that, “...the relationship proper to power would therefore be sought not on the side of violence or of struggle, nor on that of voluntary contracts...but rather in the area of that singular mode of action, neither warlike nor juridical, which is government.”⁴⁸⁸ In that essay, Foucault insists that the analysis of power relations concerns the study of the government of conduct, a domain that is essentially different from “war-like” relations. Therefore the analysis of power for Foucault will be redefined in terms of the analysis of the art of conducting others conduct, a relation that is neither warlike or juridical.

The central problem Foucault faces in attempting to distinguish the analysis of power relations from an analysis of military or warlike relations should now appear obvious. For, if the very art of conducting men, alongside the very notion of what it meant to ‘govern’ others, was conceived at least in part through military relations of discipline, subordination, obedience and order, then how can the analysis of the former be separated from an analysis of the latter? If the very art of prison administration and governance was conceived in its beginnings as an art of conducting men through military-style discipline and warlike relations, then how can Foucault separate the analysis of government or conduct from the analysis of discipline and war?

⁴⁸⁸ Michel Foucault. *The Subject and Power*, 341

These investigations into the military origins of the penitentiary reveal that the analysis of government as the ‘conduct of others’ must include an analysis of military or warlike relations that help constitute and determine certain forms of government and power relations. One result of this observation is that “governmentalities” must therefore be studied in order to reveal the ways that military or warlike relations have constituted their emergence or intelligibility. It is precisely this sort of analysis that allowed me in Chapter Three to investigate the military origins of the notion of *politeia* in Ancient Sparta as a form of military-pastoral government. And, it is this analysis that also allowed me in Chapter Four to trace this military-pastoral government to the early American Republic. In the context of the birth of the prison, this analysis also gives a much fuller picture to Foucault’s history of the prison. In particular, my analysis here illuminates the important role, somewhat neglected by Foucault, that military-style discipline developed at Auburn played in enforcing obedience, submission and silence in the early formation of the penitentiary. In addition, it gives a more detailed picture of the various ways that this military regime, coupled with solitary confinement, sought not to reform the soul of the criminal, but rather to break the will, and the body, into submission, obedience and silence. In this way, such an analysis sheds more light on the techniques of dehumanization that were developed in the early days of the prison at Auburn.

The techniques of dehumanization developed at Auburn, while eventually phased out, were nonetheless replaced by others. Indeed, as Caleb Smith writes in *The Prison and the American Imagination*, the American prison has in a sense always seen itself as an internal war against society’s enemies. Writing about the new ‘war prisons’ and supermax facilities that have emerged since 9/11, Smith writes, “...the new war prisons and carceral warehouses are not ‘exceptions’ to the rule of law and order but the most scandalous contemporary incarnations of

what the America prison has been from the beginning.”⁴⁸⁹ For Smith, carceral dehumanization is neither something new or an “exception” to the otherwise “humane” history of imprisonment in American history. And, while better enforcement of federal policies and international law seems like a solution, Smith concludes that such stricter enforcement of international juridical frameworks will not end prison dehumanization. For Smith,

(D)ehumanization of one kind or another has thus been fundamental to the American prison since its conception, and it continues to follow wherever the prison goes...Perhaps more than any other institution, the prison manifests the power of the law to disfigure and kill those within its circle of rights, in the name of humanity. ⁴⁹⁰

However, it should not be concluded that Foucault did not recognize the inhumanity and dehumanization that was integral to the prison as a carceral institution. Rather, on the contrary. In the following section, I argue that Foucault’s visit to Attica prison in 1972 changed his analytic framework for understanding confinement and the role of police, and directly led him to the theses on state racism and bio-power we find in the 1975-76 lectures on Society Must Be Defended. After rehearsing Foucault’s conception of confinement and police in The History of Madness, I show how his views change with his visit to Attica, understanding the prison as a site of dehumanization and racialized, biopolitical war. I argue that Foucault’s analysis of the American prison in turn prefigures both his general analytic grid of social war, as well as the specific analysis of state racism and biopower he develops in the lectures on Society Must Be Defended.

Foucault never published any formal study of the forms of social control developed in the early American Republic, nor conducted a study of this topic in any sort of sustained analysis. One of his only references to the formation of the early Republic comes in his study of American

⁴⁸⁹ Caleb Smith. *The Prison and the American Imagination*. (Yale University Press, 2009), 5-6

⁴⁹⁰ Smith, *The Prison and the American Imagination*. (Yale University Press, 2009), 208

liberalism in the lectures on The Birth of Biopolitics, where he cites Benjamin Franklin as a proponent of frugal government⁴⁹¹, or *raison du moindre Etat*, or again as *raison du moindre gouvernement*.⁴⁹² However, as Foucault makes clear, the formula of frugal government – which at the same time constitutes the very question of liberalism⁴⁹³ - will be riddled with the paradox of always seeking “invasive intrusions” which are met with resistance and revolt, all in the name of frugal government. These invasive intrusions of frugal government which will produce all the great revolts, resistances and social movements against the disciplinary-industrial order of the nineteenth century, as Foucault suggests, will however operate not through the exhaustive, artificial apparatus of a centralized police state, but rather through the “natural” mechanisms of government that seek to regulate the exercise of freedom in the name of security⁴⁹⁴.

While Franklin certainly endorsed the virtue of “Frugality” (one of his ‘Thirteen Virtues’) as a principle of “wise government and prudent police”, the phrase is almost certainly Thomas Jefferson’s. Even in his analysis of early liberalism, Foucault focused instead on the

⁴⁹¹ In the Course Summary of the lectures on *Naissance de le biopolitique*, Foucault says that “...liberalism arose in a very precise context as a critique of the irrationality peculiar to excessive government, and as a return to a technology of frugal government, as Franklin would have said.” Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978-79* (New York: Palgrave Macmillan, 2008), 322. As the editors to the English edition note, Franklin develops the economic principles of ‘least government’ in his *Principles of Trade* (London: Brotherton and Sewell, 1774, 2nd edition). The term frugal government, however, will encompass far more than economic principles and indeed will come to represent the entire “...epoch of frugal government, which is of course, not without a number of paradoxes, since during the eighteenth century and is no doubt still not behind us...along with the negative effects, with the resistances and revolts which we know are directed precisely against the invasive intrusions of a government which nevertheless claims to be frugal.” Foucault, *The Birth of Biopolitics*, 28

⁴⁹² Michel Foucault. *Naissance de la biopolitique : Cours au Collège de France* (1978-1979).Ed. Senellart, Michel. (Gallimard; Seuil: Paris, 2004) 30

⁴⁹³ “...the frugality of government is indeed the question of liberalism.” Foucault, *The Birth of Biopolitics*, 29

⁴⁹⁴ The ‘unitary project of police’ of the 17th century Mercantilist state, according to Foucault, undergoes a process of decomposition by which the positive functions of police that increase the strength of the state are devolved into mechanisms of ‘incentive-regulation’ centered on the economy and population, and the negative functions of police devolve into the ‘preventative’ police force we know today which is focused on the repression of social disorder, illegality, delinquency, etc. Michel Foucault, *Security, Territory, Population* (New York: Palgrave Macmillan, 2007), 353-4

economic-political theory of *laissez-faire* as it was applied and reacted against as a modification of *raison d'Etat*. And, in his 1973 lectures 'Truth and Juridical Forms', Foucault focuses on the forms of social control and police developed in England and France, writing in passing that the history of social control in America remains to be written.⁴⁹⁵

However, with his growing involvement in the Prison Information Group in France during the late 1960s and early 70s, and his increasing activism in documenting prison conditions and the voices of prisoners, Foucault began to turn his attention the American scene. Following the Attica prison uprising in 1971, Foucault would visit Attica the following year in 1972. This extremely formative experience would lead Foucault to take into account the prison system in America, and to consider the ways that it constituted part of a broader system of social control unique to the United States. One of the main sources for Surveilleur et Punir would also be de Tocqueville's report on the penitentiary system in America, Systeme Penitentiare de Etat-Unis. And, whereas Foucault places great emphasis on the ideas of Jeremy Bentham on the development of the penitentiary, it was in fact colonial elites like Benjamin Franklin and his influence on the 'Philadelphia system', and Elam Lynds and his influence in the Auburn system, that provided the conditions under which the actual penitentiary would be constructed in the nineteenth century and, eventually, across the entire globe. Foucault therefore became well aware of the influence that the penitentiary as conceived in America had for his own work and activism throughout the 1970s.

In the years following the publication of Discipline and Punish, Foucault would visit several other prisons across North America, concluding at a conference on prisons at Montreal in

⁴⁹⁵ Michel Foucault. 'Truth and Juridical Forms' in *Foucault: Essential Works, 1954-1984, VOL. 3, Power*. James Faubion (ed). (New York: New Press, 2000), p. 76. Foucault cites Goffman's 1961 study on asylums as one of the only studies of how the great institutional forms of confinement have proliferated specifically throughout the United States. Goffman, Erving. *Asylums* (New York: Doubleday) 1961

1976 that “...the police...have become naturalized within the milieu of the population.”⁴⁹⁶ This remark of Foucault’s, made in the context of a discussion on prisons, prefigures in a striking way the emergence of neoliberal forms of community policing that have become commonplace in police departments since the 1990s. Thus it is clear that by 1976, Foucault considers the prison as an essential component of a certain technology of police that, unlike the artificial Mercantilist workhouse, is naturalized within the milieu of the population. This shift in Foucault’s understanding will not only prefigure his discovery of biopower, but will also prefigure his analysis in The Birth of Biopolitics of liberalism as a “governmental naturalism”, a form of government which exercises power through mechanisms of security that are seen as natural.⁴⁹⁷

These shifts in Foucault’s intellectual trajectory can each be understood by reference to Foucault’s engagement with the question of how the repressive and exclusionary functions of police operate in the liberal State. Eventually, Foucault’s preliminary answers to this question will come in the 1975-76 lectures: the sovereign right to take life or disallow it will take the form of state racism, biopower and techniques of ‘normalization’. However, Foucault did not arrive at these preliminary answers without a serious shift in his thinking about the functions of repression, confinement and police in modern societies. For the Foucault of History of Madness, all these terms had a specific exclusionary function in relation to society in general. However, as I seek to show, this exclusionary conception of confinement, repression and police will change with Foucault’s visit to Attica prison.

⁴⁹⁶ Michel Foucault. ‘Points de vue’, Photo, nos 24-25, ete-autmne 1976, p. 74. (Extrait de la conference donnee le 29 mars 1976 a l’universite de Montreal, dans le cadre de la Semaine du prisonnier, sur le sujet des alternatives a la prison’.). *Dits et Ecrits*, Tome III, texte n. 177, pp. 93-94

⁴⁹⁷ Michel Foucault. *The Birth of Biopolitics: Lectures at the College de France 1978-79* (New York: Palgrave Macmillan, 2008)

Foucault's visit to Attica, as he tells us in an interview shortly after the visit, had such an influence on his previous ideas about exclusion and confinement that it forced him to re-think the very function of prisons within contemporary societies. Foucault writes, "(U)ntil then I envisioned exclusion from society as a sort of general function, a bit abstract, and I tried to plot that function as in some way constitutive of society, each society being able to function only on condition that a certain number of people are excluded from it."⁴⁹⁸ Foucault's History of Madness represented, no doubt, Foucault's more sociological or functional approach to the problem of exclusion and confinement, which asked the question, "Through what system of exclusion, by eliminating whom, by creating what division, through what game of negation and rejection can society begin to function?"⁴⁹⁹ With the first-hand experience of the prison at Attica, Foucault says,

...the question I ask myself now is the reverse: prison is an organization that is too complex to be reduced to purely negative functions of exclusion; its cost, its importance, the care that one takes in administering it, the justifications that one tries to give for it seem to indicate that it possesses positive functions. The problem is, then, to find out what role capitalist society has its penal system play, what is the aim that is sought, and what effects are produced by all the procedures for punishment and exclusion? What is their place in the economic process, what is their importance in the exercise and the maintenance of power? What is their role in the class struggle?⁵⁰⁰

Foucault's answer to this question, prompted by his first-hand experience at Attica, would lead him to re-think the prison in its specificity in the American context, and lead him to make several theses regarding racism and biopower that we would see in his later lectures. Reflecting on the "virtual" and physical "human horror" of "...what goes on at Attica", Foucault remarks that

⁴⁹⁸ Michel Foucault and John K. Simon. 'Michel Foucault and Attica: an Interview' in *Social Justice*. Vol. 18, no. 3 (45) Attica, 1971-1991: a Commemorative Issue (Fall 1991), pp. 26-34

⁴⁹⁹ Foucault and John K. Simon. 'Michel Foucault and Attica: an Interview', 27

⁵⁰⁰ Foucault and John K. Simon. 'Michel Foucault and Attica: an Interview', 28

what appeared “most terrifying” to him was the disparity between the ideal of the ‘periphery’ and its promise to reform prisoners through community life, and what actually goes on in the daily life of prisoners. Foucault writes,

Once the first bars have been passed through, you might expect to find a place where the prisoners are ‘readapted’ to community life, to a respect for law, to a practice of justice, etc. Well, you perceive instead that the place where the prisoners spend 10 to 12 hours a day, the place where they consider themselves ‘at home’ is a terrifying animal cage: about two yards by one and one-half yards, entirely grated on one side. The place where they are alone, where they sleep and where they read, where they dress and take care of their needs, is a cage for wild animals. And there lies the entire hypocrisy of the prison.⁵⁰¹

Foucault does not stop there, noting that the actual conditions of the prison prevent even the administration and staff of the prison from recognizing the humanity of the prisoners, making it so that, at no point is the prisoner regarded as anything other than “a wild beast”.

Foucault continues by presenting a short analysis of the American prison, one which prefigures in many ways the analyses of racism and biopower given in the 1975-76 lectures *Il faut defendre la societe* (a point returned to shortly). Foucault’s main thesis in this interview is that the American prison functions primarily *not* as a mechanism of exclusion and disciplinary normalization, but as ‘*une machine de l’elimination*’ – literally, “a machine of elimination”. Citing the incarceration rates in American prisons and their disproportionality with respect to black populations, Foucault writes, “(A)merican prisons in fact play two roles: a role as a place of punishment, as there has existed now for centuries, and a role of “concentration camp”, as there existed in Europe during the war and in Africa during the European colonization.”⁵⁰²

Citing the French colonization of Algeria, Foucault draws a line between European colonization and the American prison system as a form of internal colonization, writing that “...in the United

⁵⁰¹ Foucault and John K. Simon. ‘Michel Foucault and Attica: an Interview’, 29

⁵⁰² Foucault and John K. Simon. ‘Michel Foucault and Attica: an Interview’, 29

States, there must be one out of 30 or 40 Black men in prison: it is here that one can see the function of massive elimination in the American prison. The penal system, the entire pattern of even minor prohibitions (too much drinking, speeding, smoking hashish) serves as an instrument and as a pretext of radical concentration.⁵⁰³ What is more, Foucault then proceeds to refuse the analysis of ‘American society’ as one big prison in which all populations are equally caught up in, insisting on the contrary that

...It is true that we are caught in a system of continuous surveillance and punishment. But the prison is not only punitive; it is also part of an eliminative process. Prison is the physical elimination of people who come out of it, who die of it sometimes directly, and almost always indirectly in so far as they can no longer find a trade, don't have anything to live on, cannot reconstitute a family anymore, etc., and, finally passing from one prison to another or from one crime to another, end up by actually being physically eliminated.⁵⁰⁴

This analysis of the American prison has an uncanny resemblance to Foucault's analyses of racism and biopower in his 1975-76 lectures on Society Must Be Defended. First, in the interview, Foucault says that the penal theorists who continue to support this horrific prison system are always found defending it with a well-known motto: *il faut proteger societe* (“society must be protected”). Secondly, the analysis of the prison as a racial mechanism of elimination based on techniques of colonization mirrors almost exactly Foucault's analysis of racism in the *17March* lecture of Society Must Be Defended. In that lecture, the discussion of racism and biopower begins with the claim that, “(R)acism first develops with colonization, or in other words, with colonizing genocide.”⁵⁰⁵ This thesis about the relation between racism and “internal colonization”, presented for the first time in the 1975-76 lectures, can in fact be read directly off

⁵⁰³ Ibid 29

⁵⁰⁴ Ibid 30

⁵⁰⁵ Michel Foucault, *Society Must Be Defended: lectures at the College de France, 1975-76*. (New York: Palgrave Macmillan, 2003), 276

Foucault's remarks in the interview on Attica, when he claims that "(A)merican prisons in fact play two roles: a role as a place of punishment, as there has existed now for centuries, and a role of 'concentration camp', as there existed in Europe during the war and in Africa during the European colonization."⁵⁰⁶ Thus for Foucault, the racial component of the American prison can be directly traced to what he refers to later in the 1975-76 lectures as the "boomerang" effect of European techniques of colonization, which were adapted by the nation-state in order to use upon their own populations. In this way, Foucault links state racism and biopower as internal modes of social control to the legacy of European colonization. Foucault writes,

It should never be forgotten that while colonization, with its technique and its political and juridical weapons, obviously transported European models to other continents, it also had a considerable boomerang effect on the mechanisms of power in the West, and on the apparatuses, institutions, and techniques of power. A whole series of colonial models was brought back to the West, and the result was that the West could practice something resembling colonization, or an internal colonialism, in itself.⁵⁰⁷

Thus for Foucault, modern state racism is to be understood as a technique adapted from European colonization and applied as a mechanism of 'internal colonialism' which takes the form of the bio-regulation and administration of "...what must live and what must die".⁵⁰⁸

Furthermore, Foucault says, a state "functioning in the biopower mode" pursues a policy of state racism as "internal colonialism" through methods of "indirect murder" such as "...exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on."⁵⁰⁹ Foucault's thesis here regarding technique of "indirect murder" also can be read off his remarks in the Attica interview, where Foucault

⁵⁰⁶ Foucault, *Society Must Be Defended*, 29

⁵⁰⁷ Ibid 103

⁵⁰⁸ Foucault, *Society Must Be Defended*, 254

⁵⁰⁹ ibid 256

characterizes “the prison” not as an architectural figure of confinement and punishment, but rather as a racial social system that seeks to eliminate those who pass through its walls. Foucault writes, “(P)risons are the physical elimination of people who come out of it, who die of it sometimes directly, and almost always indirectly in so far as they can no longer find a trade, don’t have anything to live on, cannot reconstitute a family anymore, etc., and, finally passing from one prison to another or from one crime to another, end up by actually being physically eliminated.”⁵¹⁰ In this sense, Foucault re-conceptualizes “the prison” as part of a more general social system of state racism composed of bio-political, economic, social and repressive apparatuses. No longer merely an institution of disciplinary confinement, “the prison” for Foucault will become synonymous with “the politics of police” – what he refers to later as simply, bio-politics. Indeed, as late as his 1982 seminar on “The Political Technologies of Individuals”, Foucault will define police in terms of a bio-politics, writing that police “...wields its power over living beings as living beings, and its politics, therefore, has to be a biopolitics.”⁵¹¹ With Foucault’s visit to Attica prison, therefore, “the prison” will become synonymous with the politics of police as understood in American: a racial bio-politics.

