**Contingent Pasts and Contingent Futures:
Reformulating Strategies of Governance, Autonomy and Critique through
Sovereignty and Human Rights**

by

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A thesis submitted to the
Faculty of Graduate Studies and Research
in partial fulfilment of the
requirements for the degree of

Master of Arts

Department of Law
Carleton University
Ottawa, Ontario

December 18, 2002

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Submitted by

Stephen J. Tasson, B. A. Hons.

**in partial fulfilment of the requirements for
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A handwritten signature in black ink, appearing to be 'J. Tasson', written over a horizontal line.

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ABSTRACT

Despite serious challenges to their epistemological bases, sovereignty and rights remain important concepts through which we make sense of ourselves and our relationships with others. This thesis investigates transformations of sovereignty and rights through shifts from liberal to neo-liberal governmental rationalities taking place in late-modernity. It seeks to determine the effects of these new formulations for the autonomy and critical capacities of individuals. It argues that these shifts have only re-formulated and reified certain constitutional meanings, effectively rendering the liberal understandings of political life they evoke more immutable now than ever before. To disrupt their increasing fixity and to demonstrate their contingency this thesis undertakes genealogies of both sovereignty and human rights, and draws connections to the transformations taking place in governmental rationalities. The final pages present a provocative argument that challenges the formulation of human rights and neo-liberal governance as essentially oppositional. I suggest that human rights may actually help bolster and secure neo-liberal governmentality.

ACKNOWLEDGEMENTS

I would like to take the opportunity to extend my sincere thanks to the faculty and staff of the Department of Law at Carleton University who have in some way all contributed to the completion of this thesis. Particularly I would like to thank Professors Trevor Purvis, Alan Hunt, Amy Bartholomew and Peter Swan for their encouragement, insight and guidance throughout the various stages of this project and throughout my development as a student in the department.

I would also like to thank my family and friends for their words of encouragement particularly in the final stages of this thesis. Now that I can again venture out of my house perhaps I will have a chance to see them all again.

Last, I owe my deepest thanks to Julie Dyer. Without her patience, support and love none of this would have ever been possible. I am truly lucky.

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INTRODUCTION

Santos tells us of a line of graffiti he stumbled across in Buenos Aires.

“The future” it read, “is not what it used to be”. For Santos the future spoken of here is the promised future of modernity, the future in which every individual is emancipated from the uncertainty, contingency and insecurity of contemporary life. This is a future he says that we no longer believe in, a future in whose name we have neglected or rejected other futures, a future that no longer holds out the hope of a “guarantee” of an inevitable freedom for all peoples around the world. For Santos this is an empty future, one that cannot be “filled out” by the past or the present, but only through the opening up of new horizons mapped out by “radical alternatives” (1995: 479). Santos is correct in so far as he says this is a future that must be re-imagined, but to lament the loss of modernity’s promise is premature; modernity is by no means dead.

The disturbances, anxiety and disorientation characteristic of late-modern life have not fundamentally jeopardized claims to a future emancipation. Liberalism’s basic foundations of the free and rational individual, a binary formulation of power and the necessity of the order guaranteed by the sovereign state, individual rights and free markets play as much of a role in forming our understanding of ourselves and our relationships with others as they ever did.

Foundationalism may have been dragged out and exposed as a false-source of certainty and conviction, identities and meanings may be straining under the burdens of an increasing recognition of plurality and difference, and the language of emancipation and progress, in the light of their dubious past, are today perhaps used with less zeal, however despite these epistemological uncertainties these concepts have not ceased to be

constitutively relevant. On the contrary, their anticipated demise has actually only intensified reactive processes of reformation and remobilization where these central components are reworked and re-secured as part of a transformative shift from a classical liberal to a neo-liberal governmentality. What then are the consequences of these shifts? What do they mean for self-identity, or relations with others, or the way we practice politics? What happens in the wake of epistemological uncertainty and reactive reformations of mentalities of government?

There can be little doubt that these transformations have significant effects on the way we both understand and orient ourselves in contemporary democracies. This thesis is an attempt to assess some critical elements of these transformations and their effects. In doing so I consider specifically the challenges to, and reformulation of, two predominant narratives of liberalism and modernity: sovereignty and rights. These narratives are important not just because of their role in the constitution of liberalism, but also because in different incarnations they have historically been at the centre of questions of authority and freedom. Thus they remain central knowledges that help us make sense of our lived reality. As Brown has noted, “while both sovereignty and right have suffered severe erosions of their naturalistic epistemological and ontological basis in modernity, we have not replaced them as sources of political agency and sites of justice claims” (2001: 3). In fact what will become clear from our investigation of these narratives is that their respective reformations have only further reified their constitutional meanings—effectively rendering the understandings of political life they evoke more immutable now than ever before. My primary concern with the effects of these transformations and redefinitions is their effects on the autonomy and the critical capacity of the individual. I

fear that the effects that result from the shift from liberal to neo-liberal governmental rationality have only further narrowed the already limited range of conduct and thought open to the individual.

However what should be clear at the outset is that this project does not argue for a simple rejection of these narratives. To do so would be to ascribe to them some essentialized exclusionary and oppressive essence and this is not my contention. On the contrary, my hope is that this investigation of classical liberal formulations of governmental reason and the transformation toward neo-liberal formations will demonstrate the contingency and political constitution of these narratives and their various components and in turn challenge their construction as natural or inevitable. In doing so my hope is that this will reveal the excess of knowledges, practices and identities that cannot be accommodated by these governmental rationalities and potentially open critical spaces from where we might better orient ourselves in the present. This then is not a call to return to a lost age of essential freedom that has been eclipsed in the present by its more sinister evil twin. As will be clear this is a flawed and dangerous project. Instead my purpose here is to examine the effects of the current shift and to identify and initiate new possibilities in the present and for the future.