In this sense, Foucault’s visit to Attica prison in 1972 not only reconfigured his conceptions of the prison, the role of confinement and exclusion – it placed the issue of racism and the bio-political State at the center of his analysis. And, while it is true that Foucault had been reading the literature of the Black Panthers at least since 1968, this was Foucault’s first ever experience of what life was like in an actual American prison. What is more, this experience

⁵¹⁰ Ibid 30

⁵¹¹ Michel Foucault.. ‘The Political Technology of Individuals’ in *Essential Works of Foucault: 1954-1984, Vol. 3, Power*. James Faubion Ed. (New York: New Press, 2000) 404

would also lead Foucault to think more critically about not only the function of the prison, but also the function of police more generally. For if, as Foucault believed, the prison was simply one element within a much broader mesh of power utilized by a racial bio-political State, the question would be raised as to what the relation between the prison and police really was. And, judging by his remarks on incarceration rates in this interview, it was easy to see how Foucault envisioned the relationship. If for Foucault police "...wields its power over living beings as living beings, and its politics, therefore, has to be a biopolitics"⁵¹², then his visit to Attica prison showed him why "the politics of police" (biopower) was also inescapably racist, founded on the techniques of an internal colonization. This late remark, along with Foucault's lectures on "Society Must Be Defended", stands as a hallmark to Foucault's engagement with the American prison system and its influence on how Foucault envisioned the relationship between police, biopolitics and racism.

As Badiou reminds us, what remained a constant variable throughout Foucault's analyses of the prison, racism and biopower during this time (1973-1976) was "...the continuity...assured by the new forms of war, which is always intricately linked to the old *dispositive* of sovereignty."⁵¹³ This is an extremely important point, since for Foucault the analysis of power in its various forms (during this period) always has reference to a form of internal social war that is constantly provoked or concealed by the State. Thus the American prison, for Foucault, is intelligible as a mechanism of State racism precisely because of the prior assumption that, as Foucault states in the interview on Attica, such a mechanism functions within the racial,

⁵¹² Foucault, *The Political Technology of Individuals*, 416

⁵¹³ Alain Badiou. 'Continuity and Discontinuity' in *The Adventure of French Thought*. (Verso Books, 2012) 97

economic-political order of contemporary State capitalism. In this way, the sovereignty of the State and the relation of war are, for Foucault, inextricably linked.

Foucault's new understanding of the prison and police as mechanisms of internal social war would lead Foucault to apply this analytic grid – inherited from his racial, economic and political analysis of the American prison – more and more as a way to interpret state power more generally. Thus, the lecture courses on “le anormaux” in 1973-74⁵¹⁴ and “pouvoir psychiatrique” in 1974-75⁵¹⁵ would both be a continuation of the study of how the disciplinary confinement of ‘bnormals and the mentally ill, while certainly operating as a form of exclusion, gave rise to a certain form of scientific racism in the 20th century as a form of internal social defense. Thus, continuing his study of state racism as a form of internal social warfare and control, Foucault writes in the 1973-74 lectures, “(T)he new racism specific to the twentieth century, this neoracism as the internal means of defense of a society against its abnormal individuals, in the child of psychiatry, and Nazism did no more than graft this new racism onto the ethnic racism that was endemic in the nineteenth century.”⁵¹⁶ Thus here, Foucault understands the practice and constitution of psychiatry as a science *no longer* simply in terms of a mechanism of exclusion and internment for the functioning of society. Rather, in these lectures, psychiatry is analyzed in the nineteenth and twentieth centuries explicitly “...as a mechanism and body of social defense.”⁵¹⁷

⁵¹⁴ Michel Foucault. *Les anormaux: Cours au College de France* (Paris:Seuill/Gallimard, 1999)

⁵¹⁵ Michel Foucault, *Le Pouvoir Psychiatrique: Cours au College de France, 1974-75* (Paris:Seuill/Gallimard, 2000)

⁵¹⁶ Michel Foucault, *Abnormals: lectures at the College de France, 1973-74* (New York: Palgrave Macmillan, 2003) 317

⁵¹⁷ Ibid

In this way, Foucault adopts the grid of state racism as mechanism of internal social war to analyze the ways in which a certain scientific racism emerged to eliminate threats to the social body. With this new interpretive grid – again taken from his analysis of racism and the American prison – Foucault will analyze the domains of abnormality, psychiatry, and sexuality as technologies for internal social defense. McWhorter’s seminal work, *Racism & Sexual Oppression in American: a Genealogy* carries these analyses further, detailing the ways that Foucault’s interpretive grid of racism as internal social defense connects seemingly disparate discourses of sexuality, race, and class within the context of the American nation-state.

McWhorter’s provocative claim in that book is that

Nazi Germany’s was not the first government to make race a central part of its public policy or its governing strategy. It is entirely possible that the first government to do so was not that of a nation-state at all but that of a colony, England’s Virginia Colony in the early eighteenth century, and that the first nation to do so was the United States of American in 1787...so it could well be said that the United States is the birthplace of state racism, with Virginia as its cradle.⁵¹⁸

For McWhorter, it is precisely the 1975-76 lectures on Society Must Be Defended that provide the interpretive grid through which to analyze different modalities of state racism as mechanisms of internal social control, defense and ‘elimination’. It is the same interpretive grid that Foucault developed after his visit to Attica, an understanding and interpretation of state power as not merely punitive and exclusionary, but bio-political and thus necessarily racist.

However, as Foucault reminds us in the 1972 interview, we should not fall prey to thinking that all individuals and populations are equally caught up in the same mechanisms of power, nor even in the same social systems which can be properly described as racial/bio-political. Indeed, for Foucault, “the prison” is not synonymous with “society”, just as not all

⁵¹⁸ Ladelle McWhorter. *Racism & Sexual Oppression in Anglo-American: a Genealogy* (Bloomington: Indiana University Press, 2009), 62

individuals and populations are subjected in the same way to ‘the politics of police’, namely the bio-political machine of state racism. As Foucault reminds us,

...It is true that we are caught in a system of continuous surveillance and punishment. But the prison is not only punitive; it is also part of an eliminative process. Prison is the physical elimination of people who come out of it, who die of it sometimes directly, and almost always indirectly in so far as they can no longer find a trade, don't have anything to live on, cannot reconstitute a family anymore, etc., and, finally passing from one prison to another or from one crime to another, end up by actually being physically eliminated.⁵¹⁹

Foucault's critique of “the prison system” is therefore a systemic one, and not an institutional one. Just as ‘the prison’ refers to a racial system of power that transcends the stone walls and bars of the prison, the ‘politics of the police’ transcends the police department, and the uniformed officers with police batons. Foucault's lesson at Attica showed him that the prison, as well as the police, must be analyzed from the standpoint of a capitalist State operating in the biopower mode, a state which takes upon itself the duty of regulating and administering “what lives and what dies”.

In this Chapter, I've argued that, against Foucault's narrative in The Birth of Biopolitics, that Benjamin Franklin was a theorist and practitioner of police. By documenting his role in domestic and international policing efforts and the influence he had on the American Military Philosophical Society, I showed how Franklin was crucial in linking ideas about nationalism, civic virtue and population to the virtues of ‘military discipline. In the Second Section I tried to show how these ideas also influenced, and were influenced by, Franklin's political economy. And in Section Three, I showed how the regime of military-style prison discipline established at Auburn penitentiary by Captain Elam Lynds influenced ideas about the economic benefits of prison industry and labor, partly setting the stage for the expansion of what would be the prison-

⁵¹⁹ Ibid 30

industrial complex. And finally, through a study of Lynds' discussion with Tocqueville and Beaumont, I showed how the art of conducting men was conceived by Lynds as an essentially military or warlike relation. Therefore, I conclude, against Foucault's later assertions, that the analysis of power understood as 'the art of conducting men' *must* include an analysis of military or warlike relations.

In the following Chapter, I follow Foucault's analysis of the prison as disciplinary mechanism to the city as the milieu of intervention for biopower. I begin by developing Foucault's analysis of disciplinary techniques, and show how this analysis has been applied in the social sciences to describe the emergence of neoliberal cityscapes as a "prison-in-reverse". Combining this analysis with Amster's conception of an ecology of social control, I examine two case studies of neoliberal policing. Since for Foucault 'the politics of police must be a biopolitics', I conclude that the politics of *neoliberal* police must be an *ecological* biopolitics. This form of ecological state racism, I claim, can be understood through the motto of neoliberal police, *To Protect Life By Waging War*, whose mandate is carried out through legal, juridical and biopolitical components. In addition, by examining the case of the 2011 ruling in *Waller v. City of New York*, I show how judicial police power has historically operated anti-democratically.

CHAPTER FIVE

Bio-power & Police in a Neoliberal Age

In this Chapter, I follow Foucault's analysis of the prison as disciplinary mechanism to the city as the milieu of intervention for biopower. I begin by developing Foucault's analysis of 'disciplinary techniques', and show how this analysis has been applied in the social sciences to describe the emergence of neoliberal cityscapes as a "prison-in-reverse". Combining this analysis with Amster's conception of an ecology of social control, I examine two case studies of neoliberal policing. I analyze new modes of ecological social control in the neoliberal city through the lens of the "prison-in-reverse". There, I analyze recently implemented anti-feeding ordinances brought about by a new land development regime, and link this to the *militarization-privatization* strategy of neoliberal enclosures. In the third section, I analyze neoliberal police in the context of the militarization-privatization of the city, understanding the motto of neoliberal police as *To Protect Life By Waging War*. After reviewing Stephen Graham's Cities Under Siege: the New Military Urbanism, I examine the 2011 ruling in *Waller v. City of New York*, emphasizing the role of a new legal regime that demands citizens 'demonstrate' their rights to public space. There, I emphasize the historically anti-democratic role of police power jurisprudence, and show how the discourse of rule of law is utilized in concert with that of public health and safety as a mechanism of security against democratic elements. Since for Foucault 'the politics of police must be a biopolitics', I conclude that from these cases that the politics of *neoliberal* police must be an *ecological* and *juridical* biopolitics, relying on both an ecological state racism and an economic-juridical order.

From Prison to the City: The Birth of the Prison-in-Reverse

For Foucault, the eighteenth century saw the emergence of a ‘medical police’ as an instance of social control focused on urban space in general. In this way, urban space would become

...the most dangerous environment for the population. The disposition of various quarters, their humidity and exposure, the ventilation of the city as a whole, its sewage and drainage systems...the density of population, all these are decisive factors for the mortality and morbidity of the inhabitants. The city with its principal spatial variables appears as a medicalizable object.⁵²⁰

Thus for Foucault, urban space in general takes the place of the hospital as the primary milieu for the dangerous, contagious diseases and bodies of the poor. As Foucault writes, “(D)uring the eighteenth century, the idea of a pathogenic city inspired a whole mythology and very real state states of popular panic...it also gave rise to a medical discourse on urban morbidity and the placing under surveillance of a whole range of urban developments, constructions and institutions.”⁵²¹ In this way, Foucault writes,

...the needs of hygiene demand an authoritarian medical intervention in what are regarded as the privileged breeding grounds of disease: prisons; ships; harbor installations; the *hopitaux generaux* where vagabonds, beggars, and invalids mingle together...Thus priority areas of medicalization in the urban environment are isolated and are destined to constitute so many points for the exercise and application of an intensified medical power.⁵²²

For Foucault, a certain ‘medico-administrative knowledge’ will be developed and utilized as a politico-medical hold on certain populations and forms of existence and behavior. The prison, therefore, will be conceived as one of these ‘breeding grounds’ for the diseases but also the

⁵²⁰ Foucault, ‘The Politics of Health in the Eighteenth Century’, 282

⁵²¹ Ibid

⁵²² Ibid 283

illegalities of the urban poor. In this way, the prison would come to represent, as the hospital once did, a microcosm of the dangers, diseases and illegalities of the poor in their urban milieu.

In the lectures on Security, Territory, Population, Foucault will situate all these previous analyses of the medicalization of the city and urban social control within the more general framework of ‘bio-politics’.⁵²³ For Foucault, the medicalization of the city and the criminalization of the urban poor will be understood through the development of the notion of the ‘artificial milieu’ of the city in as the object of intervention for biopower. Thus the milieu of the city will be for Foucault the site of intervention for the policing of delinquency and criminality of the poor, as well as for the medical policing of the diseases and social hygiene of the poor. Therefore the biopolitical milieu of the city will be the site for new forms of police in the liberal State, at once medical, economic, legal and juridical.

The ‘utilitarian decomposition’ of poverty in the eighteenth century signals for Foucault the emergence of the early modern liberal state which seeks to distinguish between more and less capable, deserving and responsible exercises of freedom. The early modern liberal state will thus create divisions between the idle and the industrious, the deserving and undeserving poor, the corrigible and incorrigible, the able and disabled, the responsible and irresponsible, the productive and unproductive. These divisions in turn define those who are “...deserving of the responsibilities and freedoms of mature citizenship and those who are not.”⁵²⁴ As Mitchell Dean has pointed out, it is here where we begin to find cleavage between liberal and non-liberal or

⁵²³ Arnold Davidson. “Course Summary” in *The Birth of Biopolitics*, 367

⁵²⁴ Mitchell Dean. “Demonic Societies: Liberalism, Biopolitics and Sovereignty” in *States of Imagination: Ethnographic Explorations of the Postcolonial State*. Thomas Blom Hansen and Finn Stepputat (eds). (Duke University Press, 2001) 62

authoritarian governmentalities. As Dean writes, liberal and neoliberal regimes depend upon these crucial distinctions and divisions between who is and who is not a responsible subject to be entrusted with the rewards of ‘mature’ citizenship. Dean writes, “For those who are not, this will often mean despotic provision for their special needs with the aim of rendering them autonomous by fostering capacities of responsibility and self-governance.”⁵²⁵ In the mission of forming mature and responsible subjects, however, liberal and neoliberal regimes always run up against the dangers of undermining and indeed perverting their very mission:

Under certain conditions, however, frustrations with such programs of improvement may lead to forms of knowledge and political rationality that identify certain groups as without value and beyond improvement, as those who are merely living, whose existence is but zoe. Liberal regimes of government can thus slide from ‘good despot’ for the improvable to sovereign interventions to confine, to contain, to coerce, and to eliminate, if only by prevention, those deemed without value.⁵²⁶

As Dean notes, it is precisely this authoritarian ‘slide’ of liberal governmentalities which remains, for the most part, relatively unexplored in governmentality scholarship. Indeed because “(T)he study of governmentality has yet to open up the extensive discussion of authoritarian and nonliberal governmentality”⁵²⁷, we lack a critical understanding of how liberal rationalities of freedom and autonomy can so easily ‘slide’ into despotic or authoritarian regimes and practices.

To this end, I turn to Foucault’s analysis of disciplinary techniques and show how they have been applied in the social sciences to describe neoliberal cityscapes as a kind of “prison-in-reverse”. By combining this analysis with Amster’s model of an ecology of social control, I analyze two case studies of neoliberal urban social control. In what follows, I lay out Foucault’s

⁵²⁵ Dean, “Demonic Societies: Liberalism, Biopolitics and Sovereignty”, 62-3

⁵²⁶ Dean, “Demonic Societies: Liberalism, Biopolitics and Sovereignty”, 63

⁵²⁷ Dean, “Demonic Societies: Liberalism, Biopolitics and Sovereignty” 61

analysis of disciplinary techniques and their application to the analysis of the neoliberal “prison-in-reverse”. In section two, I analyze the City of Ft. Lauderdale’s Land Development regime implemented in 2014 which implemented anti-feeding ordinances against the homeless. And in section three, I analyze the 2011 ruling in *Waller v. City of New York* regarding the occupation of Zucotti Plaza on Wall Street. If for Foucault ‘the politics of police must be a biopolitics’, I conclude from these cases that the politics of *neoliberal* police must be an *ecological* and *juridical* biopolitics, enforcing both an ecological state racism and an economic-juridical order.

For Foucault, the prison was a determinate architectural form that contained within (and without) its walls the normalizing and disciplinary logics which objectified the subject – exclusion, surveillance, discipline, normalization. Yet, none of these features of objectification would be coherent without an account of the unique *spatialization* involved in their employment. Thus for Foucault, a notion one finds central to the development of the prison in the eighteenth century which was lacking in the previous centuries is the discourse of architecture and space: “(F)rom the eighteenth century on, every discussion of politics as the art of the government of men necessarily includes a chapter or a series of chapters on urbanism, on collective hygiene, and on private architecture.”⁵²⁸ This emphasis Foucault places on the spatialization of disciplinary techniques has gained wide appreciation, particularly since the translation of Foucault’s 1976 interview with the French geography journal *Herodote* that was published in the Power/Knowledge compilation of Foucault’s work as ‘Questions on Geography’⁵²⁹. This is for good reason for, by 1982, Foucault was ready to state in unequivocal terms that “...space is

⁵²⁸ Michel Foucault. ‘Space, Knowledge and Power’ in *The Foucault Reader*, Paul Rabonow (ed) (New York: Pantheon Books, 1984) 240

⁵²⁹ Jeremy Crampton and Stuart Elden. *Space, Power and Knowledge: Foucault and Geography* (Burlington: Ashgate Publishing, 2007) 2

fundamental in any exercise of power.”⁵³⁰ Such a statement might be seen by some as simply implied by Foucault’s approach to the analysis of the discipline of the body – the body located in and subjected through a given space. Yet this statement is more significant than one might think, as some have recently observed.⁵³¹ For Foucault, the appreciation of space as central to the exercise of power is one way of describing the maturation of Foucault’s understanding of the spatial-geographic and architectural aspects of his analysis of power. “Discipline”, Foucault would write, “...is, above all, analysis of space; it is individualization through space, the placing of bodies in an individualized space that permits classification and combinations.”⁵³²

Indeed, most notably in his 1977-78 lectures at the College de France, Foucault came to see the spatialization of disciplinary techniques as absolutely central to the exercise of power. Spatial layouts, architectural forms, ‘heterotopias’⁵³³, each intimately involved in the exercise of disciplinary power and subjectification, were concerns of utmost importance in Foucault’s analysis of power. As Huxley makes clear, some of Foucault’s most notable work on disciplinary strategies and tactics serves as “distillations of underlying logics” inherent in spatial-architectural layouts that may be extended to more complementary forms.⁵³⁴ In one particularly outstanding passage from an essay titled ‘The Force of Flight’, Foucault states that “...the vertical is not one

⁵³⁰ Foucault, ‘Space, Knowledge and Power’, 252

⁵³¹ Crampton and Elden, *Space, Power and Knowledge*, 8

⁵³² Michel Foucault. ‘The Incorporation of the Hospital into Modern Technology’ in *Space, Knowledge and Power: Foucault and Geography*. Crampton, Jeremy and Stuart Elden (ed) (Burlington: Ashgate, 2007) 147

⁵³³ Michel Foucault and Jay Miskowiec. ‘Of Other Spaces’. *Diacritics*, Vol. 16, No. 1 (Spring 1986), pp. 22-27

⁵³⁴ Margo Huxley. ‘Geographies of Governmentality’ in *Space, Knowledge and Power: Foucault and Geography*. Crampton, Jeremy and Stuart Elden (eds) (Burlington: Ashgate, 2007) 194

of the dimensions of space, it is the dimension of power.”⁵³⁵ Precisely what Foucault meant by this is not entirely clear, but it nonetheless suggests a conception of spatialization that enmeshes questions of power with geographical and, as I will argue, ecological concerns in a very real sense.

The first methodological principle of Foucault’s analysis of disciplinary power is “...to try to study the metamorphosis of punitive methods on the basis of a political technology of the body, in which might be read a common history of power relations and object relations.”⁵³⁶ A second methodological guideline of his approach is that, given that systems of punishment in modern societies are situated in a certain ‘political economy’ of the body, “...it is always the body that is at issue – the body and its forces, their utility and their docility, their distribution and their submission.”⁵³⁷ Third, the knowledge of the body, or political technology of the body, is to be analyzed in terms of a ‘political anatomy’, an analysis of “...a set of material elements and techniques that serve as weapons, relays, communication routes, and supports for the power and knowledge relations that invest human bodies and subjugate them by turning them into objects of knowledge.”⁵³⁸ In summary, Foucault’s methodological aim in Discipline and Punish was to

⁵³⁵ Michel Foucault. ‘The Force of Flight’, translated by Gerald Moore in *Space, Knowledge and Power: Foucault and Geography*. Crampton, Jeremy and Stuart Elden (eds) (Burlington: Ashgate, 2007) 170

⁵³⁶ Michel Foucault. ‘The Body of the Condemned’ in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 171

⁵³⁷ Michel Foucault. ‘The Body of the Condemned’ in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 172

⁵³⁸ Michel Foucault. ‘The Body of the Condemned’ in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 175-6

write the history of the modern prison, "...with all the political investments of the body that it gathers together in its closed architecture."⁵³⁹

This last remark of Foucault's on his aim in Discipline and Punish tells us several important things. First, the political technologies of the body are found, first of all, in a space – they are *spatialized*. Secondly, in order to examine the political technologies of the body, we must infiltrate the space which encloses and adopts them – in this case, the prison. This is important for our purposes because it clarifies how, if we are employing Foucault's analysis of disciplinary techniques, we should go about inquiring into contemporary relations of power, space and the body. It is important to keep in mind, however, that what Foucault is describing here are *disciplinary techniques*; that these techniques easily spread from one discipline to another; and that the domain of their application seemed always to be expanding. Foucault warns us, when proceeding in such an analysis, to look not only for the raw *function* of a disciplinary technique, but also the "...coherence of its tactics."⁵⁴⁰ It is this methodological sensitivity to the identification of disciplinary *tactics* and their coherence – not their mere function – that animates Foucault's analysis of power-knowledge. For Foucault, it is this distinction between the *function* of disciplinary techniques and a specific *tactical coherence* which utilizes them which will enable Foucault to speak of discipline as a mobile technology of power which may be utilized in the tactics of sometimes very different 'governmentalities', whether liberal, neoliberal or fascist.

⁵³⁹ Michel Foucault. 'Docile Bodies' in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 183

⁵⁴⁰ Michel Foucault. 'The Means of Correct Training' in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 188

The success of disciplinary power, Foucault tells us, derives from the use of three instruments: hierarchical observation, normalizing judgment, and "...their combination in a procedure that is specific to it...the examination."⁵⁴¹ To the extent that disciplinary power is successful in its objectification of the subject, we should be able to locate the instruments of disciplinary power functioning in different tactical forms. That is, given that disciplinary power functions in modern societies in a variety of different tactical coherences ('governmentalities'), we should be able to identify the common instruments of disciplinary power utilized in each of those tactical coherences.

The first instrument of disciplinary power Foucault identifies is the instrument of *hierarchical observation*, which manifests itself through "...the spatial nesting of hierarchized surveillance": "(T)he exercise of discipline presupposes a mechanism that coerces by means of observation; an apparatus in which the techniques that make it possible to see induce effects of power and in which, conversely, the means of coercion make those on whom they are applied clearly visible."⁵⁴² The ideal model of this development of hierarchized surveillance was the military camp, which Foucault calls the 'artificial city' and which was also found in urban development, where the idea of 'spatial embedding' of surveillance was also implemented.⁵⁴³ Several things should be noted here. First, we need to recognize that this mechanism Foucault is describing that 'coerces by means of observation' is a necessary condition of the exercise of discipline. Such a mechanism could, of course, exist within a space, but by itself not be *sufficient*

⁵⁴¹ Michel Foucault. 'The Means of Correct Training' in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 190

⁵⁴² Michel Foucault. 'The Means of Correct Training' in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 189

⁵⁴³ Michel Foucault. 'The Means of Correct Training' in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 190

for the complete exercise of disciplinary power. Second, this mechanism is *embedded* in the spatial layout in such a way that makes the spatial layout *itself* a critical part of the surveillance. Furthermore, Foucault tells us, this hierarchized surveillance was organized as both *automatic*, and *anonymous*. It is automatic in the sense that it functions continuously like a machine; anonymously because the effects inherent in its implementation are not possessed or transferred by *anyone* – it is, in an important sense, carried out by the spatial layout itself.

The second instrument of disciplinary power Foucault identifies is the instrument of the *normalizing judgment*, which manifests itself as a form of punishment which ultimately results in a binary opposition of the permitted and the forbidden; the normal and the abnormal. This normalizing judgment is accomplished through five distinct operations, which Foucault lays out as the following:

- 1) The referring and comparing of individuals to the rule of the whole
- 2) The differentiating of individuals according to a rule of minimum achievement
- 3) The quantitative measuring and hierarchization of people in terms of ‘ability/nature’
- 4) The introduction of the constraint of conformity, according to this hierarchy of ability/nature
- 5) The definition of the limit of permissible difference⁵⁴⁴

Foucault summarizes each step of this process as 1) Comparison, 2) Differentiation, 3) Hierarchization, 4) Homogenization, and 5) Exclusion. This process employed as discipline, Foucault says, is the ‘perpetual penalty’ inherent in all disciplinary institutions, and results in the

⁵⁴⁴ Michel Foucault. ‘The Means of Correct Training’ in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 195

binary opposition of two types of subject: the normal/accepted subject, and the abnormal/forbidden subject.

The third instrument of disciplinary power that Foucault identifies is the ‘examination’ which, regardless of the form it takes, is always the combination of the instruments of surveillance and normalizing judgment in a specific procedure. As a result, the examination is essentially the spatial manifestation of surveillance and normalization which takes a specific form:

It is the fact of being constantly seen, of being able always to be seen, that maintains the disciplined individual in his subjection. And the examination is the technique by which power, instead of emitting the signs of its potency, instead of imposing its mark on its subjects, holds them in a mechanism of objectification. In this space of domination, disciplinary power manifests its potency, essentially, by arranging objects. The examination is, as it were, the ceremony of this objectification.⁵⁴⁵

The examination, therefore, is the instrument of disciplinary power which combines both the instruments of hierarchized surveillance and normalizing judgment into a procedure of objectification, a sort of spectacle of the subject. One exemplary manifestation of the ‘examination’ Foucault mentions is the military parade of review. Describing the design of a commemorative medal of King Louis XIV in the seventeenth century, in which a regiment of soldiers is strategically positioned in front of the sovereign palace, Foucault gives us a detailed illustration of how “(T)he order of the architecture...imposes its rules and its geometry on the disciplined men on the ground.”⁵⁴⁶ This depiction of the military parade shows how the ‘examination’, utilizing architectural, geographic and spatial means, creates an ‘inversion of

⁵⁴⁵ Michel Foucault. ‘The Means of Correct Training’ in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 199

⁵⁴⁶ Michel Foucault. ‘The Means of Correct Training’ in *The Foucault Reader*. Paul Rabinow (ed) (New York: Pantheon Books, 1984) 200

visibility in which the power of the sovereign is masked by and through the visibility of the subject. In this way, Foucault will claim, the disciplinary power of the prison lies precisely in the fact that the sovereign power to punish is masked by the visibility of the prisoner. And, as I will claim, the disciplinary power of the neoliberal “prison-in-reverse” (city) lies in the fact that sovereign power is masked by the *invisibility* of those excluded from the city.

Foucault’s notion of governmentality⁵⁴⁷ has been taken up in the critical social sciences as a research tool into what has been described as roughly three ‘sequences’ of governmentality⁵⁴⁸. The first two sequences are those analyzed by Foucault first as the institution of confinement and physical action on the body, and secondly as the institution of reform and disciplinary techniques whose ‘birth’ he described in Discipline and Punish. The third ‘sequence’ of governmentality is identified as a form of ‘spatial governmentality’ which is described as “(A) late twentieth-century postmodern form of social control that targets categories of people using actuarial techniques to assess the characteristics of populations and develops specific locales for prevention rather than the normalization of offenders. [Simon 1993b].”⁵⁴⁹

⁵⁴⁷ “The concept of spatial governmentality derives from Foucault’s elaboration of the notion of governmentality, a neologism that incorporates both government and rationality (1991). Governmentality refers to the rationalities and mentalities of governance and the range of tactics and strategies that produce social order. It focuses on the ‘how’ of governance (its arts and techniques) rather than the ‘why’ (its goals and values). Techniques of governmentality are applied to the art of governing the self as well as that of governing society. Nicolas Rose defines governmentality as ‘the deliberations, strategies, tactics and devices employed by authorities for amking up and acting upon a population and its constituents to ensure good and avert ill’” Merry, Sally Engle. ‘Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law. *American Anthropologist*. March 2001. Vol. 103, Issue 1, p. 18

⁵⁴⁸ Sally Engle Merry. ‘Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law. *American Anthropologist*. March 2001. Vol. 103, Issue 1, p. 18

⁵⁴⁹ Merry, ‘Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law. *American Anthropologist*. March 2001. Vol. 103, Issue 1, p. 19

This new form of *spatial governmentality* targets spaces rather than people by employing architectural design and security initiatives to regulate space. Merry argues that the logic of this new form of spatial governmentality is fundamentally different than the governmentality of disciplinary reform and normalization. The emphasis is on producing spaces of safety for a given population and excluding deviant behavior.⁵⁵⁰ Although ‘spatial mechanisms’ for excluding deviant behavior have existed at least since the pre-industrial city, some argue that their recent expansion in urban life reflects an abandonment of the project of disciplinary reform and a move towards the territorialization of space itself. As Merry writes,

Disciplinary regulation focuses on the regulation of persons through incarceration or treatment, while spatial mechanisms concentrate on the regulation of space through excluding offensive behavior. Spatial forms of regulation focus on concealing or displacing offensive activities rather than eliminating them. Their target is a population rather than individuals. They produce social order by creating *zones* whose denizens are shielded from witnessing socially undesirable behavior such as smoking or selling sex. The individual offender is not treated or reformed, but particular public is protected. The logic is that of zoning rather than correcting [see Perin 1977]⁵⁵¹

Foucault’s influence on the study of this new spatial governmentality is underscored by that fact that, as Crampton and Elden point out, “...governmentality and biopolitics informs the work of an increasing number of geographers”, a focus they call “geo-governmentality”⁵⁵². Furthermore, as Huxley argues, the investigation of spatial rationalities is at the same time an investigation into the “...logics contained in ‘strategies’ and ‘tactics’ of government that seek to

⁵⁵⁰ Merry, ‘Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law.’ *American Anthropologist*. March 2001. Vol. 103, Issue 1, p. 17

⁵⁵¹ Merry, ‘Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law.’ *American Anthropologist*. March 2001. Vol. 103, Issue 1, p. 17

⁵⁵² Crampton and Elden, *Space, Knowledge and Power*, 6

use urban space for particular disciplinary ends. (Foucault 1980b, 149)⁵⁵³ This observation makes clear the importance of Foucault's methodological concern of distinguishing the *function* of disciplinary techniques from the *tactics* of a coherent governmentality which seeks to utilize them. In the context of the spatial rationalities of neoliberalism then, we will be speaking about a rationality which "...postulate[s] causal qualities of 'spaces' and 'environments' as elements in the operative rationalities of government, and these postulates can be examined as truths having histories."⁵⁵⁴

The "prison-in-reverse", as it has been described in the social science literature, can be seen as a specific spatial manifestation of a new form of *spatial governmentality*. A wide range of literature from urban studies, criminal sociology, human geography and other related disciplines has made the "prison-in-reverse" a topic of debate in critical discussions on life in contemporary urban space. This literature is sometimes characterized as describing different aspects of the "punitive city". Several areas of specific focus include the increasingly segregated nature of the urban experience⁵⁵⁵, the management and territorialization of public space⁵⁵⁶, the

⁵⁵³ Margo Huxley. 'Geographies of Governmentality' in *Space, Knowledge and Power: Foucault and Geography*. Crampton, Jeremy and Stuart Elden (eds) (Burlington: Ashgate, 2007) 194

⁵⁵⁴ Huxley, 'Geographies of Governmentality' in *Space, Knowledge and Power: Foucault and Geography*. Crampton, Jeremy and Stuart Elden (eds) (Burlington: Ashgate, 2007) 194

⁵⁵⁵ Blakely, Edward and Mary Gail Snyder. *Fortress American: Gated Communities in the United States* (Brookings Institution Press, 1997); Christopherson, Susan. "The Fortress City: Privatized Spaces, Consumerist Citizenship" in *Post-Fordism: a Reader*. Ash Amine ed. (Blackwell Publishing, 1994), 409-427; Low, Setha M. "The edge and the center: Gated communities and the discourse of urban fear. *American Anthropologist*. Mar 2001; 103, 1; Research Library pp. 45-58; 2001; Beckett, Katerine and Steve Herbert. 'Dealing with disorder: social control in the post-industrial city. *Theoretical Criminology*. Vol. 12(1): 5-30; 1362-4806, 2008

⁵⁵⁶ England, Marcia Ray. *Citizens on Patrol: Community Policing and the Territorialization of Public Space in Seattle, Washington* (University of Kentucky, Electronic Theses and Dissertations, 2006) URL: <http://hdl.handle.net/10225/313>; Mitchell, Don. "The End of Public Space? People's Park, Definitions of the Public, and Democracy", *Annals of the Association of American Geographers*, Vol. 85, No. 1, Mar 1995, 108-133; Mitchell, Don. "The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States. *Antipode* 29:3, 1997, 303-335; Voyce 2003, 2006; Wright 1997)

criminalization and objectification of the poor and homeless, the surveillance of urban society⁵⁵⁷ and urban governmentality in general⁵⁵⁸. While each of these foci no doubt contribute to the elucidation of the “prison-in-reverse” and its characteristics, I focus on the specific figure of the “prison-in-reverse” as it relates to Foucault’s own analysis of disciplinary power. In this way, we can get a better grip on the specific ways that disciplinary techniques are deployed within the *tactics* of an urban neoliberal governmentality.