While this is the central aim of this thesis, it is not the sole aim. Each chapter draws out important strands of this shift and attempts to answer a number of secondary, and I think equally important, questions that impact on our understanding of contemporary practices of freedom and their relationship to practices of government. What, for example, is the purpose, role and limits of critique? How should we understand power? Has the state in fact become “impotent” in the face of expanding globalization?

What role does the law play in these transformations? What are the consequences of the turn toward human rights as a remedy to the excesses of neo-liberal markets? Ultimately what is clear following the discussion is that the constitutional narratives of modernity grounded in the assertions of the autonomous, reasoning, rights-bearing subject and a latent teleological vision of progress have not only failed to disappear, but rather have been reformulated through sovereignty and rights and mobilized by neo-liberal governmental rationalities to reify and secure a particular version of the past, present and future. Liberalism's idyllic ends are reassured and re-secured in the present through contemporary practices of self-government and responsabilization such that we need not look to the future for emancipation, we need only look to ourselves.

To orient this investigation Chapter I discusses the issue of methodology and forms of critique. I assess the genealogical method, its general strengths and potential weaknesses. I specifically ask the question: can genealogy be critical? More importantly, can genealogy be an effective critical methodology in investigating the effects and consequences of contemporary forms of governance that comprise the focus of this thesis?

To answer these questions the introductory portion of the chapter is divided into two sections. The first undertakes a brief investigation of the purposes and targets of the genealogical method by examining its history in Nietzsche and Foucault. In the second portion attention turns to an examination of the utility of genealogy as a critical methodology by highlighting its strengths and particularly what it reveals. Drawing on Foucault and Owen, I emphasize that genealogy's utility lies in its ability to disturb or disrupt fixed knowledges, practices and identities, and its potential to open new critical

“spaces” from where individuals can better orient themselves in the present. I argue that genealogy seeks to remove the “naturalness” or “inevitable” construction of the present, to reveal it as a contingent, historical product that is not unchallengeable and not predestined. Importantly, genealogy offers no prescription of what this might mean or where challenges may lead. Instead it reveals the “openness” of the present and leaves us to our own devices. As Dean says, “it allows us to experience a state of domination as a state of domination. It does not tell us how we should practice our freedom.” (1999: 38). But in addition to the strengths of genealogy I also discuss important criticisms that may be levelled against it as a critical method. Theorists like Habermas have argued that genealogy engages in a dangerous presentism and that it can claim no foundation from which it can make normative judgments. In response to these criticisms I discuss Owen’s assertion that genealogy engages in an “exemplary form” of criticism and argue that genealogy can support an ethic of autonomy and openness.

The chapter then shifts to investigate how liberal governmentality became a target of genealogy and discusses an alternative conception of power to the traditional binary formulation of power that dominates liberal governmentality. This discussion then sets the stage for the second and third chapters that utilise the genealogical approach to speak to the transformations and the continuing importance of sovereignty and rights in projects of governance.

Thus, Chapter II undertakes a genealogy of classical sovereignty. It asks how the theorizations, discourses and definitions of sovereignty are implicated in classical liberal governmental rationality. To facilitate this analysis it examines the foundations of liberal conceptions of sovereignty with Bodin and Hobbes and elaborates on the rationalities of

government that supported these theories and vice versa. We expand on the issue of the circular tendency of claims to reason that we draw out in the first chapter by highlighting a similar structure of justification that supports liberal formations of sovereignty.

Following important insights by Dillon, I expand on the relationship between different forms of power and their intersections and tensions in projects of governance. This is critically important first, because it challenges us to expand on our understanding of power and its various operations and intersections in contemporary governmental projects and second, because it lays the foundations for further discussions in Chapter III of the transformation of law and the intersection between governmental, juridical and disciplinary power. Chapter II demonstrates the continuing importance of sovereignty in our contemporary organization and understanding of political life. It underscores the essentialized foundations that ground the liberal constitution of sovereignty and draws a connection to the consequences of these defining practices and the lessons of the first chapter. Chapter II lays a solid foundation for Chapter III which investigates the shift from liberal to neo-liberal governmental rationalities. To facilitate this comparative analysis Chapter II posits a series of criteria against which to judge the transformation in governmental rationalities. Our investigation of these categories exposes a particular classical liberal construction of the rational, self-interested, and inherently dangerous individual and the sovereign state as pre-political entities. It underscores their constitution as natural, inevitable and consequently unchallengeable. This investigation is important because in revealing the political constitution of sovereignty and its important role in projects of governance we expose the contingency of these liberal formations and render them open for critique. The chapter aims to demonstrate sovereignty's contingent

advance to the present and in doing so potentially allows subjugated knowledges once marginalized or excluded by reified definitions or practices of sovereignty to be “released” or “reactivated” and thus again, “brought into play” (Foucault 1980: 85).

Chapter III elaborates on the analysis of classical liberal governmentality through formations of sovereignty from Chapter II and investigates the important transformation from classical liberal to neo-liberal governmental reason. As in Chapter II I utilize the market, society and the law as indicators to access these changes and to again discuss the effects of these transformations both on, and as a consequence of, changing articulations of sovereignty and the individual.

This chapter also seeks to elaborate on the preliminary remarks I introduced in Chapter II on the interaction of law and liberal governmentality. I discuss particular formulations of the relationships and role of law and other forms of power in neo-liberal governmentality. I argue that many governmentality theorists have neglected the complexity of law in contemporary strategies of governance by either reducing it to its juridical or disciplinary face. This has several important consequences. Most notably, this forces them to ignore the role and effects of an increasingly influential explanatory and constitutive discourse: human rights. Having completed the discussion of neo-liberal governmental rationality and the consequences for the autonomy of the individual and the relative space open for critique, my attention turns to the novel question that orients Chapter III: Mainly, how, with sovereignty, are human rights implicated in projects of governance? More specifically, how are contemporary formations of human rights implicated in projects of neo-liberal governance?