The elaboration of the notion of the “prison-in-reverse” should be attributed first to Susan Christopherson in her chapter titled ‘Fortress City: Privatized Spaces, Consumer Citizenship’. The term itself and its application to the empirical study of a specific space – namely an Australian shopping mall – has appeared in the work of sociologist Malcom Voyce Using Foucault’s genealogical method, Voyce analyzes the socio-political, conceptual and spatial development of an Australian shopping center, focusing on the changing nature of ‘public space’ in Australia. In his analysis of the shopping center, a massive project which displaced a large area designated ‘public space’, Voyce concludes that the shopping center was ultimately

⁵⁵⁷ Wacquant, Loic. “The Penalisation of Poverty and the Rise of Neo-Liberalism. *European Journal on Criminal Policy and Research* 9, 2001, 401-412; Williams, James W. “Taking it to the Streets: Policing and the Practice of Constitutive Criminology” in *Constitutive Criminology at Work: Applications to Crime and Justice*, Stuart Henry and Dragan Milovanic eds (Albany: State University of New York Press, 1999); Arrigo, Bruce. “Constitutive Theory and the Homeless Identity: the Discourse of a Community Deviant” in *Constitutive Criminology at Work: Applications to Crime and Justice*, Stuart Henry and Dragan Milovanic eds (Albany: State University of New York Press, 1999); Arnold, Kathleen. *Homelessness, Citizenship and Identity: the Uncanniness of Late Modernity* (Albany: State University of New York Press, 2004)

⁵⁵⁸ Lyon, D. *The Electronic Eye: The Rise of the Surveillance Society* (Cambridge: Blackwell Press, 1994); Marx, G.T. “What’s New about the ‘New Surveillance’?: Classifying for Change and Continuity” in *Surveillance and Society*, 1(1), 2003, 9-29; Elden, G. “A Diagram of Panoptic Surveillance, *New Media and Society*, 5(2). 2003, 231-247; Norris, C. “From Personal to Digital: CCTV, the Panopticon and the Technological Mediation of Suspicion and Social Control” in *Surveillance and Social Sorting: Privacy Risk and Automated Discrimination*, D. Lyon ed. (London: Routledge, 2003), 249-281

constructed "...to form a predictable controlled environment which acts like a prison-in-reverse: to keep deviant behavior on the outside and to form a consumerist form of citizenship inside."⁵⁵⁹

In her study of 'The Fortress City', Christopherson argues that the shopping mall is the 'predecessor' of even newer forms of the "prison-in-reverse" model.⁵⁶⁰ These new forms, she argues, are urban forms characterized by "...larger, highly managed...mesoscale urban environments...designed to insulate and isolate, to buffer and protect so-called 'normal users' in the space."⁵⁶¹ This effective normalization is reflected by the various city ordinances and regulations that enforce the 'rules of conduct' as well as the physical design of the space itself. Christopherson gives several examples of these 'buffered and isolated urban spaces', including "Bunker Hill in Los Angeles, the Renaissance Center in Detroit, Harbor Place in Baltimore, Battery Park in Manhattan and Peach Tree Center in Atlanta."⁵⁶² Elaborating further on the characteristics of these spaces, Christopherson continues,

The quintessential features of these environments are separation from the larger urban environment, limited pedestrian access, multi-level functionally integrated spaces through which users are channeled via walkways and high level of security. Although these spaces may provide spectacle – puppet shows, musical performances, fashion shows – all activities are programmed and intended to enhance the central uses of the space.⁵⁶³

Yet another extension of this prison-in-reverse model of the business improvement district. One important aspect of the business improvement district is the priority of cleaning, 'polishing' and

⁵⁵⁹ Malcolm Voyce. 'Shopping Malls in Australia: The End of Public Space and the Rise of 'consumerist citizenship'? *Journal of Sociology*. The Australian Sociological Association, Volume 42(3): pp. 273

⁵⁶⁰ Likewise, Merry (2001) considers the shopping mall the 'prototype' of this new spatial governmentality.

⁵⁶¹ Christopherson, *The Fortress City*, 417

⁵⁶² Christopherson, Susan. 'The Fortress City: Privatized Spaces, Consumerist Citizenship' in *Post-Fordism: A Reader*. Ash Amine (ed) (New York: Blackwell Publishing, 1994) 417

⁵⁶³ Christopherson, *The Fortress City*, 417

policing the space over actual physical improvements to the space: “(O)ne important aspect of emulating the mall experience”, Christopherson says, “...is to rid the business improvement district of the homeless and deinstitutionalized mentally ill through design, daily regulation and longer-term solutions such as displacement to the urban fringe. [Mair 1986]”⁵⁶⁴ Finally, Christopherson mentions studies of privately controlled public space in Los Angeles and the many common features they share with the model of the shopping mall: “(D)esigns are inwardly oriented, with high enclosing walls, blank facades, distancing from the street and obscured street level access. These ‘public spaces’ are effectively disconnected from the surrounding city. The activities that can take place in these spaces are severely restricted.”⁵⁶⁵ For Christopherson, it is the very boundaries between ‘public’ and ‘private’ space that have been ‘reworked’, wherein the new boundaries are determined by the production of spatial territory itself, with the street “...abandoned to the unhoused, the poor and the undesirable” and the new urban space produced exclusively for the ‘normal user’. Most importantly, These new boundaries that separate the normal and abnormal user require the creation and maintenance of a ‘territoriality of safety’ which must be guaranteed by property owners, city authorities and the police.⁵⁶⁶ These new territorialities of safety are constituted by three levels: a symbolic level of outdoor signage, paving and plantings, a level of organized security through private security personnel and city police, and a level of mechanical control through locks and mechanical surveillance.⁵⁶⁷ Through

⁵⁶⁴ Christopherson, *The Fortress City*, 417

⁵⁶⁵ Christopherson, *The Fortress City*, 418

⁵⁶⁶ Christopherson, *The Fortress City*, 421

⁵⁶⁷ Christopherson, *The Fortress City*, 417) 422

these three levels of territoriality the boundaries between the normal and abnormal user of the space are effectively marked out.

A final aspect to be noted about the expansion of the prison-in-reverse model from mall to the city is the element of surveillance. This observation is not new, as a whole literature on ‘surveillance studies’ has established itself, one which takes a mostly Foucaultian approach.⁵⁶⁸ A particularly lucid illustration of the expansion of surveillance documented by Christopherson is worth quoting in full:

In cities such as Newark, New Jersey, the scale of surveillance has been extended to the entire portion of the city traversed by the commercial user and consumer. Grants from the federal government have allowed a selected number of cities to set up video surveillance posts throughout a ‘protected’ area. Swiveling video cameras high above the street capture every human move for a police surveillance team located at central command post. This surveillance is an aspect of city government participation in public-private partnerships with developers. In contrast, those spaces where property values are not dependent on safety, such as parking lots, are increasingly ‘owned’ by no one. They have become the no man’s land, and even more so the no woman’s, lands of the city.⁵⁶⁹

Here Christopherson reiterates the importance of the production and definition of the protected area in marking out the new spatial and symbolic boundaries between ‘normal’ and ‘abnormal’ or undesirable user. Christopherson also makes clear how the advancement of technology has allowed the expansion of surveillance techniques over a broader and much larger geographic scale. Thus the expansion of surveillance from the shopping mall to the business district, the downtown city hall, the city park, and other urban ‘protected’ areas.

⁵⁶⁸ See Wood’s *Beyond the Panopticon? Foucault and Surveillance Studies* in Crampton and Elden (2007) for a good review.

⁵⁶⁹ Christopherson, *The Fortress City*, 421

We are now at a point where we can define the “prison-in-reverse” as the following: *a novel urban spatial production in which the traditional logic of ‘public space’ and the disciplinary logic of the prison has been inverted, creating a predictable controlled environment in order to physically exclude deviant behavior and undesirable forms of life while fostering ‘normal’ users.* Using this definition, we can tease out disciplinary techniques as they are utilized in the *tactics* of neoliberal governmentality. The first and most obvious indication of disciplinary techniques of the “prison-in-reverse” is the hierarchized surveillance implemented in the very constitution of the spatial architecture itself. As pointed out, the technological expansion of surveillance has made it possible to cover wider geographic areas and in more efficient ways. This ‘spatial nesting of hierarchized surveillance’ can be aptly illustrated by the proliferation of closed-circuit television cameras (CCTVs). As Gould points out, CCTVs present urban subjects with the problem of the ‘unobservable observer’:

Knowing that we are being watched by a camera is not the same as knowing the identity of who is watching us. All that we know is that we are being watched, but it is impossible for us to know why or by whom. This is the reason that we draw a distinction between being watched by a visible police officer and a CCTV camera mounted on the side of a building. Seeing, identifying, and attempting to understand the motives of whoever is watching us is an essential precursor to deciding how we feel about being observed and to deciding how to respond to such observation.⁵⁷⁰

Another scholar of surveillance, commenting on CCTVs, notes that

Often, the presence of CCTVs is unannounced, and the cameras are concealed. But even if the cameras are unconcealed, the fact that they are mechanical, positioned above people’s line of vision, and blend in with other features of the physical environment makes them easily overlooked.⁵⁷¹

⁵⁷⁰ Benjamin Gould. ‘Privacy Rights and Public Spaces: CCTV and the Problem of the Unobservable Observer.’ *Crim. Just. Ethics.* 2002, p 24

⁵⁷¹ A. Von Hirsch. ‘The Ethics of Public Television Surveillance in *Ethical & Social Perspectives in Situational Crime Prevention*. Edited by A. von Hirsch, (D. Garland and A Wakefield, 2000) 65

In Goold's article, possible solutions are discussed to this problem of the 'unobservable observer', one of which is proposed by von Hirsch, namely an independent 'watchdog agency' that could oversee and make public the surveillance activities of those behind the cameras. As Goold points out, this solution, while attempting to solve the problem, actually moves us closer to something exactly like Bentham's Panopticon. For, in a panoptic situation, the central observer is also himself observed, *but without the inmates being aware who (or even if) the observer is even present in the central tower*. In other words, the panoptic effect would be the same in the situation where there is a 'watchdog' observing the observer, for precisely the reason that those who are being observed *are never aware if or by whom they are being watched*.

The salient features of CCTVs for the technique of hierarchized surveillance are obvious. First, CCTVs are both *automatic* and *anonymous*. They are first automatic in the sense that they can be programmed to operate by themselves and, increasingly, are being programmed to even identify certain elements of the visual field through the use of identification technology. They are also *anonymous* in the sense that they are an 'unobservable observer'. And finally, a central feature of CCTVs - one Foucault would have made much of - is the element of perpetual, constant surveillance. As Foucault writes,

Discipline is a technique of power, which contains a constant and perpetual surveillance of individuals. It is not sufficient to observe them occasionally or see if they work to the rules. It is necessary to keep them under surveillance to ensure activity takes place all the time and submit them to a perpetual pyramid of surveillance.⁵⁷²

⁵⁷² Foucault, 'The Incorporation of the Hospital into Modern Technology', 147

Thus, the automaticity, anonymity and perpetual nature of surveillance in the prison-in-reverse model exemplifies in a striking way the instrument of disciplinary power Foucault identified as hierarchized surveillance.

The second instrument of disciplinary power is the normalizing judgment, which Foucault defined as a process of punishment or ‘perpetual penalty’ inherent in all disciplinary spaces which results in the binary opposition of the normal/accepted subject and the abnormal/forbidden subject. As Christopherson argues, the ‘normalizing judgment’ of the prison-in-reverse’ should be understood as the network of exclusionary processes including “..design, daily regulation and longer-term solutions such as displacement to the urban fringe”.⁵⁷³ Drawing upon this analysis, I try to show in Section Two the specific ways that the ‘normalizing’ process of exclusion occurs in the case of the Ft. Lauderdale Land Development regime and its exclusion and displacement of the homeless and the criminalization of those who attempt to share food with them in public places.

One significant aspect of the ‘normalizing’ process inherent in the prison-in-reverse model is the convergence of the discourses of citizenship and the presence and visibility in public-private space, where participation as consumerism within the urban milieu is now seen as constitutive of what it means to be a citizen. As Merry writes,

The space itself creates expectations of behavior and consumption. These systems are not targeted at reforming the individual or transforming his or her soul; instead they operate on populations, inducing cooperation without individualizing the object of regulation...Spatial governmentality works not by containing disruptive populations but by excluding them from particular places.⁵⁷⁴

⁵⁷³ Christopherson, *The Fortress City*, 418

⁵⁷⁴ Merry, ‘Spatial Governmentality and the New Social Order’, 20

The spatial rationality of the prison-in-reverse model therefore involves, on the one hand, a defined set of expectations of behavior and consumption, and on the other the exclusion of particular populations. However, what should be noted is that *these 'excluded' populations, in a very real sense, have long already been judged.* “The judges of normality”, as Foucault calls them, have become the very exclusionary spatial order of the city itself.⁵⁷⁵

In spaces modeled on the “prison-in-reverse”, the body and its “...gestures, its behavior, its aptitudes and achievement”⁵⁷⁶ is subjected to the spatial order itself, which has already defined the limit of permissible difference long before one steps into the space. What kinds of gestures, bodies, utterances, clothing, behavior, and comportment are permissible and what not have in a sense already been defined; indeed, such things are increasingly defined by city ordinances, the enforcement of which is left up to police. In this way, the ‘normal’ and ‘abnormal’ subject is defined and circumscribed by what Foucault calls “techniques of individualization”: techniques that make the individual subject to control. Foucault writes

Discipline is basically the mechanism of power through which we come to control the social body in its finest elements, through which we arrive at the very atoms of society, which is to say individuals. Techniques of individualization of power. How to oversee someone, how to control their behavior, their aptitudes, how to intensify their performance, multiply their capacities, how to put them in the place where they will be most useful; this is what discipline is, in my sense.⁵⁷⁷

⁵⁷⁵ “The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the ‘social-worker-judge’. It is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behavior, his aptitudes, his achievements.” Michel Foucault. *Discipline and Punish: the Birth of the Prison* (New York: Pantheon, 1977) 304

⁵⁷⁶ Michel Foucault. *Discipline and Punish: the Birth of the Prison* (New York: Pantheon, 1977) 304

⁵⁷⁷ Michel Foucault. ‘The Meshes of Power’, translated by Gerald Moore in *Space, Knowledge and Power*, Crampton and Elden (eds) (Burlington: Ashgate, 2007) 159

For Foucault, it is the techniques of individualization employed that render individuals subject to certain forms of social control. The prison-in-reverse will thus use techniques of individualization in order to render the ‘normal’ and ‘abnormal/forbidden’ subject amenable to control.

The first technique of individualization in the prison-in reverse model is the creation of the ‘subject-as-user’. Here the urban subject is defined and classified as either a *user* or *abuser* of the space. First, Merry describes what she sees as the use of ‘risk-based techniques’ of governance in the ordering of urban space. These ‘risk-based techniques’ of governance “...offer more efficient ways of exercising power since they tolerate individual deviance but produce order by dividing the population into categories organized around differential degrees of risk”.⁵⁷⁸ These techniques then divide populations into categories of risk in such a way to provide a basis or criterion for property owners, city authorities and police to exclude certain ‘high-risk’ or ‘out of place’ populations from a certain area of neighborhood. Merry points out that the neoliberal model of urban governance from which these risk-based techniques derive complement the broader emphasis on the risk-taking consumer-citizen and the ideal of the self-entrepreneur.⁵⁷⁹ These techniques, once defined and articulated in city law and discourses of public health and safety, then act as the standard by which urban subjects are then compared, differentiated, hierarchized, homogenized and excluded according to their degree of ‘risk’ or conformity with the ‘character’ of the space.

⁵⁷⁸ Merry, *Spatial Governmentality and the New Social Order*, 19

⁵⁷⁹ Merry, *Spatial Governmentality and the New Social Order*, 19

The ‘examination’ of the prison-in-reverse therefore could be said to be ubiquitous, precisely in its very *absence*. As the *inversion* of the logic of the ‘spectacle’ and infinite visibility of the excluded subject, the examination in the prison-in-reverse is manifest in the *invisibility* of the subject that is excluded. Indeed, “(P)ower appears to disappear behind individual choice [Ewick 1997:81].”⁵⁸⁰ Unlike the military parade, where power is masked by the *visibility* of the subject, power in the prison-in-reverse is masked by the *invisibility* of the forbidden subject from the space. Indeed, for those populations who are excluded from these territorialities, “(T)he punitive city of the 21st century appears to be one in which mere presence in urban space is once again a crime.”⁵⁸¹ In the prison-in-reverse model, we have therefore an inversion of the logic of the prison as the new model for public-private space: *to keep deviant behavior on the outside and to foster a normalized population of citizenship inside.*

The Neoliberal City & the Ecology of police

The conception of the prison-in-reverse as a punitive and disciplinary form of neoliberal *spatial governmentality* resonates well with Foucault’s work on the city as the object of intervention for biopower. In addition, this conception of the prison-in-reverse illuminates the crossover in Foucault’s own work between the prison as mechanism of biopolitical war and the city as site of intervention for biopower and a ‘medical police’ of the poor. What’s more, several contemporary authors have taken up the analysis of urban space as the site for understanding the new punitive, disciplinary and biopolitical war being waged on ‘undesirable’ populations by a neoliberal urban regime. In this vein, Amster has described what he calls the ecology of social

⁵⁸⁰ Merry, *Spatial Governmentality and the New Social Order*, 20

⁵⁸¹ Katherine Beckett and Herbert, Steve. ‘Dealing with disorder: Social control in the post-industrial city.’ *Theoretical Criminology*. Vol. 12(1), 2008, 24

control which models the city as a living organism with distinctive ‘zones’ of character. Once reconceived as itself a kind of ecological order, the ‘zoning’ of the city itself becomes a kind of social control. In this way, a new regime of land development based on an ecological model of social control and displacement can be seen to underwrite a punitive and biopolitical neoliberal regime. Combining the “prison-in-reverse” model with Amster’s model of the ecology of social control, I examine the Ft. Lauderdale Land Development regime and its aggressive program of removing the homeless, anti-feeding ordinances, and land speculation.

In August 2014, the City of Ft. Lauderdale contracted out to the private property consultant firm CBRE to develop a ‘Strategic Plan’ for a new land development initiative for urban investment and renewal in the city. Formerly the sole job of ‘city managers’ or administrators, the task of land valuation and real estate speculation was placed in the hands of a private multinational conglomerate. At CBRE’s service was also placed the currently sitting city manager, the Parks and Recreation Board, and the Mayor. On October 10, 2014, CBRE rolled out its 161-page Strategic Plan for the City of Ft. Lauderdale.⁵⁸² In its plan, CBRE identified its top “Priority Projects” for new land development. One ‘Priority Project’ CBRE identified was the ‘One Stop Shop’, which it describes as an

irregularly shaped City Block which consists of 3.469 acres of land located on the northwest corner of Andrews Avenue and NE 2nd Avenue which is two blocks north of Broward Boulevard, the major east west artery that leads into the city of Fort Lauderdale. The site has a building that was once the site of the One Stop Shop for city permitting and licensing. The building is currently vacant and fully secured. The site has become a central gathering place for homeless citizens and also contains a City Public Parking Lot.⁵⁸³

⁵⁸² CBRE Inc. ‘Real Property Market Analysis & Recommendations for the City of Ft. Lauderdale’, 2014.

⁵⁸³ CBRE Inc. ‘Real Property Market Analysis & Recommendations for the City of Ft. Lauderdale’, 54

After detailing the valuable property in proximity to the site, which includes “...the future All Aboard Florida Rail Station...the highly desirable Las Olas and Himmarshee areas of downtown Fort Lauderdale....1 Million Square Feet of Office Space”⁵⁸⁴, the report concludes that “(G)iven the site size and location this site is a prime redevelopment candidate. The sale or ground letting of the site could unlock significant capital for the City while adding several acres back to tax roll.”⁵⁸⁵ In its final land valuation, CBRE estimates the One Stop Shop property at a target of \$12million.

Following in the footsteps of CBRE’s Strategic Plan, in November 2014 the City of Ft. Lauderdale passed a sweeping overhaul of the city’s Land Development Regulations. One ordinance issued was Ordinance No. C-14-42, whose purpose is “...to regulate social service facilities in order to promote the health, safety, morals and general welfare of the residents of the City of Fort Lauderdale”.⁵⁸⁶ In a sweeping revision of the regulation of social services in public space, the ordinance struck the entire existing definition of ‘Social Service Facility’, replacing it with six different categories of distinctive facilities each with their own highly standardized and regulated procedures for complying with ‘public health and safety’. The ordinance begins by stating that

In the development and execution of this section it is recognized that there are some uses which, because of their very nature. are recognized as having serious objectionable characteristics, and that may result in adverse secondary effects on adjacent properties, particularly when several are concentrated together or are located in proximity to businesses of a community nature, residential areas, houses of worship and schools, or both thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that the location and concentration of these uses will have a minimal negative impact on the surrounding neighborhood. These regulations are

⁵⁸⁴ Ibid

⁵⁸⁵ Ibid

⁵⁸⁶ Fort Lauderdale City Ordinance No. C-14-42, p 1

intended to establish criteria by which their use will have a minimum adverse impact on the surrounding properties.⁵⁸⁷

The ordinance proceeds to strike from the record the existing definition of ‘Social Service Facility’, which previously read, “(A) facility providing personal services described herein by an eleemosynary or philanthropic entity. Personal services include the provision of food, hygiene care and day shelter or any combination of same.”⁵⁸⁸ In its place, the ordinance implemented the following highly standardized and highly regulated categories:

1. Addiction Treatment Center: Any outpatient service, providing diagnostic or therapeutic services for alcoholism, drug abuse, or similar conditions. Clinics, professional offices or similar uses that provide addiction treatment counseling to individuals as part of a larger practice are not Addiction Treatment Centers.
2. City Block: A subdivision of land consisting of a cluster of contiguous lots, parcels or tracts within common boundary lines as typified by a block as identified on subdivision plats recorded in the Official Record Book of Broward County, Florida.
3. Food Distribution Center: Any building or structure, or a portion thereof, of which the interior, or portion of the interior, is used to furnish meals to members of the public without cost or at a very low cost as a social service as defined herein. A food distribution center shall not be considered a restaurant.
4. Outdoor Food Distribution Center: Any location or site temporarily used to furnish meals to members of the public without cost or at a very low cost as a social service as defined herein and is generally providing food distribution services exterior to a building or structure or without permanent facilities on a property.
5. Secondary social services: Social service such as counseling, education and referral, training, indoor recreational facilities and similar services supportive to the primary social services offered at a Social Service Facility. Secondary social services may only be provided during day and evening hours as further defined in Section C.1.a and shall not include overnight accommodations.
6. Social services: Any service provided to the public to address public welfare and health such as, but not limited to, the provision of food; hygiene care; group rehabilitative or recovery assistance, or any combination thereof; rehabilitative or recovery programs utilizing counseling, self-help or other treatment or assistance; and day shelter or any combination of same.⁵⁸⁹

The ordinance begins by mandating that all Social Service facilities listed herein must: operate only between 7am-7pm, have a waiting area on premises, do not block public access to sidewalks, right-of-ways or private property, have an emergency access point clearly marked and maintained, “demonstrate that adequate space is available to accommodate the expected number

⁵⁸⁷ Fort Lauderdale City Ordinance No. C-14-42, p 2

⁵⁸⁸ Fort Lauderdale City Ordinance No. C-14-42, p 1

⁵⁸⁹ Fort Lauderdale City Ordinance No. C-14-42, p 3

of persons using the facility”, be “...buffered from abutting properties and streets with a fence, wall, or hedge that meets all ULDR [Land Development] requirements, have an official management plan indicating compliance with Land Development standards, have staff on premises, have “residential provisions”, have a “security plan”, have transportation provided, have restroom facilities provided, have trash receptacles provided, and lighting.⁵⁹⁰

The ordinance then enumerates in order all the *specific* regulations that apply to each SSF. The ordinance then specifies the following regulations and requirements for all ‘Outdoor Food Distribution Centers’:

- c. Outdoor Food Distribution Center (OFDC). Shall be subject to the following:
 - i. If a dining area is provided, it shall meet all state, county and city requirements for food service establishments or similar uses.
 - ii. Shall not be closer than 500 feet from another Food Distribution Center or Outdoor Food Distribution Center.
 - iii. Shall not be any closer than 500 feet from a residential property as defined in Sec. 47-35 of the ULDR.
 - iv. Shall provide restroom facilities, portable toilets or other similar facilities for persons preparing and serving food as well as for the persons being served food.
 - v. Shall provide equipment and procedures for the lawful disposal of waste and wastewater at the location.
 - vi. Shall provide equipment and procedures at the location for hand washing.
 - vii. Shall provide written consent from the property owner to conduct that activity on the property.
 - viii. Shall have one person, who will be present at the location at all times that food is being prepared and served, who has received Food Service Manager Certification under Section 509.039, Florida Statutes.
 - ix. Shall have adequate storage of food at a temperature of:

⁵⁹⁰ Fort Lauderdale City Ordinance No. C-14-42, p 3-5

- a. 41 °F or below or
- b. 135 °F or above.
- x. Shall provide transportation of food in a clean conveyance
- xi. Shall provide service of food within four (4) hours of preparation.
- xii. Where non-prepackaged food is served, a convenient hand washing facility for persons preparing and serving the food, which hand washing facility must at a minimum include:
 - a. A five (5) gallon container with a spigot that provides free-flowing water and a catch bucket to collect wastewater from hand washing.
 - b. Soap and individual paper towels.
- xiii. Any wastewater generated at a location (including, but not limited to wastewater from hand washing, utensil washing, sinks, and steam tables) must be placed in a container approved by the director until properly disposed of into a sanitary sewer system or in a manner that is consistent with federal, state, and local regulations and requirements relating to liquid waste disposal.

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The ordinance then adds the final two general rules for all SSFs, stating that all facilities

- i. Shall not be any closer than 500 feet from any another Social Service Facility.
- ii. Shall not be any closer than 500 feet from a residential property as defined in the ULDR.

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Following this laundry list of regulations for specific SSFS, the ordinance then distinguishes between a ‘Permitted Use’ and a ‘Conditional Use’ of public space. In addition, each type of SSF is then designated special areas in a table determined by the zoning areas of the city conducive to what the ordinance calls the “character of the area”.

Abolishing the ‘Permitted’ distribution of food in public space, the ordinance designates zones for the ‘Conditional’ use of only fully pre-approved, reviewed, regulated and administered ‘Outdoor Food Distribution Centers’ which have demonstrated and passed review *beforehand*. The ordinance then mandates that any SSF must meet the following criteria. First, the SSF must meet the requirement of what’s called ‘Abatement of Nuisance’:

⁵⁹¹ Fort Lauderdale City Ordinance No. C-14-42, p 6-7

⁵⁹² Fort Lauderdale City Ordinance No. C-14-42, p 7

c. Abatement of nuisance. The activities on the property of the facility shall not create or cause a nuisance to adjacent properties or surrounding community or a public nuisance or a violation of City Code by creating adverse conditions such as noise, odor, health hazard, glare or unlawful activities.

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This requirement, whose language of ‘public nuisance’ has been the language of police power since the nineteenth century, is followed by the criterion of a new sort of police discourse, namely that of ‘*the compatibility with the character*’ of the area:

d. Compatibility with the character of the area. The intensity of use of the proposed facility shall not adversely impact upon existing uses or change the character of the area in which it is located. This includes ensuring the use is compatible with the neighborhood within which it is located and that will be impacted by the use and mitigating any adverse impacts which arise in connection with the approval of the use or any continuation thereof. Conditions for approval may relate to any aspect of the development, including but not limited to height, bulk, shadow, mass and design of any structure, parking, access, public transit and landscaping requirements.

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On the early morning of October 22, 2014, after meeting from 2am-3:30am, the legal basis for the new Land Development regime of Ft. Lauderdale, recommended in CBRE’s Strategic Plan only months before, was passed into law by the City Commission.

The night before, homeless advocates had organized a mass ‘solidarity food share’ in front of City Hall to protest Mayor Jack Seilor and the Commissions’ new ‘anti-food sharing law.’ As crowds grew to eat, share news and to protest, the Mayor called in police to relocate the crowd.⁵⁹⁵ One group present that was impacted directly by the new Land Development ordinance was an religious organization called ‘Love Thy Neighbor’, which serves free hot meals to the

⁵⁹³ Fort Lauderdale City Ordinance No. C-14-42, p 10

⁵⁹⁴ Fort Lauderdale City Ordinance No. C-14-42, p 10

⁵⁹⁵ ‘Fort Lauderdale commissioners pull all-nighter and approve homeless feeding restrictions.’ By Larry Barszewski, Ft. Lauderdale SunSentinel. Oct. 22, 2014.

homeless at multiple locations throughout the city. In addition to outlawing many existing social service facilities, and making it extremely difficult for existing social services to be ‘pre-approved’ and compliant with the law, the ordinance also had the effect of concentrating most social services towards the downtown area of Flagler Area.⁵⁹⁶ In addition, the ordinance effectively made the operations of Love Thy Neighbor and Food Not Bombs illegal overnight.

As the Sun Sentinel writes,

Besides enacting the feeding restrictions, the commission this year followed the lead of a number of other South Florida communities from soliciting at the city’s busiest intersections. It has outlawed sleeping on public property downtown, toughened laws against defecating in public and made it illegal for people to store personal belongings on public property.⁵⁹⁷

In concert with the new Land Development legal regime, the City Commission also passed a new budget that earmarks \$25,000 “...to buy one-way tickets for homeless people who want to reunite with their families in other parts of the country.”⁵⁹⁸

On November 2, 2014, less than a month after the new ordinance went into effect, police arrested 90-year old Arnold Abbot, a member of Love Thy Neighbor who has been serving free meals to the homeless for over twenty years in Ft. Lauderdale. The police entered Stranahan Park citing the new ordinance, and are recorded as saying, “Drop that plate right now.”⁵⁹⁹ Abbot was arrested and issued a citation for being in violation of the new Land Development ordinance,

⁵⁹⁶ ‘Fort Lauderdale Commissioner asks to suspend homeless feeding ordinance’, By Bob Norman, Ft. Lauderdale Local 10 News, Nov. 18, 2014.

⁵⁹⁷ ‘Fort Lauderdale commissioners pull all-nighter and approve homeless feeding restrictions.’ By Larry Barszewski, Ft. Lauderdale SunSentinel. Oct. 22, 2014.

⁵⁹⁸ ‘Fort Lauderdale commissioners pull all-nighter and approve homeless feeding restrictions.’ By Larry Barszewski, Ft. Lauderdale SunSentinel. Oct. 22, 2014.

⁵⁹⁹ ‘Fort Lauderdale police keep tabs on homeless feedings’, By Larry Barszewski, Ft. Lauderdale SunSentinel, Nov. 20, 2014

whose penalty is a maximum of \$500 and 60 days in jail per citation. Three days later, on November 5, Abbott was issued a second citation at Fort Lauderdale Beach Park, where he has been sharing food with the homeless for over 20 years. And, several days later, he received his third citation, and now has a court hearing scheduled for Dec. 3.⁶⁰⁰ When interviewed about the intentions of Love Thy Neighbor to continue serving meals or not, Abbott responded that “We will continue as long as there is breath in my body.”⁶⁰¹

Since Abbott’s defiant insubordination of the new Land Development ordinance, the City of Ft. Lauderdale has endured what the SunSentinel calls “...a public relations nightmare for local officials, including those in the tourism business.”⁶⁰² In response, many groups have rallied together in a campaign of civil disobedience, including the Group ‘Picture the Homeless’, Food Not Bombs, and local religious organizations like Love Thy Neighbor. Abbott, a WWII veteran, actually squared off in a live debate with Mayor Jack Seilor, who signed the ordinance into law.⁶⁰³

After massive public backlash, extensive media coverage, and 11 persons criminally charged within one month of the ordinance being implemented, city commissioners are now considering suspending the ordinance.⁶⁰⁴ However, seeing how civil and religious organizations have responded to providing resources for the homeless during the ban, some City

⁶⁰⁰ Fort Lauderdale police keep tabs on homeless feedings’, By Larry Barszewski, Ft. Lauderdale SunSentinel, Nov. 20, 2014

⁶⁰¹ ‘Homeless Advocate faces mayor on TV, braces for Wednesday run-in with police’, By Mike Clary, Ft. Lauderdale SunSentinel, Nov. 9, 2014

⁶⁰² ‘Homeless Advocate faces mayor on TV, braces for Wednesday run-in with police’, By Mike Clary, Ft. Lauderdale SunSentinel, Nov. 9, 2014

⁶⁰³ ‘Homeless Advocate faces mayor on TV, braces for Wednesday run-in with police’, By Mike Clary, Ft. Lauderdale SunSentinel, Nov. 9, 2014

⁶⁰⁴ ‘Fort Lauderdale Commissioner asks to suspend homeless feeding ordinance’, By Bob Norman, Ft. Lauderdale Local 10 News, Nov. 18, 2014.

commissioners have concluded that "...it's not the city's job to make sure food is available after their ban took effect."⁶⁰⁵ City Commissioners, along with Mayor Seilor, have now gone on record as saying that, "I don't think that's our charge to take on that role in this community... We don't have the resources and we don't have the time."⁶⁰⁶ As Local 10 News reports, Mayor Seilor has also now stated that, "I've had no citizen come to me and say we ought to take on that role of being the provider."⁶⁰⁷

Therefore, whether or not the Land Development ordinance will be suspended or not, it is clear that the City Commission and the Mayor do not consider 'social services' to be an essential part of the government of the city. This might seem like a startling revelation, but in fact this neoliberal conception of governance is implicit in the Land Development regime that the Commission and the Mayor seek to implement at the recommendation of the private property consultant, CBRE. First, it speaks volumes that Social Services in a major city are not part of the 'general' functions of the city regulations, or the 'public health and welfare', but are rather covered by the Land Development regulations of the city code. In other words, Social Services are legally speaking a branch of Land Development regulation and real estate, not city services or social welfare. Thus, here 'social services' are seen as activities that are provided by civil society and *not* government. Social Services thus concerns city government *only to the extent* that social services impinge upon the business of government, which is Land Development, real estate acquisition, and property valuation. Indeed, as the ordinance declares, "(T)hese regulations

⁶⁰⁵ 'Homeless Advocate faces mayor on TV, braces for Wednesday run-in with police', By Mike Clary, Ft. Lauderdale SunSentinel, Nov. 9, 2014

⁶⁰⁶ 'Homeless Advocate faces mayor on TV, braces for Wednesday run-in with police', By Mike Clary, Ft. Lauderdale SunSentinel, Nov. 9, 2014

⁶⁰⁷ 'Homeless Advocate faces mayor on TV, braces for Wednesday run-in with police', By Mike Clary, Ft. Lauderdale SunSentinel, Nov. 9, 2014

are intended to establish criteria by which their use will have a minimum adverse impact on the surrounding properties.⁶⁰⁸

The criminalization of homelessness and groups who share meals with them is part of a larger movement in many cities across the US that began around 2002. With the implementation of city ordinances that prohibited the public sharing of food to ‘indigents’, city commissions, city managers and ‘private property consultants’ began in the early 2000s to construct new urban downtown re-development schemes that sought to criminalize life-sustaining activities of the homeless and push them to the urban fringe. This steady trend has been documented by many, and described most aptly by Randall Amster as a new “ecology of social control” that seeks to not only criminalize the homeless but in fact remove them, by any means, from the downtown spaces of urban consumerism and public-private business districts. These neoliberal regimes of land development and social control have led to not only the criminalization of life-sustaining activities of the homeless, but the criminalization of *non-homeless* individuals who ‘encourage homeless’ by ‘feeding them in public space’. In addition, these new regimes of land development have given rise to the implementation of “homeless deterrence technologies” in designing urban cityscapes themselves.⁶⁰⁹ In London and Montreal, for example, property owners have installed ‘homeless spikes’ outside their entrances to deter the homeless from sleeping on the ground.