My argument is that the relationship between human rights and neo-liberal governance is most often characterized as strictly oppositional. I argue that this positioning fails to acknowledge the role that human rights may play in orientating and bolstering the logics of neo-liberal governmental rationality and vice versa. It perpetuates a formulation of rights as essentially emancipatory tools to be used *against* government or *against* power and in doing so it reifies the traditional formulation of power that I argue against throughout this thesis. Leaving this binary conception of power in place only re-fixes the boundaries of what can be challenged; it redraws the lines between what is natural, rational, inevitable etc. and what is contingent and open to critique. In doing so it reaffirms the reasonableness and inevitability of a liberal mentality of rule, and closes any serious critique of its orientation and paradoxical effects.

Finally the genealogy of human rights that comprises the last portion of the chapter should reawaken us to the fact that modernity's promise of an inevitable future emancipation to be realized by securing the rights and freedoms of individuals is not so diminished, merely, as our investigations of the shifts in different forms of governmental reason reveal, only reformulated and re-entrenched.

In closing (or beginning) then I want to suggest another meaning to the Santos' graffiti that I mentioned at the outset. What if the future it talks about is not the future promised *by* modernity, but the future *of* modernity. The future then "is not what it used to be" not because modernity has *failed* but precisely because it has *prevailed*. History is at an end, if we allow it to be. The questions *are* all answered if we choose to accept them. But if we do, if the future is *now*, if we take the logics of liberalism and now neo-liberalism as given, inevitable or manifestations of some elusive common sense, we fail

to recognize the contingency, complexity, and excesses of meanings that cannot be captured and accommodated in these rationalities of government. In doing so we ignore the imminent capacity for change in contemporary rationalities of government and reserve ourselves to accept the forms of exclusion and marginalization characteristic of this newest prescription for liberal emancipation.

CHAPTER ONE

GENEALOGY, POWER AND CRITIQUE

Introduction: Foundations and Orientations

As I remarked in the introduction, this first chapter serves several purposes. Principal among these is to introduce the origins of the genealogical method in an effort to illustrate its orientation, its advantages and several potential problems that may arise from its use as not only a methodology, but as a form of critique. This is accomplished through an investigation of Nietzsche's purposes and use of the concept as well as its more contemporary reworking by Foucault. Secondly, the chapter seeks to draw a connection between genealogy and an emerging governmentality literature and in doing so seeks to demonstrate the applicability and practical and theoretical utility of the genealogical approach specifically to critical questions of governance. This discussion then sets the stage for the second and third chapters that utilise the approach laid out here to investigate transformations in sovereignty and human rights that bolster these types of "apparatuses" as particularly effective tools of neo-liberal governance. The last chapter then returns full-circle to some important potential deficiencies identified with genealogy and governmentality as tools of political critique and offers some direction on how these possible weaknesses might be effectively avoided, if not overcome.

To begin then, we need to ask a series of questions: What is this type of study we call genealogy? What is its purpose? What does it reveal? What are its targets? And on what criteria can we judge the relative success or failure of genealogical investigation? In the service of clarity, these questions can be broadly categorized under two organizing

banners: *Genealogy as Methodology* and *Genealogy as Critique*. After a brief introduction we turn to the first of these below.

The term genealogy should not be completely unfamiliar to us. When one investigates familial history they often set about constructing a “genealogy” or “family tree”. The purpose of this type of project is to lay bare the routes by which they, in the present, have come to be who they are. Similarly Nietzsche metaphorically characterized his historical investigations as genealogical because like an investigation of familial history, Nietzsche was interested in revealing the contingent routes by which humanity had arrived at any particular present. Nietzsche believed this type of investigation was crucial as it provided a context in which one could both critically reflect, as well as also orient oneself. Thus for Nietzsche genealogy was a means to investigate both the existing and potential character of knowledge (including self-knowledge), while at the same time it provided a means to interrogate and better understand the activity of critique itself or the way in which we use this knowledge in the present.

To begin to understand the orientation and practice of genealogy as both a methodology as well as a form of critique, it is first imperative to have at least a provisional understanding of the basic components of the methodology and form of critique that Nietzsche’s genealogy was seeking to challenge. As Mahon remarks, “Kantian critique opened the space for a general critique of reason and, thereby, made Nietzsche possible” (1992: 7). We need then to first elaborate the purpose of genealogy contra Kant’s project and also to distinguish what exactly we mean by critique. I begin by

attempting to answer some the questions posed above: what is this type of study we call genealogy and what does it seek to reveal?

Following Foucault, we can identify genealogy as first, producing a different kind of knowledge and second, as engaging in a different kind of methodology. This project can be characterized by stressing two key oppositions to Kant's project: first, genealogy *contra* metaphysics and second, genealogy *contra* whiggish history.

Genealogy as Methodology

Genealogy *contra* Metaphysics: Against the search for origins

Owen simplifies the goals of genealogical inquiry by arranging the specific knowledges that the method allows us to investigate into three categories. Genealogy is interested first in determining what we are in the present. Second, how it is that we have come to be what we are? And finally, if we can accept what we are, where might we go—"what might we become"? (Owen 1995: 40) To capture this type of knowledge genealogy engages in a type of historical investigation. However, while clearly interested in history, it is primarily interested in this type of knowledge for the purpose of orienting our behaviour in the present and future. Knowledge of the past allows us to see how we have arrived at our present. This is opposed to a Kantian project of historical analysis—what Dean terms "the philosophy of history" approach (1994: 14-15)—that seeks to employ the past to either demonstrate the steady march of "progress" or reify the "natural" state of privileged present-day identities, knowledges or practices. In contrast to

the philosophy of history approach, genealogy “opposes itself to the search for origins” (Rabinow 1984: 77).