The discourse of environmental deterrence and control that is commonplace in many urban governmentalities uses urban design itself as a sort ‘crowd control’ and ‘population management’. Commenting on the ‘Right to the City’ debates that emerged in the 90s in the work of Neil Smith, Talmidge Wright and Don Mitchell, von Mahs writes that “...the real aim of

⁶⁰⁸ Fort Lauderdale City Ordinance No. C-14-42, p 2

⁶⁰⁹ ‘How Cities Use Design to Drive Homeless People Away’, By Robert Rosenberger, The Atlantic, June 19, 2014.

anti-homeless measures is to reclaim the city and its most important economic and residential areas for commercial and monetary purposes” where ‘undesirables’

...must be removed to enhance the urban experience of shoppers, tourists, upscale residents, and other more affluent visitors of the city. The deliberate exclusion of homeless people through punitive means and displacement, then, is rationalized as a necessary step to reclaim the city and halt and reverse city center deterioration.”⁶¹⁰

In an edited volume titled, Policing Cities: Urban Securitization and Regulation in a 21st Century World, Palmer and Warren write that urban techniques such as “zonal banning”, where a certain type of life activity is banned and zoned out to the urban fringe, “...are now common forms of biopolitical securitization in most major Australian cities.”⁶¹¹

Most importantly, neoliberal techniques such as ‘zonal banning’, these authors show, have a direct influence of the life chances of homeless populations.⁶¹² In this way, the policing the neoliberal city through regulatory and ecological techniques of urban design and social control can be understood through Foucault’s analysis of the ‘regulatory disciplinary’ power of modern stat racism. As Foucault writes,

If it is true that the power of sovereignty is increasingly on the retreat and that disciplinary or regulatory disciplinary power is on the advance, how will the power to kill and the function of murder operate in this technology of power, which takes life as both its object and its objective? How can a power such as this kill, if it is true that its basic function is to improve life, to prolong its duration, to improve its chances, to avoid accidents, and to compensate for failings? How, under these conditions, is it possible for a political power to kill, to call for deaths, to demand deaths, to give the order to kill, and to expose not only its enemies but its own citizens to the risk of death? Given that this powers objective is essentially to make live, how can it let die? How can the power of

⁶¹⁰ Jurgen Von Mahs. ‘Get Lost! The impact of punitive policy on homeless people’s life chances in Berlin’ in *Policing Cities: Urban Securitization and Regulation in a 21st Century World* (New York: Routledge, 2013) 177-78

⁶¹¹ Darren Palmer and Ian Warren, ‘Zonal Banning and public order in urban Australia’ in *Policing Cities: Urban Securitization and Regulation in a 21st Century World* (New York: Routledge, 2013) 80

⁶¹² Von Mahs, ‘Get Lost! The impact of punitive policy on homeless people’s life chances in Berlin’ in *Policing Cities: Urban Securitization and Regulation in a 21st Century World* (New York: Routledge, 2013)

death, the function of death, be exercised in a political system centered upon biopower?⁶¹³

For Foucault, the modern state since the eighteenth century will come to exercise the sovereign right to kill through a ‘regulatory disciplinary’ technology of power he calls biopower. For Foucault,

It is indeed the emergence of this biopower that inscribes it in the mechanisms of the State. It is at this moment that racism is inscribed as the basic mechanism of power, as it is exercised in modern States. As a result, the modern State can scarcely function without becoming involved with racism at some point, within certain limits and subject to certain conditions.⁶¹⁴

Understanding the ‘neoliberal governmentality’ as functioning in ‘the mode’ of biopower then, we can speak of a neoliberal state racism in the form of what Amster has called ‘an ecology of social control’⁶¹⁵, or in terms of the neoliberal “prison-in-reverse”. By regulating and controlling for the exclusion of homeless populations through urban design, punitive measures and legal ‘zoning bans’, the political ecology of neoliberal ‘prisons-in-reverse’ works to eliminate the life-sustaining activities and reduce the life chances of homeless populations. In doing so, neoliberal state and city government exercises the sovereign right to kill through the regulatory disciplinary techniques of biopower.

To Protect Life By Waging War: the new Military-Juridical Order

Since for Foucault, ‘the politics of police must be a biopolitics’, we can understand the politics of *neoliberal* police as a kind of *ecological* biopolitics. In the new economic-juridical

⁶¹³ Michel Foucault. *Society Must Be Defended: lectures at the College de France, 1975-76* (New York: Palgrave MacMillan, 2003) 254

⁶¹⁴ Michel Foucault. *Society Must Be Defended: lectures at the College de France, 1975-76* (New York: Palgrave MacMillan, 2003) 254

⁶¹⁵ Randall Amster. *Lost in Space: The Criminalization, Globalization and Urban Ecology of Homelessness* (New York: LFB, 2008) 86

order of the neoliberal city, it is the police who carry out and enforce the physical relocation, removal and physical arrest of bodies and populations who do not comply or conform to that economic-juridical order. As Foucault makes clear, however, the policing of neoliberal orders requires, more than ever, a reliance upon and appeal to rule of law in order to underwrite its legitimacy. The legitimacy of neoliberal police, therefore, will require the explicit appeal to rule of law in order to justify its use of military-style force in maintaining the economic-political order. In what follows, I attempt to show how neoliberal policing relies upon a military-juridical technology that links the militarization of police to a police power jurisprudence. First, I analyze Stephen Graham's book Cities Under Siege: the New Military Urbanism and the ACLU report on the militarization of police. There, I show how the militarization of urban life is linked to the *militarization-privatization* strategy of neoliberal urban enclosures. Then, by analyzing the 2011 ruling on the eviction of demonstrators from Zucotti Plaza in NYC, I show how neoliberal police relies upon a juridical order that demands citizens to 'demonstrate their rights' to public space. In doing so, I spell out the ways that the military-pastoral technology of police is supported by both an economic technology and a legal-juridical technology. In this way, I seek to understand police as a set of political technologies that support one another in the maintenance of a neoliberal *politeia*.

In Cities Under Siege: the New Military Urbanism, Stephen Graham documents the "...massive global proliferation of deeply technophilic state surveillance projects...[which] signals the startling militarization of civil society – the extension of military ideas of tracking, identification and targeting into the quotidian spaces of everyday life."⁶¹⁶ Situating the massive crossover of military discourses and technologies into the governance of urban life, Graham

⁶¹⁶ Stephen Graham. *Cities Under Siege: the New Military Urbanism* (New York: Verso Books, 2011) xi

argues that these military-style governmentalities “...represent dramatic attempts to translate long-standing military dreams of high-tech omniscience and rationality into the governance of urban civil society.”⁶¹⁷ For Graham, these movements to militarize urban policing and governance, most notably after 9/11, also signal the blurring of the lines between discourses of State ‘homeland security’ and martial practices. Indeed for Graham, what we are seeing is “(T)he dovetailing of state domestic security and military doctrines.”⁶¹⁸

Graham makes sense of the militarization of civil society through Foucault’s thesis about the ‘boomerang effect’ of modern state governmentality, whereby colonial techniques of genocide, discipline and social control are appropriated by the State and applied internally on their own populations. This is a central thesis of the book. Thus for Graham, the militarization of civil society can be understood as the internal application of colonial and post-colonial models of social control, developed also in the Global South and in the War on Terror, internally upon the domestic population. Graham outlines five key features of the new military urbanism. First, Graham notes the expansion of the traditional language of ‘battlespace’ from the field to the city, such that everyday urban places such as subways, supermarkets, tower blocks, industrial districts, and public spaces become reimagined as the site of urban warfare. Indeed, “(E)veryday spaces of the city “...are becoming the main battlespace both at home and abroad.”⁶¹⁹ In this way, Graham states,

Western security and military doctrine is being rapidly reimagined in ways that dramatically blur the juridical and operational separation between policing, intelligence

⁶¹⁷ Graham, *Cities Under Siege: the New Military Urbanism*, xi-xii

⁶¹⁸ Graham, *Cities Under Siege: the New Military Urbanism*, xii

⁶¹⁹ Graham, *Cities Under Siege: the New Military Urbanism*, xv

and the military; distinctions between war and peace; and those between local, national and global operations.”⁶²⁰

According to Graham, the ‘traditional’ understanding of ‘legal or human rights and legal systems based on ideas of universal citizenship’ is being replaced within these new ‘battespaces’ with “...the profiling of individuals, places, behaviors, associations, and groups...[and] assign these subjects risk categories based on their perceived association with violence, disruption or resistance against the dominant geographical orders sustaining global, neoliberal capitalism”⁶²¹ This for Graham, the profiling of individuals with regard to their risk or dangerousness is a feature of the new military urbanism.

The second feature of the new military urbanism has to do with ‘Foucault’s Boomerang: where “...explicitly colonial models of pacification, militarization and control, honed on the streets of the global South, are spread to the cities of capitalist heartlands in the North.”⁶²² Internal colonization as mode of social control. For Graham, the new technologies of militarization that are being deployed by local and state government increasingly view urban areas as if they were a sort of post-colonial ‘military camp’ which needs to be protected and walled in from outside invading forces. Indeed, for Graham, such technologies

...force people to prove their legitimacy if they want to move freely. Urban theorists and philosophers now wonder whether the city as a key space for dissent and collective mobilization within civil society is being replaced...by camps which are linked together and withdrawn from the urban outside beyond the walls or access-control systems.⁶²³

⁶²⁰ Ibid

⁶²¹ Graham, *Cities Under Siege: the New Military Urbanism*, xv

⁶²² Graham, *Cities Under Siege: the New Military Urbanism*, xvi

⁶²³ Stephen Graham. *Cities Under Siege: the New Military Urbanism*, xxi

The third feature of the new military urbanism for Graham is what he calls ‘the surveillant economy’. For Graham, ‘the surveillant economy’ refers to the ‘political economy’ of the new military urbanism which is composed of private security firms, weapons manufacturing, and the international weapons trade. Together, the public-private network of military-to-industry economic exchange drives and incentivizes the further militarization of city, state and governmental agencies, while emphasizing the importance of surveillance as a method of internal security. The fourth feature of the new military urbanism for Graham is the emergence of a new kind of ‘urban warfare’. For Graham, the city as site of urban warfare signals a transition from a conception of ‘total war’ against cities which aimed at annihilation to a long, biopolitical war against the population. For Graham, these ‘humanitarian’ modes of warfare in fact

...end up killing the most vulnerable members of society as effectively as carpet bombing, but beyond the capricious gaze of the cameras. Such assaults are engineered through the deliberate generation of public health crisis in highly urbanized societies where no alternatives to modern water, sewage, power or medical and food supplies exist.⁶²⁴

Thus for Graham, one might say that the new military urbanism signals a transition from a conception of war as ‘annihilation’ to a conception of war as ‘attrition’, an extended campaign of material, biopolitical and psychological war on one’s opponent.

The final feature of the new military urbanism for Graham is the phenomena of ‘the Citizen Soldier’. However, rather than analyzing the various discourses of popular movements or republican discourses of the citizen soldier, Graham focuses on the discourse of the citizen soldier in popular culture. Here, Graham focuses on the material culture of urban life, electronic and popular media, and the rise of militaristic pop culture. Two examples in particular Graham

⁶²⁴ Graham, *Cities Under Siege: the New Military Urbanism*, xxvi

focuses on are the new military video games, some of which are sponsored by the US Army, and ‘The Hummer’ SUV culture in urban life.

Graham’s book could not be more timely, especially in light of the ACLU’s recently released report *War Comes Home: the Excessive Militarization of American Policing*. In that report, the ACLU documents the rise of the startling militarization of American policing through two stages. Beginning with the ‘War on Drugs’ in the 1980s, the report documents how the US government began to collaborate more closely with local and state government to combat the urban ‘drug-dealer’ and his network. The ‘War on Drugs’, as the report documents, culminated in the 1989 National Defense Authorization Act, which was then made a permanent program intended for the transfer of military resources to fight ‘counterdrug and counterterrorism activities’.⁶²⁵ The 1990s then saw the development of the ‘1033 Program’, which was intended to provide local and state authorities with military equipment.⁶²⁶ After 9/11, the report continues, the Department of Homeland Security developed a grant program for local and state law enforcement, one branch of which is the ‘Urban Areas Security Initiative.’⁶²⁷ This grant program only requires applications from local and state government to dedicate a minimum of 25% of received grant monies to ‘terrorism prevention-related law enforcement’, allowing a wide net of requests to be granted that have a marginal relation to ‘terrorism’.⁶²⁸

One fundamental aspect of the militarization of the governance of urban life noted by both Graham and the ACLU report is the transformation of the self-conception of many police

⁶²⁵ ACLU, *The War Comes Home: the Excessive Militarization of American Policing*, 16

⁶²⁶ ACLU, *The War Comes Home: the Excessive Militarization of American Policing*, 16-17

⁶²⁷ ACLU, *The War Comes Home: the Excessive Militarization of American Policing*, 17

⁶²⁸ Ibid

departments, major authorities and officers themselves. While not universally accepted by any means, the ACLU documents that “(T)he most common rationale put forth to support the notion that the police in fact should be militarized is to protect life”.⁶²⁹ Referencing the emerging discourse of ‘the Ethical Warrior’ within the policing community, the report summarizes the discourse in its own words: “(A) warrior cop’s mission is to protect every life possible and to only use force when it’s necessary to accomplish that mission.”⁶³⁰

As Graham’s book illustrates, however, the politics of the new ‘ethical warrior’ police are inevitably, as Foucault would say, a biopolitics. Since the politics of police since the eighteenth century, for Foucault, have always been to protect life by managing and administering life itself, the politics of police are by definition a biopolitics. However for Foucault, as we recall, since the police are a mechanism of the sovereign state, and the sovereign state exercises State racism through the techniques of biopower, it follows that the police are also implicated in State racism. This means, as Graham’s book shows, that politics of police are *To Protect Life By Waging War* on certain elements, dangers and threats within the population. Within the increasingly militarized urban zones of the city, therefore, *To Protect Life By Waging War* then means that policing the city comes to look more and more like the protection and organization of a military camp. Echoing Agamben’s thesis on the *camp* as internal logic of the contemporary *nomos*, Graham writes,

A priori incarcerations, bans, and a creeping mass criminalization begin to puncture already precarious legal norms of due process, habeas corpus, the right to protest, international humanitarian law and the human rights of citizenship. Increasingly, the always-fragile notions of homogenous national citizenship fray and disintegrate as different groups and ethnicities are pre-emptively profiled, screened, and treated differently. The rights of citizenship are disaggregated or ‘unbundled’: ‘Law’ is deployed to suspend law, opening the door to more or less permanent ‘states of exception’ and

⁶²⁹ ACLU, ‘*The War Comes Home: the Excessive Militarization of American Policing*’, 18

⁶³⁰ *ibid*

emergency Systems' of camps, militarized borders, and systems of illicit, invisible movement now straddle nations and supranational blocs. The resulting transnational archipelagos of incarceration, torture and death exhibit startling similarities to those that sustain global geographies of tourism, finance, production, logistics, military power and the lifestyles of elites. The 'enemies within', the persons adjudged risky or worthless or out of place - the African-Americans of New Orleans, the troublesome inhabitants of Paris's *ban lieues* , the Roma encamped in the suburbs of Naples or Rome, the favela dwellers on the edges of Rio's tourist hot spots, the undocumented immigrants, the beggars, the homeless, the street vendors everywhere - become increasingly disposable, assaulted, forcibly excluded.⁶³¹

Noting the increasing importance of the 'state of exception' or the 'state of emergency', Graham foreshadows in a striking way the events in Ferguson, MO. After a white police officer shot and killed an unarmed black teenager, Michael Brown, civil protests erupted after the police officer was not brought forth or charged with any crime. As the investigation into the teen's death stalled, and no action was taken, public outcry grew. As protests grew larger, the town of Ferguson police came out in full force to control crowds, utilizing military equipment they had been receiving from the Urban Areas Security Initiative, Justice Department Grants, the 1033 Program and Pentagon programs. Like many other cities, Ferguson has received millions of dollars in military equipment, not including the resources they receive at no charge from the government. As the New York Times reports, these government programs came under review in the Senate after the startling media coverage of Ferguson police descending upon protestors with military fatigues: "(A) sniper rode a BearCat armored truck, paid for with \$360,000 in federal money. They pointed assault rifles at unarmed protesters and fired tear gas into crowds."⁶³²

After three months of inaction, a grand jury was finally convened to decide a verdict. However, days before the jury was to release the verdict, the Governor Jay Nixon of Missouri signed Executive Order 14-14 declaring a state of emergency. Calling in the National Guard to

⁶³¹ Graham, *Cities Under Siege: the New Military Urbanism*, 94-5

⁶³² 'After Ferguson Unrest, Senate Reviews Use of Military-Style Gear by Police', By Matt Apuzzo, New York Times, Sept. 9, 2014

support the St. Louis Police Department, the rationale for the executive order was couched in the language of protecting peaceable assembly, protest and the protection of public safety, civil rights and private business. However, the suspension of law in order to protect civil rights raises a disturbing prospect, one that Graham rightly highlights. Indeed, to the extent that “(L)aw is deployed to suspend law, opening the door to more or less permanent 'states of exception' and emergency Systems’ of camps, [and] militarized borders”, it is precisely the legal, civil and human rights that ‘law’ *is supposed to protect* that is suspended and replaced with the logic of ‘camp’. The suspension law in order to protect civil rights is thus the paradigm of the logic of the exception, a disturbing situation where martial law becomes *necessary* for the protection of civil rights. In this way, justifying a state of emergency by claiming that such a state is the best means to protect civil rights therefore implies the very possibility Graham raises: the permanent state of exception or state of emergency that claims it is necessary to protect civil rights.

The discourse of ‘exception’ essential to the logic of ‘the camp’ is intimately related to the idea of *securocratic war* developed by Feldman and discussed by Graham. Drawing up Feldman’s notion of *securocratic war*, Graham links the ‘militarization’ of the urban city as *camp* to the neoliberal privatization and ‘enclosing’ of the city. “Securocratic war”, Graham writes,

involves the reconfiguration of sprawling cities, as increasing numbers of spaces within them are turned into camp-like environments supported by private security forces; hardened, impermeable or militarized boundaries; high - tech security systems and customized infrastructural connections to elsewhere. Urban geographies become increasingly polarized, and cities experience palpable militarization as secessionary elites strive to sequester themselves within fortified capsules...More inward-looking as well, they militarize the effort to draw and police their boundaries with the urban outside. It is made very clear to intruders judged as illegitimate that they must leave or face serious consequences.⁶³³

⁶³³ Graham, *Cities Under Siege: the New Military Urbanism*, 100

In this way, the punitive Land Development regime of Ft. Lauderdale documented earlier can be seen as part of *the complementary militarization-privatization strategy of neoliberal urban enclosures*.

Another site of neoliberal urban enclosure that has become internationally recognized is Zucotti Plaza in New York City, the site of the Occupy Wall Street movement and its controversial eviction by city police and the Sanitation Department in 2011. Described itself as an island of ‘enclosure’⁶³⁴, Manhattan Island is thus a ripe object of analysis for contemporary forms of regulatory disciplinary enclosure. In what follows, I link the repressive police eviction of the Occupy demonstrators to a legal-juridical order that demands individuals to ‘demonstrate their right’ to public space. In doing so, I link this military-juridical order of police power to the events in Ferguson, MO where a state of emergency was declared *in advance* of a grand jury verdict on the killing of Michael Brown by a white police officer.

At approximately 1:00am on the morning of November 15, 2011 the NYPD along with the Sanitation Department entered Zuccotti Plaza with armored vehicles, barricades and bullhorns and announced to ‘those occupying Zucotti Park’ that they were to immediately remove all property and leave the park or be subject to arrest. Thus began a four-hour long coordinated police sequestration of the area surrounding Zucotti Plaza, which included the removal of tenements and encampments by the Sanitation Department, the closing of bridges and street access, a media blackout, and the forceful eviction of the protestors utilizing sound cannons and pepper spray, resulting in mass arrests of hundreds including journalists. Lawyers for the occupation frantically submitted an application for a temporary restraining order to the City of New York which requested the following injunctions:

⁶³⁴ Matthew Bolton et al. *Occupying Political Science: The Occupy Wall Street Movement from New York to the World*. (New York: Palgrave Macmillan, 2012) 141-142

- (a) Enjoining the respondents from evicting lawful protestors from Liberty Park/Zucotti Park;
- (b) Permitting all protestors to re-enter the park with tents and other gear previously utilized;
- (c) Returning all property seized from protestors; and
- (d) Granting such further relief as may seem just and proper

Waller v City of New York, 2011, Index No. 112957/2001

At 6:30am, a judge issued a temporary restraining order granting *limited* restrictions on the City until the matter could be heard in court later in the day. These limited temporary prohibitions on the City included:

- (a) Evicting protests from Zucotti Park a/k/a Liberty Park, exclusive of lawful arrests for criminal offense
- (b) Enforcing the ‘rules’ published after the occupation began or otherwise preventing protestors from re-entering the park with tents and other property previously utilized

Waller v City of New York, 2011

Shortly after noon, Justice Michael Stallman heard oral arguments for and against the lifting of the restraining order against the city. At bottom, the issue in the lifting of the restraining order was whether the court would recognize the First Amendment rights of those occupying the park in view of their conflicting relationship with a) the right of Brookfield Properties to establish ‘reasonable rules’ for ‘hygienic, safe and lawful’ public access, b) the legal obligation of the City to enforce city ordinances within the park *and* c) to make it available to those who ‘live and work in the area’ who are listed as the ‘intended beneficiaries’ of the zoning plaza in question. Judge Stallman’s reasoning ultimately fell back on the justification that the demonstrators

have not demonstrated that they have a First Amendment right to remain in Zucotti Park, along with their tents, structures, generators and other installations to the exclusion of the owner’s reasonable rights and duties, and to maintain Zucotti Park, or to the rights to public access of others who might wish to use the space safely.

Waller v City of New York, 2011

Echoing Judge Stallman's reasoning, Mayor Bloomberg stated in his press conference later that day that the rights to free speech were outweighed by the demands for 'public health and safety'. The final ruling of Judge Stallman in *Waller* stated unequivocally that the applicants for the temporary restraining order failed to show "...a right to a temporary restraining order that would restrict the city's enforcement of the law so as to promote public health and safety." (*Waller v City of New York*, 2011). On these grounds, the petition for staying the temporary restraining order against the City was denied.

The police discourse of 'public health and safety' utilized in *Waller* and in Mayor Bloomberg's justification of the 'eviction' should be understood in the context of what Foucault calls 'bio-power', denoting both the management of populations and the disciplining and confinement of bodies. There are two elements that stand out with regards to the bio-political discourse that governed both the ruling and the Mayor's statement: the involvement of the Sanitation Department, and the subtle and explicit references to 'internal danger' and mental illness.⁶³⁵ Both of these references, I claim, are doing specific discursive work within the juridical-institutional matrix. The Mayor's official statement on 'the clearing' of the park, mirroring the rationale of Justice Stallman, was the following: when the goals of 'public health and safety' clash with the goals of guaranteeing the First Amendment Rights of the protestors, 'public health and safety' assumes priority. However, by examining the discursive, juridical and symbolic work that is done by the bio-political discourses of 'public health and safety', we can understand *how* these goals (Public Health v. Democratic Rights) are discursively *framed in such a way* so as to *ensure* that they *do* come into conflict, making the issue a matter of the police

⁶³⁵ CQ Press and Heather Kerrigan (eds), Mayor Bloomberg on Zucotti Park Clearing in *Historic Documents of 2011*, (London, Sage, 2013), 591

power, which in turn may be asserted against an old threat to ‘public’ majorities: the specter of ‘democratic absolutism’.

As Foucault documents in ‘The Politics of Health in the 18th Century’ and the lectures on Security, Territory, Population⁶³⁶, the problems of urban ‘blight’, disease, sanitation, disorder and the elimination of ‘dark spaces’ of the city become central objects for a ‘medical police’ [*medizinische polizei*] of the eighteenth century that emerges as part of the economic-institutional calculus of liberalism.⁶³⁷ During the nineteenth century, the discourse of ‘public health’ in United States took shape within the problem-space of the threat of disease epidemics like cholera, tuberculosis and typhus and the risk of ‘contagion’ and ‘congestion’ that lurked in the ‘dark’ corners of tenement housing for poor immigrants and black communities.⁶³⁸ In this context, local boards of health began to emerge in response to the threat of disease, contagion and ‘congestion’ and its potential impact on ‘the population’ and commercial ‘publics’. It was thus within this problem-space of early industrial cities like Philadelphia and New York and the discourse of the diseases of the ‘urban poor’ that local experiments in ‘public health and safety’ – a fundamental police power - would gain traction and develop into more centralized, and more pernicious, city and state boards of health at the beginning of the twentieth century.

The broad police powers that Public Health agencies enjoy today can be traced to their early organization and consolidation as administrative ‘police powers’ of government. In 1828, the City of New York purchased Blackwell’s Island in order to build a prison and, by the end of

⁶³⁶ Michel Foucault. ‘The Politics of Health in the Eighteenth Century’ in Paul Rabinow (ed), *The Foucault Reader*. New York, Pantheon Books, 1984, pp273-289

⁶³⁷ Michel Foucault. *Securite, territoire, population*, Annuaire du College de France, 78e annee, Histire des systemes de pensee, annee 1977-1978, *Dits et Ecrits* Tome III texte n 255, pp. 445-449

⁶³⁸ Lloyd F Novick, and Glen P. Mays. *Public Health Administration: Principles for Population-based Management*. (London, Jones & Bartlett, 2005) p14

the century, the island – sequestered from the mainland as a true ‘enclosure’ - was a disciplinary archipelago of nightmares. By 1860, the island housed an insane asylum, a workhouse, a penitentiary, a smallpox hospital, and a ‘colored orphan asylum’.⁶³⁹ As Maria Sanchez writes, “(T)he logic of who became a resident of Blackwell’s is painfully obvious: racial minorities, the poor, the sick, and the criminal were all segregated on 120 acres in the East River.”⁶⁴⁰ As an explicit mechanism of social control aimed at the ‘dangers’ of the urban poor, Blackwell’s Island, renamed ‘Welfare Island’ and now known as Roosevelt Island, was a first step in the development and consolidation of the ‘police powers’ of the State under the discourse of ‘public health’. Sanchez writes, “The development of ‘public health’ as a governmental charge and an area of public policy, as well as the changing institutional structure of prisons, can be read through the history of Blackwell’s”.⁶⁴¹

In 1921, the New York Department of Health created a distinct Department of Sanitation (formerly the Department of Sanitary Engineering) and enumerated various powers under its authority, including:

- the supervision and control of public water quality
- enactment and enforcement of rules and regulations for water contamination
- administration of plans for mosquito extermination
- investigation of “public nuisances”
- examination into “...conditions of nuisance affecting life and health under order from the Governor”
- special investigations of sanitary conditions of parks, camps, fair grounds and other public gathering places”
- “...examination of the conditions of state institutions”⁶⁴²

⁶³⁹ Maria Carla Sanchez. *Reforming the World: Social Activism and the Problem of Fiction in Nineteenth Century America*. (Iowa City, University of Iowa Press, 2009) 99

⁶⁴⁰ Ibid

⁶⁴¹ Ibid

⁶⁴² State Department of Health of New York. *Annual Report of the State Department of Health of New York*, Vol. 42, Issue 1, 1921, pp 11-12

The ‘examination of state institutions’ included the examination, treatment and sequestration of “dangerous” persons under supervision in state prisons, hospitals, penitentiaries, mental wards and houses of corrections. Alongside the Department of Sanitation, the Department for Contagious Disease was charged with the ‘Sanitary’ police powers of apprehending, examining and treating ‘menaces’ such as women with venereal diseases⁶⁴³, smallpox patients, ‘lunatics’ indigent poor and processing them for transport to Blackwell’s Island, which was used increasingly seen as a kind of quarantine area for ‘public menaces’ and ‘nuisances’ to the public health.

And while ‘Welfare Island’ was renamed ‘Roosevelt Island’ and slated for development in the 1970s, the ‘police powers’ of the Public Health authority remain relatively unchanged, even within the self-understanding of contemporary public health administration. As part of the executive branch of government, public health agencies today “...wield considerable authority to make rules to control private behavior, interpret...regulations, and adjudicate disputes about whether an individual or company has conformed with health and safety standards.”⁶⁴⁴ In this sense, public health agencies – in cooperation with a network of social service agencies, bureaus, boards and judicial bodies – perform a ‘quasi-judicial function’ within the administration of city and state ‘police powers’. Indeed, as one contemporary textbook on Public Health Administration explains, “...the lines between law making, enforcement, and adjudication have become blurred with the rise of the administrative state.”⁶⁴⁵ Health Departments therefore retain

⁶⁴³ State Department of Health of New York. Quarterly bulletin (New York (N.Y.). Dept. of Health). 1921-22, 298-99

⁶⁴⁴ Lloyd F Novick and Glen P. Mays. *Public Health Administration: Principles for Population-based Management*, 145

⁶⁴⁵ Lloyd F Novick and Glen P. Mays. *Public Health Administration: Principles for Population-based Management*, 148

“...the executive power to enforce the regulations that they have promulgated...[and] monitors compliance and seeks redress against those who fail to conform.”⁶⁴⁶ In addition, as a consequence of public health being conceived in the first instance as a matter of executive state ‘police powers’, government has inherent power to interfere with personal interests in autonomy, liberty, privacy, and association, as well as economic interests in ownership and uses of property [and]...to keep society free from noxious exercises of private rights.⁶⁴⁷ Most importantly, public health authorities and officials, as proper magistrates of state police powers, therefore “...retain(s) discretion to determine what is considered injurious or unhealthful and the manner in which to regulate, consistent with constitutional protections of personal interests.”⁶⁴⁸ And, despite exceptional federal attempts at intervening in state and municipal government regulation and authority, the most recent trend in public administration law has been in favor of granting states the benefit of the doubt in matters of ‘internal police’.

Bloomberg’s references to the internal ‘danger’ and the mentally ill within Zucotti Plaza have an immediate reference to a dark history of the city’s very recent past of enclosure, confinement and sequestration. And history shows, the goal of ‘public health and safety’ carried out by the Sanitation Department is itself a discourse enmeshed in that same history. In addition, the typology of ‘normal users’ as opposed to the ‘encampments’ and ‘tenements’ of the ‘protestors with no rights’ shows how specific discursive and symbolic work is carried out in making marginal populations into a kind of ‘underclass Other’. (As one observer said, ‘It’s like

⁶⁴⁶ Lloyd F Novick and Glen P. Mays. *Public Health Administration: Principles for Population-based Management*, 149

⁶⁴⁷ Lloyd F Novick and Glen P. Mays. *Public Health Administration: Principles for Population-based Management*, 149

⁶⁴⁸ Lloyd F Novick and Glen P. Mays. *Public Health Administration: Principles for Population-based Management*, 146

we are an invading army’). This reasoning resembles what Mike Davis calls a ‘rhetoric of social warfare that calculates the interests of the urban poor and the middle-classes as a zero-sum game.’⁶⁴⁹, where the ‘middle-class’ is conceived as embodying the healthy, law-abiding, consumer-citizen and the ‘underclass’ is conceived as dirty, criminal, lazy, homeless etc. Most disturbingly, the categories of ‘normal users’ of the space – those ‘who wish to use the space *safely*’ - appear here in Stallman’s ruling as those who *apparently* do not need to ‘demonstrate their rights’ to the space. The First Amendment rights of the occupants, however - who are interpellated as the underclass, dangerous ‘Other’ – are contingent, theoretical and subject to judicial review (a point returned to later). This discursive formation that allows demonstrators to be inserted into an economic-juridical framework as ‘unruly, dangerous protestors’ is now what I turn to.

The development of American police power jurisprudence at the end of the nineteenth century government was in effect a direct response to the failure of disciplinary networks and authorities to contain and control the “dangerous” and unruly figures that would haunt the laissez-faire constitutional state of the late nineteenth and early twentieth century; namely, the “dangerous” and unruly figures that threatened the conservative classes with ‘democratic absolutism’: the Anarchists, Socialists and Communists. At moments when disciplinary authorities failed to enforce the terms of the laissez-faire constitutional order upon these ‘radical reformers’, a certain ‘counter-reformation’ emerged in the field of American ‘administration’ and legal thought. As one historian recalls for us, by 1800, labor strikes and trade union organizing became commonplace and, between the upheavals of the War of 1812 and the economic recession that followed from 1816-1822, the working class as well as an ‘underclass’

⁶⁴⁹ Mike Davis, *City of Quartz: Excavating the Future in Los Angeles*. (New York, Verso Books, 2006)

of vagrants, beggars and ‘discontents’ were rapidly becoming a permanent fixture of urban life in Philadelphia.⁶⁵⁰ At the judicial level, courts increasingly began appealing to the ‘police powers’ of their own, ruling that working-class strikes, such as the Shoe and Boot-makers union strike of 1806,⁶⁵¹ were an obstruction and ‘conspiracy against trade’ and commerce. At the core of laissez-faire constitutional arguments against workers’ demands was the upholding of the ‘right of contract’ between worker and employer, regardless whether the terms and conditions of the contract are secured under exploitation, intimidation or poor working conditions. And, while these laissez-faire arguments for ‘right of contract’ would eventually give way to the biopolitical police power that would see to the health and safety of the ‘race’ in its living and working environment, the judicial and administrative ‘counter-reformation’ against workers’ rights to organize and bargain remained a significant element throughout the 20th century, and to the present. However, the inflation of judicial ‘police powers’ in the attempt to suppress working class movements only seemed to fuel the struggle for shorter working days, free public education, and a living wage.

As labor strikes and clashes with employers and police turned into calls for class insurrection and agitation at the end of the nineteenth century, laissez-faire constitutional jurists began developing and the first comprehensive treatises on the ‘police powers’ of American government. Christopher Tiedeman’s 1886 *Treatise On the Limitations of the Police Power in the United States* would become one of the founding documents for American police power jurisprudence in the 20th century. In the opening pages of the *Treatise*, Tiedeman calls attention

⁶⁵⁰ Gary Nash, *First City: Philadelphia and the Forging of Historical Memory*. (Philadelphia, Univ. of Pennsylvania Press, 2005) 163-65

⁶⁵¹ Ibid

to “...the great army of discontents” of ‘Socialism, Communism and Anarchism’ who represent “...an absolutism more tyrannical and more unreasoning than any before experienced by man, the absolutism of a democratic majority.”⁶⁵² Tiedeman then states that his goal is “...to awaken the public mind to a full appreciation of the power of constitutional limitations to protect private rights against the radical experimentations of social reformers” in what he calls the “...cause for social order and personal liberty”.⁶⁵³ Tiedeman writes that the police power, being concerned with protecting the ‘private rights’ of the ‘shrewd majority’ from the ‘radical’ social reforms of the minority, inheres in the legal maxim “...*sic utere tuo, ut alienum non laedas*”⁶⁵⁴, the principle of ‘using your own without alienating the same use by others’. By enforcing and inculcating this legal maxim of ‘equal use’ or ‘equal access’ by law, social stability will be ensured by the appeal to ‘equality’. The legal maxim of equal use enforced by police power jurisprudence, in turn, will serve as a mechanism of security against class insurrection.