Foucault elaborates on Nietzsche’s reasons for rejecting the search for origins (Rabinow 1984: 78-80). First he says, the search is an attempt “to capture the exact essence of things”; to reveal what Connolly has elsewhere called a “deep” or “true” identity (1991: 171-172). The search for origins assumes static and fully formed identities or knowledges that pre-exist what Foucault calls, our world of “accident and succession” (1984: 78). When one examines the history of reason he says, we soon learn that it is a product of chance;

...devotion to “truth” and the precision of scientific methods arose with the passions of scholars, their reciprocal hatred, their fanatical and unending discussions, and their spirit of competition- the personal conflicts that slowly forged the weapons of reason (Foucault 1984: 78).

Second, the search for origins relies on the belief that things are most “pure” and most “essential” at the moment of their genesis. Consequently it follows that if we search hard and long enough we can find these identities, knowledges or practices in their most “natural” state—before their Fall.¹ Nietzsche mocks the goal of determining humanity’s “divine” origin when he quips,

We wished to awaken the feeling of man's sovereignty by showing his divine birth: this path is now forbidden, since a monkey stands at the entrance (1982: 123).

¹ Connolly's “The Problem of Evil” (1991: 1-15) discusses the relevance of the Fall metaphor in issues of identity and the natural state of “the good”.

Third, Foucault remarks that the “origin” is synonymous with the site of Truth. Here the origin makes possible an “absolute distance” from the limitations of relativist epistemology—the impossible ‘view from nowhere’. Moreover it makes possible a particular *kind* of knowledge whose principle function, is to recover itself (e.g. reason). But as genealogy seeks to reveal, this is always necessarily a *false* recovery because of its own historicity (Foucault 1984: 79). In this characterization the necessity and goal of the search for origins becomes a clearly tautological exercise.

To reject the search for origins is to reveal it as an ultimately flawed, misguided and “pessimistic” project. When a genealogist examines history it is not an essential timeless essence that is revealed, but that there is no essence to be found. What is revealed is a multitude of knowledges, practices and identities that, through unpredictable historical conditions, have been disqualified, suppressed or excluded in projects to establish existing dominant knowledges, practices and identities. The project of a search for origins reveals only that which is needed to bolster the claims of already dominant knowledges and identities; it is blind to the totality and contingency of history because it only seeks that which can justify and reify existing beliefs in the present. Moreover, it confirms that we *can* discover the essential origin of things. As Nietzsche says of Kant,

Kant was, like every good German of the old stamp, a pessimist; he believed in morality, not because it is demonstrated in nature and history, but in spite of the fact that nature and history continually contradict it (1982: 3-4).

Genealogy *contra* Whiggish History²: Foucault's effective histories

Whiggish history is characterized as being founded on a series of metaphysical assumptions particularly in regards to the transcendental subject and its ability to determine truth by way of adopting a suprahistorical perspective provided by the type of knowledge we call reason. This location is similar to where we located the essential origin of the last section. In opposition to this version of historical investigation, genealogy is oriented toward an anti-essentialist and anti-foundational history. It is so because it dispenses with the possibility of the transcendental or pre-political subject; it makes no claim to achieve a perspective that has escaped or can escape history. By

² The concept of whiggish history originates with historian Herbert Butterfield (1950). Butterfield defined whiggish history as "the tendency of many historians to write on the side of Protestants and Whigs, to praise revolutions provided they have been successful, to emphasize certain principles of progress in the past and to produce a story which is the ratification if not the glorification of the present" (1950: v). Essentially Whig history depicted the history of mankind as a continued advance that, while capable of being interrupted by periods of retreat, would at last reaching its apotheosis in the liberal ladies and gentlemen of Victorian England. Though Butterfield used the English Whigs who drew a straight line from the Magna Carta to their own conception of liberty as an example, his observations have obvious wider application. In short, Butterfield simply articulated a history of backward justification.

It is part and parcel of the whig interpretation of history that it studies the past with reference to the present; and though there may be a sense in which this is unobjectionable if its implications are carefully considered, and there may be a sense in which it is inescapable, it has often been an obstruction to historical understanding because it has been taken to mean the study of the past with direct and perpetual reference to the present. Through this system of immediate reference to the present day, historical personages can easily and irresistibly be classed into the men who furthered progress and the men who tried to hinder it; so that a handy rule of thumb exists by which the historian can select and reject, and can make his points of emphasis (Butterfield 1950: 63).

While I use the concept of whiggish history to characterize a particular approach to history, I am actually referring here to a particular version (Nietzsche's) of what constitutes a traditional historical investigation. I am not making the claim to have discovered some essential composition of traditional or whiggish historical investigation against which I juxtapose genealogy as an historical method. The reason for this precaution becomes clear in the discussion that surrounds the potential limitations of genealogy later in the chapter.

refuting the possibility of such a suprahistorical position genealogy opens itself up to several significant attacks that suggest it may be limited in its critical potential. We will return to these criticisms very shortly. In the meantime, Magnus and Higgins (1996) remind us Nietzsche does not mean to propose we abandon historical searches altogether. Rather, while still insisting that nothing can be determined once and for all through the historical investigative process, Nietzsche maintains that an essential task of the genealogist is to begin by examining how we have come to know what we are—a type of knowledge only revealed through historical investigation. But this knowledge is most important not for what it reveals in the past, but instead for what it reveals in the present. As Scracht says, “it is above all by their fruits—and not *merely* by their roots—that [Nietzsche] would have us know them (morals, knowledges, identities etc.)” (1996: 172).

In his article *Nietzsche, Genealogy, History* Foucault attempts to resolve the central deficiency of his archaeological method through a more sustained interrogation of the genealogical one utilized by Nietzsche³. Here he investigates the purposes, functions, and uses of history as a means to develop what Dean describes as “critical and effective” histories. Effective in the sense that these histories,

...upset the colonization of historical knowledge by schemas of a transcendental and synthetic philosophy of history, and ‘critical’ in proportion to its capacity to engage in tireless investigation of what is held to be given, necessary, natural or neutral (Dean 1994: 20).

³ Dean remarks that the central problem with the archaeological method is that “it gives no explicit account of how the historical description of the positivity of discourse is to be mobilized in terms of current purposes and issues... [It could] reflect upon its own *theoretical* effects... without providing an account of its *strategic* purposes” (1994: 17-18).

Like Nietzsche, Foucault uses genealogy to “undermine the notion that humanly constructed concepts are ‘given’ and unchangeable” (Magnus & Higgins 1996: 52). Foucault uses Nietzsche's *Untimely Meditations* (1983) to define traditional, or what we have called the whiggish, uses of history to illustrate their weaknesses and to propose an alternative. Foucault says that Nietzsche recognized three distinct uses of traditional history: first, the *monumental*, which Nietzsche said is “devoted to the veneration of great events and deeds”; second, the *antiquarian*, which seeks to preserve aspects of the past in reverence of present-day identities and traditions; and last, the *critical*, which seeks to judge and condemn the past in the name of present-day “truths” (Dean 1994: 18-19). To counter these traditional uses of history Foucault presents their “doubles”. These constitute the genealogical understanding of the uses of history.

The first [use] is *parodic*, directed against reality, and opposes the theme of history as reminiscence or recognition: the second is *dissociative*, directed against identity, and opposes history given as continuity or representative of tradition; the third is *sacrificial*, directed against truth, and opposes history as knowledge. They imply a use of history that severs its connection to memory, its metaphysical and anthropological model, and constructs a counter-memory—a transformation of history into a totally different form of time (Rabinow 1984: 93, emphasis added).

The similarities between the goals of this kind of history and the rejection of metaphysics characterized in a search for origins are evident. Each seeks to prompt a constant questioning of the foundations and immanent character of entrenched knowledges, practices and identities.

Genealogy aims not to replace the current dominant knowledges, identities and practices with what the genealogist deems to be a newer, more inclusive or more just incarnation, but rather, seeks to demonstrate the futility of the search for a single universal, a privileged natural discourse, a view outside of history. More than disrupting present-day dominant knowledges, practices and identities, genealogy, through this process, reveals competing histories and in doing so “entertain[s] the claims to attention of local, discontinuous, disqualified, illegitimate knowledges against the claims of a unitary body of theory which would filter, hierarchies and order them” (Foucault 1980: 83). In essence, it allows these subjugated knowledges to be uncovered from the veil of conventional tradition and truth.

In *Discipline and Punish*, Foucault emphasizes an important component of the practices of genealogical investigation when he asks: Why write this kind of history?

Simply because I am interested in the past? No, if one means by that writing a history of the past in terms of the present. Yes, if one means writing the history of the present (1977: 31).

The quote here reemphasizes that genealogy seeks to grasp regimes of knowledges and practices in their own terms (Dean 1992: 219; 1999: 44). This is what further characterizes the history of the present that Foucault seeks to write. Bearing in mind the weaknesses of a search for origins, this kind of history is able to highlight the present without reifying the identities and knowledges that find foundations and security in the past.

As Owen suggests, a provisional understanding of genealogy as a methodological instrument would be to emphasize “its concern with providing a history of the present in

order to facilitate critical reflection on the present” (1995: 39). If this is what genealogy reveals, how are we able to reflect on the new types of knowledge, practices or identities that are revealed through the practice of genealogy? What are we able to say about these practices? Or more accurately, what does genealogy *allow* us to say about these emerging types of knowledges and identities? Can genealogy be critical?

Genealogy as Critique

From Immanent to Exemplary Critique

According to Owen, Nietzschean genealogy is, in major part, a reaction against Kant’s claim to construct a form of critique that was both *immanent* and *total* (1994: 17-32; 1995: 39-40). For Nietzsche, Kantian critique, despite its legislative aspirations, could never be wholly complete because the privileged position of the evaluator—in Kant’s case the position provided by reason itself—was always capable of avoiding evaluation. Again, if reason is given the task of legislating the laws that govern claims to knowledge and claims to morality, reason as legislator is itself not open to judgements outside of itself. Consequently, even on its own terms Kantian critique was necessarily incomplete.

The point is that while Kant provided a type of knowledge that fashioned for us a way to evaluate all other forms of knowledge, including importantly ‘moral’ knowledge, the *value* of this type of knowledge was, Nietzsche argued, not apparent outside of this new knowledge. Nietzsche’s comments on the need for a genealogy of morality are instructive.

Let us articulate this new demand: we need a critique of moral values, *the value of these values must be first called into question*—and for that there is needed a knowledge of the conditions and circumstances under which they grew, under which they evolved and changed..., a knowledge that has never yet existed or even been desired (Nietzsche 1967: 6, emphasis added).

As discussed above, Nietzsche, contra Kant, sought to dispense with the possibility of transcendental knowledge. For Nietzsche, Kant's transcendental knowledge depended primarily on the consequences of its own non-existence and these consequences were further measured by the type of knowledge that Kant sought to prove as transcendental.