As Mayer notes, Tiedeman immediately follows these introductory warnings against class insurrection “...with a spirited defense of judicial review”.⁶⁵⁵ In another major influential work, *Unwritten Constitution*, Mayer notes that for Tiedeman, the role of the judiciary is primarily an anti-democratic one; in addition to the legal principle of ‘*sic utere*’ or ‘equal use’, there is another legal measure which should be utilized by the judiciary against the popular will: judicial review. For Tiedeman, judicial review

⁶⁵² Christopher Gustavus Tiedeman. *A Treatise on the Limitations of Police Power in the United States: Considered from Both a Civil and Criminal Standpoint*. (F.H. Thomas Law Book Company, 1886) p vii

⁶⁵³ Ibid vii-viii

⁶⁵⁴ Ibid

⁶⁵⁵ David M. Mayer. ‘Jurisprudence of Christopher G. Tiedeman: A Study in the Failure of Laissez-Faire Constitutionalism.’ *Missouri Law Review*, 55, 1 (1990), Art. 16, p118

enabled a small body of distinguished men, whose lifelong career is calculated to produce in them an exalted love of justice and an intelligent appreciation of the conflicting rights of individuals, and the life-tenure of whose offices serves to withdraw them from all fear of popular disapproval; it enables these independent, right-minded men, in accordance with the highest law, to plant themselves upon the provisions of the written Constitution, and deny to popular legislation the binding force of law, whenever such legislation infringes a constitutional provision.”⁶⁵⁶

Therefore, as Mayer notes, the institution of judicial review “was essentially anti-democratic”, insulating the judiciary from popular scrutiny while at the same time allowing the judiciary to maintain the status quo by basing their reasoning on firm, constitutional principles.⁶⁵⁷

Both the principles of ‘equal use’ [*sic utere*] and judicial review would continue to be understood in the discourse of police power jurisprudence as mechanisms of security and control against social disorder. The absence of hard limits and undefined scope of its authority would thus draw within its sphere a vast network of regulatory and administrative agencies, bureaus, bodies and institutions. The fundamental principle of *sic utere* would even appear as the foundation of the powers of fire prevention. At the 1st National Fire Prevention Convention held in Philadelphia in 1913, public authorities gathered in an attempt to delimit all the powers of fire prevention for city administration and regulation. The delegates of the convention, locating fire prevention under the police power, defined the police power as the right “...to compel the observance of certain rules of safety by one or many for the general good of all.” Citing Blackstone’s Commentaries on the Laws of England, the convention defined ‘police power as “...the power of each State (exercised directly by its legislature or through its municipalities) for the suppression or regulation of whatever is injurious to the peace, health, morality, general

⁶⁵⁶ Tiedeman, quoted in Mayer, of Christopher G. Tiedeman: A Study in the Failure of Laissez-Faire Constitutionalism’, p123

⁶⁵⁷ Ibid

intelligence and thrift of the community and its internal safety.”⁶⁵⁸ The convention then proceeds to cite the fundamental principle of police power, which they trace to ‘the days of Roman law’, which is the “...maxim of common law, that a person has only the right to use his own property to the extent that he does not thereby injure that of his neighbors.”⁶⁵⁹ The power of police understood as fire prevention is therefore charged with the supervision of the level of ‘congestion’ within the city that might create fire, abating ‘public nuisances’ that disturb the use of property through their ‘congestion’ of streets, alleyways, or public spaces.⁶⁶⁰ Citing the *Commentaries* again, the convention delegates write that

...we find that the police power is ‘that which concerns itself with due regulation and domestic order of the kingdom whereby individual of the State, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood and good manners, and to decent, industrious and not offensive in their stations.’⁶⁶¹

The delegates, noting that while “...this definition has not been resorted to as describing the scope of police power”, such an authority nonetheless licenses the due regulations of fire prevention, public health and safety. The police power thus supervises and provides for the “...direct use and enjoyment of the property of the citizen that it shall not prove pernicious to his neighbors or the public generally.”⁶⁶²

⁶⁵⁸ American National Fire Prevention Convention, 1st, Philadelphia, 1913. Official record of the first American national fire prevention convention: held at Philadelphia, Pa., U. S. A., October 13-18 (inclusive) 1913. Powell Evans Ed., New York, Merchant & Evans, 1914, p27

⁶⁵⁹ Ibid 28

⁶⁶⁰ Ibid 29

⁶⁶¹ Ibid 30

⁶⁶² Ibid

The proliferation of the ‘powers of police’ at the local and state level throughout the twentieth century thus ballooned into network of administrative authorities, state agencies, and city officials who all claimed to be able to deploy the powers of police to maintain the internal public health, safety and internal tranquility. Today many constitutional and legal scholars who study the history of police power jurisprudence have pointed to the fact that, for roughly the first 150 years of our nation’s history, the police power of government – delegated to the states at the Constitutional Convention – constituted one of the most pernicious sources of unchecked state power and social control in American history.⁶⁶³ Indeed, not until the Civil Rights revolution in the 1960s did the federal government truly attempt to assert its authority over what was for so long called the ‘internal police’ of each sovereign state government. However, lest we think that state governments have relinquished their ‘police powers’ in an ascendant era of (neo)liberal equality and rule of law that is increasingly “post-fordist and therefore post-disciplinary”⁶⁶⁴, we need only to examine recent history: the protests and repression in Ferguson, demonstrations and protests over NYPD abuses of power, the federal investigation of Albuquerque police killings of the homeless, clashes at the US-Mexico border between federal police, anti-immigration militias and activists, and the renewal of Occupy movements across the globe.

This context of the police maxim of *sic utere* sheds a revealing light on the ruling in *Waller*, as Judge Stallman, resorting to the same legal maxim set out in Tiedeman’s treatise on police power (*sic utere*), ruled that the protestors

⁶⁶³ Gary Gerstle. ‘Federalism in America’. *Dissent*, 57, 4 (2010) 29-36; Christopher Tomlins. ‘Necessities of State: Police, Sovereignty and the Constitution.’ *Journal of Policy History*, 20, 1 (2008) 47-63; Markus Dubber. *The Police Power: Patriarchy and the Foundations of American Government*. (New York, Columbia Univ. Press, 2013) Christopher Tomlins. *Law, Labor and Ideology in the Early American Republic*. New York, Cambridge University Press, 1993

⁶⁶⁴ Nancy Fraser. *Scales of Justice: Reimagining Political Space in a Global World*. (New York, Columbia University Press, 2010) 125

have not demonstrated that they have a First Amendment right to remain in Zucotti Park, along with their tents, structures, generators and other installations to the exclusion of the owner's reasonable rights and duties, and to maintain Zucotti Park, or to the rights to public access of others who might wish to use the space safely.

Waller v City of New York, 2011

Here, there is an explicit appeal to the legal maxim of 'equal use' first set out by Tiedeman; namely, that, because the protestors 'use' of the public space violated the legal maxim of 'equal use by others', the First Amendment rights of the protestors have been rendered void. The 'exclusion' clause, by making the recognition of the First Amendment rights of the protestors *contingent* on the 'equal use by others', thereby makes it clear that the rights of the 'minority' demonstrators are subject to the security mechanisms intentionally put in place against them *by the law*. Thus in the legal limbo of *Waller*, it is clear that the impetus is on the protestors to "demonstrate" their First Amendment Rights. They must demonstrate their rights *to the exclusion* of the other 'users' of the space whose legitimate access to the space is already recognized. That the First Amendment rights of 'minority' protestors are contingent upon a judicial review of their legitimacy by a judge in view of this legal maxim, then, is the hallmark of *Waller* and the police power of neoliberal government that relies upon the security provision of *sic utere*, and the insulation of the use of such principles from popular scrutiny through judicial review.

Most importantly, the court ruling made it clear that in both respects – with regard to the status of the protests themselves *and* with regard to Brookfield's private rules of conduct – the applicants did not demonstrate a right which warranted upholding. In other words, what the court did not appear to do is weigh the already-recognized first Amendment rights of the occupants of the park against those of the public at large and those of Brookfield Properties (indeed nowhere does the ruling explicitly recognize *a priori* the First Amendment rights of the protestors). Rather

what the court *did* do, it seems, was evaluate, from the standpoint of the ‘majority’, law-abiding consumer-public, whether or not the protests had any rightful validity *at all*. This perspective allows us to understand more clearly the language of the court which described the occupants of the park as occupying the space ‘to the exclusion’ of the recognized private owners of the park, the general public who ‘wish to use the space *safely*’, as well as ‘those who live and work in the area’ who are the ‘intended beneficiaries’ of the zoning plaza.

Indeed within the language of the court, the occupants of the park appear as the only category of individuals who lack any rightful claim at all to using the park. The categories of persons who appear to have a rightful claim to the park include a) the property ‘rights’ of the private owners, b) the ‘public access’ rights of those who ‘wish to use the space *safely*’ and c) a special category of ‘those who live and work in the area’ who are named as the ‘intended beneficiaries’ of the zoning plaza. Curiously, the rightful claims of these categories of persons to use the space do not appear to be in conflict. Rather, the only category of persons whose ‘presupposed’ rights in question appear to create a conflict is the category of the occupants, *who are already interpellated* as violating the principle of *sic utere*. That is, even prior to the reasoning of *Waller*, a legal judgment has already been made at the level of discourse that the demonstrators are ‘dangerous protestors’ who have violated the *sic utere* maxim and thus pose a threat to public health.

In this way, both the *sic utere* principle, and the legal-judicial review of the temporary park re-occupation work together to produce a situation in which a judicial ‘decision’ becomes merely the application of the principle to an already pre-defined discursive space. The decision in *Waller*, therefore, is simply an application of a general legal maxim to a particular case – an easy exercise in deductive legal reasoning. But notice that, as Tiedeman observed, that in cases

of judicial review – but not all cases – where a democratic will is opposed to ‘the public’ or ‘the general welfare’, judicial review will almost always tend to serve as an anti-democratic measure. In other words, whenever a conflict arises between a democratic minority and the ‘public health’, or safety or ‘general welfare’, police power jurisprudence as a set of legal-institutional practices and legal maxims will always tend to “decide” against the ‘democratic absolutism’ that lurks in the popular will.

From the analysis of the various discourses of police - ‘public health and safety’ and police power jurisprudence – we can better understand the more subtle forms of social control that both frame and support the more repressive police force we associate with “police”. This insight into the discursive, institutional, economic and juridical framework of police illuminates the connections between liberal and neoliberal logics of rule, as well as the connections between forms of disciplinary enclosure and confinement and forms of regulatory, administrative control. This allows us to speak of Zucotti Plaza both as a space of enclosure, but one that is controlled not by a professional class of ‘disciplinary’ figures wielding power over the body, but by a *regulatory-administrative* class wielding power through economic regulation, population management and law. Police, therefore, will here refer to the set of political technologies that include a repressive police, an economic regulation, a biopolitical administration, and a juridical police power. This perspective refuses the kinds of sharp distinctions between discipline and control, ‘enclosure’ and ‘network’, or ‘fordist’ and ‘post-fordist’, or ‘localized’ and ‘global’ that often limit more detailed, historical and thoughtful analyses. Viewing contested spaces like Zucotti Plaza as a form of ‘open enclosure’⁶⁶⁵, as some have recently, is also an extremely

⁶⁶⁵ Matthew Bolton et al. *Occupying Political Science: The Occupy Wall Street Movement from New York to the World*. (New York, Palgrave Macmillan, 2012) 142

fruitful way of problematizing the very kinds of struggles that movements like Occupy seek to bring to light: the struggle between the ‘commoning’ of public spaces and the ‘exclusive-inclusivity’ of the neoliberal economic-juridical order that Don Mitchell characterizes as a new ‘anti-urban legal regime’.⁶⁶⁶

One essential component of the new neoliberal legal regime is the transformation of constitutional law in the 1970s towards a regime of conduct laws. As Feldman clarifies, the transition from policing the status of persons to the *conduct* of persons was “...a reflection of the due-process and equal-protection revolution in American constitutional law in the 1960s and 1970s” towards a more “complete liberalism”.⁶⁶⁷ This transition in American liberal jurisprudence would present itself as a progressive movement away from vague status laws like vagrancy statutes based in English common law, ruled unconstitutional in the 1970s, to specific “conduct laws” that focus on specific prohibited ‘acts’, behavior or conduct. This major turn in American policing and law enforcement faced widespread criticism and failure in the face of growing claims that targeting certain forms of conduct is simply another way of targeting certain categories of persons. This criticism continues to the present, through the ‘targeting’ policing of various ‘delinquent’ or “dangerous” categories of persons, such as the ‘stop-and-frisk’ policy of the NYPD that has been shown to overwhelmingly target and stereotype inner-city black youth. In short, the claim is that targeting certain forms of conduct is merely another way to criminalize certain categories of persons within urban space such as the homeless, black youth, women of color, political activists, etc. Couched in the language of personal responsibility and choice,

⁶⁶⁶ Don Mitchell. ‘People Like Hicks: The Supreme Court Announces the Antiurban City’ in Mike Davis and Bertrand Monk (eds) *Evil Paradises: Dreamworlds of Neoliberalism* (New York, New Press, 2007) 215

⁶⁶⁷ Mark Feldman. *Citizens Without Shelter: Homelessness, Democracy and Political Exclusion* (Ithaca, Cornell University Press, 2006) 49

conduct laws and private ‘rules of conduct’ in public-private spaces target not the identity or status of persons but rather the willful, illegal conduct of persons. Indeed the “...contemporary criminalization of the (conduct of the) homeless concerns...their willful violation of the behavioral norms of public space.”⁶⁶⁸

In a neoliberal urban legal regime in which one now must have proper conduct or a ‘social purpose’ for being present in the streets, sidewalks and public spaces (or Privately Owned Public Spaces)⁶⁶⁹, one thinks of the “prison-in-reverse” model of normative, ‘exclusive-inclusion’ that characterizes spaces like shopping malls, with their privately enforced ‘rules of conduct’ and private security. As Voyce describes these smooth, sleek spaces of neoliberal conduct, they constitute “...predictable controlled environments which acts like a prison-in-reverse: to keep deviant behavior on the outside and to form a consumerist form of citizenship inside.”⁶⁷⁰ What is particularly notable about these spaces is that, like the model of the Panopticon, they are easily transferable to other applications in public space. Because they are based in loose, ever-changing ‘rules of conduct’ enforced by private security, the “prison-in-reverse” can (and does) function extremely well in public-private spaces.

Here, once again, we find disciplinary enclosures (shopping malls, public-private spaces) integrated in a mesh of regulations, ordinances, rules of conduct, public authorities and legal codes. The notion of the ‘open enclosure’ once again suggests itself as a combination of disciplinary logics and regulatory-administrative control. In this respect, the three axes of regulatory police can be discerned in the economic-juridical order of these spaces just as easily: a

⁶⁶⁸ Feldman, *Citizens Without Shelter*, 50

⁶⁶⁹ Ibid

⁶⁷⁰ Malcolm Voyce. ‘Shopping Malls in Australia: The end of public space and the rise of consumerist citizenship.’ *Journal of Sociology*, 42, 1996, pp. 269-286

‘political economy’ of the ‘entrepreneur’, ‘consumer citizen’ or ‘normal user’; a *medizinische polizei* of Public Health and Sanitation; and a police power jurisprudence of ‘public health and safety’ and ‘*sic utere*’, in which one must ‘demonstrate one’s right’ to use public-private spaces. Democratic rights, just like social services, are seen here as conditional, and the rights to these goods must be ‘demonstrated’ beforehand. In neoliberal regimes, therefore, the *right to democratic rights and social services* is itself not presupposed, but rather *the very right to these basic political goods* must be demonstrated.

Both in the neoliberal land development regime of the City of Ft. Lauderdale and in the *Waller v. City of New York* ruling, *To Protect Life By Waging War* means the protection of ‘the normal’ or ‘intended’ user of space over and against the ‘abnormal’, undesirable or “dangerous” elements of the population. In this way, the legal and juridical are linked together as a technology of social control that is then enforced by police. *To protect life by waging war* thus becomes the motto of neoliberal police, understood simultaneously in legal, juridical and biopolitical terms. Together this set of political technologies, modeled on the relation of war, seeks to enforce and maintain a certain economic-political order.

In conclusion to Chapter Five, I’ve sought to trace Foucault’s analysis of the prison as disciplinary mechanism to the city as the milieu of intervention for biopower. In Section One, I showed how this analysis has been applied in the social sciences to describe the emergence of neoliberal cityscapes as a “prison-in-reverse”. Combining this analysis with Amster’s conception of an ecology of social control, I examined two case studies of neoliberal policing. In Section Two, I link new a new legal order of ecological social control to the neoliberal “prison-in-reverse”. There, I analyze recently implemented anti-feeding ordinances brought about by a new land development regime and linked this to the the *militarization-privatization strategy of*

neoliberal enclosures. In the Section Three, I examined the 2011 ruling in *Waller v. City of New York*, emphasizing the role of a new juridical order that demands citizens ‘demonstrate’ their rights to public space. There, I emphasized the historically anti-democratic role of police power jurisprudence, and showed how the discourse of rule of law is utilized in concert with that of public health and safety as a mechanism of security against democratic elements of the city-*politeia*.

Since for Foucault ‘the politics of police must be a biopolitics’, I concluded that the politics of *neoliberal* police must be an *ecological* and *juridical* biopolitics, relying on both an ecological state racism and an economic-juridical order that stresses rule of law. I argued that the motto of neoliberal police must be understood as *To Protect Life By Waging War*, at once a mandate with legal, juridical and biopolitical components. In doing so, I sought to show how neoliberal logics of rule utilize elements of a biopolitical police of population, an economic policing of ‘dangerous masses’, and an anti-democratic police power jurisprudence.

Understanding these technologies of police in context of neoliberal rule, I argue, is essential in revealing their connection to a history of military-pastoral technologies that may be traced to the idea of the Ancient *politeia* and the art of male-dominated military-political life. In this way, I seek to draw out the similarities and subtle differences between ancient and modern forms of rule that are still very much embedded within our conceptions of American government and the maintenance of order that is essential to an American *politeia*.

CONCLUSION

Let me review the arguments made. In the first chapter, I attempted to situate Foucault, against many common interpretations, as a philosopher of actuality. Tracing both genealogy [*wirkliche historie*] and the ontology of actuality to the notion of *wirklichkeit/actualité*, I showed

how Foucault's work can be interpreted as a philosophical reflection on our actuality as free subjects engaged not merely in effective self-transformation but as subjects engaged in struggles against authority. Drawing upon Badiou's argument regarding Foucault's 'turn' to 'philosophy proper', I argued that Foucault's late work should be seen as part of the maturation of his understanding of *wirklichkeit* from the phenomenological *l'effectivité* to the philosophical category of *l'actualité*. On this account, I argued that the reflection upon actuality developed by Foucault involves a much more comprehensive critical project than genealogy, entailing both a critique of authority and a theoretic ethics grounded on the standpoint of the principles of freedom or *parrhesia*. In turn, the critical project Foucault was developing at the end of his life, I argued, licenses the wholesale critique of certain forms of authority that he identified as pastoral. In the Second Chapter, I drew out the fundamental opposition in Foucault's later work between pastoral modes of subjectivity and Cynic modes of subjectivity, setting up an opposition in Foucault's account between police and the practices of *parrhesia*. In the Third Chapter, I analyzed police through the notion of *politeia*, and uncovered in Ancient Greece a military-pastoral technology grounded in the relation between leaders [*hegemon*] and followers [*epistatae*]. In Chapter Four, I traced this military-pastoral technology to the early American Republic and show how ideas about American government were linked to ideas about discipline, obedience and subjection. In the fifth Chapter, I spelled out the ways that these various forms of police power converge within neoliberal governmentality in the context of policing the conduct of urban life. In conclusion, I proposed that police in American government be understood as a set of military-pastoral technologies which seek to establish hierarchical relations of authority-obedience, but which are increasingly stratified across a network of regulatory, administrative and judicial power. I conclude that the different forms of police and the hierarchical forms of

authority and subjectivity they seek to produce should be understood in light of their contribution to an American *politeia*.

By developing the central antagonism in Foucault's own work between the political technologies of police and the practices of freedom, revolt and *parrhesia*, my dissertation seeks to extend and enhance Foucault's history of governmentality. The unorthodox idea introduced here into the understanding of Foucault's late work that there is in fact a central antagonism in his late work between police and Cynic *parrhesia* in turn attempts to situate Foucault as contributing to both critical theory and a philosophical project of his own. In addition, if life itself is today conceived more and more as a kind of war, my dissertation argues that it is in part because reason itself was first conceived in masculine, military-pastoral terms. In this the dissertation seeks to illuminate the history of how life itself became, through a series of transitions, intelligible through the relations of war.

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