Kantian critique “legislates” an orientation in thinking toward a particular transcendental ideal which is contextualized in a project that seeks to reconcile the ‘real’ and the ‘ideal’ through the *lawful* use of reason (Owen 1999a: 22). Specifically, Kant's conception of critique and the metaphysical foundations on which it is secured is grounded in the unconstrained use of public reason manifest in public discussion. Kant says,

Our age is, in especial degree, the age of criticism, and to criticism everything must submit. Religion through its sanctity and law-giving through its majesty may seek to exempt themselves from it. But they awaken just suspicion, and cannot claim the sincere respect which reason accords only to that which has been able to sustain the test of free and open discussion (cf. Owen 1999a: 22).

This reemphasizes Kant's desire to promote a type of critique that is both total and founded in the act of public discussion. By locating the foundations of reason in the public realm, Kant believes that reason remains essentially open to renegotiation by free subjects. He claims that “reason has no authority; its verdict is always simply the

agreement of free citizens” (1983: B 766f.). Again though, this “test of free and open discussion” quoted above, is a transcendental presupposition that grounds reason’s ability to critically judge itself. For Nietzsche, these judgements of judgements, those that assume the immanent *value* of public discussion to then ground public reason are made prior to experience and consequently escape criticism. Furthermore, the free subjects or “free citizens” that Kant claims must be the source of reason are themselves pre-political transcendental presuppositions, figures that emerge outside of history.

Kant of course does not provide the final word on the nature and orientation of this type of critique. Habermas similarly engages in a reconstruction of Kant’s project, and remains committed to the relationship between critique and communicative freedom. Habermas however shifts the foundations from Kant’s metaphysical philosophy of the subject grounded in the rational structures of internal consciousness, toward a “philosophy of intersubjectivity focused on the reconstruction of the rational internal structure of communication oriented toward understanding/ agreement (*Verständigung*)” (Owen 1999a: 24). What is important about this is that while Habermas avoids important deficiencies in Kant’s theory that surround the transcendental subject, he remains committed to a minimum set of transcendental presuppositions about rules of rational argumentation. Habermas claims that participants in argumentation focused on validity claims to truth “cannot avoid” certain ‘idealizing presuppositions’ immanent in this type of action. These presuppositions are the rules of rational argument (cf. Owen 1999a: 25).

Against this kind of critique, Nietzsche and later Foucault, pose genealogy. Again, as we discussed above, genealogy rejects the search for, and claims to, transcendental

knowledge or identity. The question then becomes: can genealogy actually be critical? If genealogy refuses to legislate through reasoned judgements as Kant's "immanent critique" does, how can it be critical? How might it make normative judgements about knowledges, practices or identities without relying on some minimum set of normative foundations?

These questions have been at the heart of one of the central criticisms levelled at genealogy by a number of important thinkers who claim the utility of genealogy is compromised because its potential as a form of critique is necessarily limited. I return to elaborate on these criticisms shortly, however before that I will attempt a pre-emptive response by investigating Owen's assertion that genealogy can act as a form of critique—not an imminent, but an exemplary, form of critique.

In his indictment of practitioners of genealogy—Nietzsche, Derrida, Foucault etc.—Habermas claims that it was Hegel who established the "rules" within which the theme of modernity—the "dialectic of enlightenment"—can be located and varied (1987a: 52). Owen claims that for Habermas, the genealogist has simply refused to play by the rules and should therefore not be allowed into the game (1995a: 490). In short, Habermas is concerned that genealogy's claim to provide a non-dialectical form of critique leads inevitably to a culture of nihilism coupled with an irrational politics that condenses in regressive forms of neo-conservatism. This fear is not wholly unwarranted (as we will discuss more fully in our discussion of the potential weakness of genealogy to follow) because without referencing a universal norm that values some version of human autonomy, genealogy as a form of critique has, according to Habermas, no incentive to

act. As Owen remarks, for Habermas “genealogy is incapable of answering the question ‘why fight?’” (1995a: 490).

On the criterion provided by Kant and Habermas, that any form of critique must be minimally capable of making or legislating “judgements on judgements” by referencing an immanent normative framework, genealogy fails miserably because its own tenets basically comprise this criterion’s opposite. The question then becomes: is legislation a necessary condition of critique?

Owen concludes that genealogy can be an effective form of critique because it can act as an exemplar of how to orient practices of thinking and acting through what it reveals and how it is practiced. If we recall our examination of genealogy as methodology, and what were genealogy’s targets and what it revealed, we are reminded that genealogy seeks to ‘free-up’ static knowledges and identities by revealing them not as universal, natural, evident or complete, but as contingent, contradictory, dislocated and elusive. Its purposes if we remember are numerous, but principally, genealogy seeks to render ambiguous the constitutional matrix of knowledges, practices and identities in which we presently orient and reflect on our lives. It does this by essentially providing an alternative set of these conditions—or counter-histories—that we can choose to take-up, ignore or amend. What Owen argues is that this act, the act of rendering up and transforming what he calls the “grammar” of our judgements, “is *structured* in terms of a concern for autonomy” (1995a: 491, emphasis added).

To further his assertion that there is a relationship between autonomy and genealogy that need not rely on normative judgements, Owen claims that it is what

genealogy reveals—the historical contingency of how we have become what we are in the present—that gives history its structure *as* history and not merely as evolution.⁴

Consequently, resistance to certain kinds of power (resistance to that which fixes knowledges, practices and identities), which in part constitutes historical contingency, constitutes historical time. Since history then is *the* essential condition of genealogical practice, Owen concludes that this “establishes autonomy as the architectonic practical interest of genealogy” (1995a: 492). In other words, it is the practice of autonomy, in various manifestations, that constitutes history *as* history and not merely a seamless unitary narrative that has led to this inevitable present. This is what genealogy seeks to reveal or uncover, to allow us to reflect on the present. The practice of genealogy would be an impossibility if the past were in fact seamless, continuous and unitary, and this, it would seem for Owen, is the consequence of autonomy denied.

Genealogy then as critique avoids the model utilized by Kant and Habermas and instead proposes a form of critique that while emphasizing autonomy, need not reference a normative foundation.

Genealogy cannot legislate autonomy for us, it recognizes no grounds on which such an act of legislation could be secured, but it can (and does) exemplify its commitment to the value of autonomy in the form of its reflection on our present, that is, in terms of what it *shows* and what it *says* (Owen 1995a: 492).

⁴ Owen quotes Foucault at length to illustrate this point. In sum Foucault describes the position of the delinquent, set against “so much which is set up to silence them”. He concludes “[a]ll the disenchantments of history amount to nothing: it is due to such voices that the time of men does not have the form of evolution, but precisely the form of history” (cf. Owen 1995a: 492).

For Owen, what genealogy *says* is comprised of its orientation toward the central problem of the connection between multiple forms of power, manifest in issues of bio-power and discourses of humanism, and our capacities to think and act differently. These concerns prompt Foucault's elaboration of an "ethics of creativity" (made possible by the counter histories produced by genealogy) and a politics of struggle as means to separate the development of our capacities of freedom from the intensification and proliferation of power relations (Owen 1995a: 493).

The "*showing*" of genealogy emphasizes what genealogy actually reveals and its orientation toward autonomy. For Owen it shows three things: First, the relationship between the anti-humanist assumption of genealogy and an ethics of creativity, that as touched on above, "opens" up space for self-reflection that is for a moment minimally impinged upon by relations of power. Second, that the form of historical perspective adopted by genealogy embodies an ethos of "ironic heroization". This means that in the moment in which genealogy reveals to us what we are it 'heroizes' the present. However at exactly the same time, in a moment of irony, genealogy reveals the utter contingency of our being what we are. What this accomplishes is a basic respect for reality, and a simultaneous violation of it (Foucault 1984: 41). Last, genealogy's eschewal of a supra-historical perspective above, results in an 'agonal' conception of the political that recognizes the 'formal' necessity of autonomy (as above, that autonomy is in a sense *systemically* necessary for the practice of genealogy), while also recognizing that the interplay of specific interests animates this conception of autonomy.

So contra Habermas and Kant who rely on various transcendental authorities that allow their respective theories to legislate the procedures with which we can make judgements about judgements, genealogy need not rely on transcendental sources of authority. Rather, as demonstrated by Owen, genealogy as a form of critique seeks to “recommend” values such as autonomy through “an exemplification of its commitment to this value” (1995a: 504). In other words, genealogy does not ask us to “obey!”⁵, but merely leads by example. The implications of this debate are far reaching. If Owen is right genealogy can escape what Fraser (1989) has labelled its “performative contradiction”—it *can* remain committed to autonomy without falling victim to its own criticisms by securing these values in normative claims to reason. But this is not the last word on these issues by any means. These themes re-emerge later in this section and then run throughout the chapters that follow, finally being taken up again in a return to questions about genealogy’s utility in relation to human rights in the final chapter.

Critiquing Genealogy

Given our general understanding of genealogy as a methodology and style of critique, our attention turns to the consequences of the transformation in methodology and critique initiated by genealogy—in particular, the rejection of Kant’s transcendental subject and normative foundations derived from privileged transcendental knowledge. These conceptual moves, argue a virtual torrent of theorists, open up genealogy to a core

⁵ Kant defines enlightenment with reference to the principle, “‘Argue as much as you want and about what you want, but obey!’” (1983: 45). Moral law was not open to revision and, for Kant, must be obeyed for its own sake.

set of problems that, some argue, sound the death knell for genealogy as both a methodology and form of critique. The two criticisms we will investigate here are first, that genealogy engages in a dangerous “presentism” and secondly, that by adopting a genealogical method we give up all our ability to make normative judgements about what genealogical investigations reveals. Genealogy in this reading is among other things, unable to provide any normative foundation from which we can make political decisions or ground political strategy. This criticism, which we touched upon briefly moments ago, may in fact be the most serious for genealogy. We will characterize this critique as the “apolitical” critique. I will first investigate Habermas’ assertion that genealogy engages in a dangerous presentism before turning to a more sustained discussion of the characterization of genealogy as apolitical.

Genealogy and Presentism

As evidenced in the previous section, genealogy serves several important functions: first, it opens the field of possibility in the present by disrupting a teleological vision of progress in which the past is glorified and some present day knowledges, practices and identities are constrained, marginalized or excluded. Second, this expansion of possibility in the present serves to lay bare possible multiple forms of violence and exclusion that might arise by maintaining hegemonic identities, knowledges or practices as universal, natural or the manifestation of ‘common sense’. Again, as we saw, this “loosening up” of static knowledges and identities in the present allows genealogy to inject critical reflection into formations of identity, morality, rationality, etc.

However it is this continual emphasis on the present and the consequences of that emphasis that has led some theorists to question genealogy's utility. Connolly, who believes that genealogy can serve as an important form of criticism, nevertheless argues that genealogy has several potential limitations. First, Foucault and other genealogists act as though they can easily "bracket" ontological assumptions in established perspectives. In other words, they assume that concepts like reason, truth and progress are themselves discreet and easily identified concepts. Thus, in the case of Foucault, he stands accused of denying the extent to which he presupposes those very conceptions of subjectivity, truth, responsibility, and rationality he wishes to render ambiguous (Connolly 1991:35).

In a similar vain, Foucault's emphasis on the history of the present has been criticized as adopting a kind of dangerous "presentism" that may fail to recognize its own effects on present day understandings.

Dean interrogates the argument that genealogy and specifically Foucault's more "active" genealogy falls victim to the "historiographical problem of presentism". The argument follows along the lines of our previous discussion regarding the privileging of the past in support of present-day identities and knowledges. The criticism is elaborated by Habermas (1987a) who claims that Foucault privileges the present by employing genealogy as a method. What appears evident at the outset is that, from my reading, Habermas' and Foucault's positions are essentially incompatible in this respect. Foucault and Habermas employ different assumptions that ground their respective definitions of presentism. For Foucault the present *is* central in two ways. First it is from contemporary struggles and problematisations that the will to investigate particular historical lineages,

and all that comes with them, derives. Secondly, while genealogy addresses past knowledges and practices, emphasis remains on the relationship with the present distillations of knowledges and identities (Dean 1994: 28). Again it is from the variations in these knowledges that we are able to orient ourselves in the present. As mentioned earlier in the discussion of the uses of whiggish history, genealogy rejects modernity's privileging of the present in order to avoid reifying current meanings and identities.

For Habermas these intentions make little difference. He defines presentism as a historiography which cannot remove itself from "its own forms of consciousness" and thus must accept, and thus reinforce, contemporary identities and knowledges (1987a: 278). Here I agree with Dean (1994: 29) that this criticism *does* hold in some respects. While it is necessarily true that genealogy must refer at least in part to the conditions of the present when examining the past, this does not necessarily transform it into an investigation that seeks to reify present-day identities and knowledges. Owen tells us that,

...to engage in genealogy as a critical practice only presupposes a certain dissatisfaction with our current understanding. If our self-understanding satisfies our embodied experience of agency in the world, we have no reason to ask this question (1995b: 40).

Thus genealogy need only be prompted by a breakdown in present understanding; but this means it can therefore never avoid some version of presentism entirely. However, it can and does avoid a version that reifies the present in the service of the past or dominant knowledges and identities of the present. Secondly, while it must necessarily refer to the present, genealogy *does* avoid privileging that present. If we recall, Foucault emphasizes

that genealogy's understanding of current distillations of meaning and identity are themselves limited and contingent. So while genealogy cannot help but refer to the present, its orientation and goals are vastly different than those types of history that seek to entrench or fortify knowledges, practices or identities as universal, natural, or manifestations of 'common sense'. Thinking back to what Owen argues, genealogy shows us the present must be "heroized" in order to allow us to orient and be critical of ourselves in the present, but genealogy also ironicizes this moment and in doing so avoids the presentism and the consequences of that presentism to which Habermas has sought to condemn it.

Genealogy as Apolitical

As highlighted briefly in our discussion of genealogy as critique, the claim that genealogy is unable to sustain a direction which can be critical of the knowledges, practices and identities that it reveals has led many theorists to reject genealogy as a useful method of critique. Others have simply said that unlike theorists like Habermas and Marx, both Nietzsche and Foucault's work did not establish any positive direction or program of reform and are consequently limited.

As we discussed earlier, the grounds for such a criticism are evident. Neither Nietzsche nor Foucault articulated a political project—strictly speaking—in fact, both purposefully avoided articulating such projects. In the case of Nietzsche, only recently has he even come to be discussed as a political thinker. As Villa has remarked, to even evoke Nietzsche as a political philosopher is to invite scepticism (Villa 1999: 170). The

assertion of a discreet direction for genealogical projects would have forced both theorists into the same trap that Foucault, at least, sought to escape by employing genealogy as a methodology in the first place. Again, Foucault seeks to avoid this trap by rendering ambiguous the goals and even conclusions of genealogy itself. He says,

I strive to avoid any reference to this transcendental as a condition for the possibility of knowledge. When I say I strive to avoid it, I don't mean that I am sure of succeeding... I try to historicize to the utmost to leave as little space as possible for the transcendental. I cannot exclude the possibility that one day I will have to confront an irreducible residuum which will be, in fact, the transcendental (Foucault 1989: 79).

Foucault remains unhelpful in his own cause, when he elsewhere suggests,

[t]he role of the intellectual is not to tell others what they have to do. By what right would he do so? Remember all the prophecies, promises, injunctions and programs that intellectuals have managed to formulate over the past two hundred years and whose effects we can now see" (1988: 265).

But again, the goal of genealogy is not to suggest a universal project of autonomy.

It does not even presuppose the value of its own form of critique. Instead its practice is oriented for a number of reasons toward autonomy. Again, Owen explains that the moment of self-reflection and orientation in the present provided by genealogy is all that is needed to further the project itself. As our understandings and beliefs about the world and our ability to optimally function in it change (through genealogical study) dominant knowledges and identities can begin to lose, what Owen calls, their "proof of power".⁶ As

⁶ By example it useful to briefly highlight the analogous remarks on the history of science by Thomas Kuhn. Kuhn (1970) asserts that as deviations or anomalies begin to collect around a core belief or system of scientific beliefs, it becomes increasingly more difficult to relegate them to the margins; their accumulation

a consequence what is revealed by genealogy can maintain its position only by maintaining either “meaning” or “autonomy” (Owen 1995a: 47). That is the knowledges, practices and identities revealed by genealogy are opened for revision if (a) they no longer have the capacity to give meaning to our experience of the world, or (b) they can no longer explain the world in such a way as to maintain or increase our experience of ourselves as autonomous agents (Owen 1995a: 47).

What the previous section demonstrated was that genealogy can serve as a form of critique, not by legislating how it is we must make judgements, but instead by exemplifying a commitment to autonomy through genealogy’s practice and orientation. We might conclude that genealogy then, is not apolitical, but merely engages in a different kind of politics. At the close of this discussion on genealogy as a methodology and form of critique, I return to the question: So what is this study we call genealogy?

Genealogy is itself a protean and unwieldy concept in many respects. While it is discussed readily, frequently cited and referenced by numerous authors, it seldom receives enough focused or systematic attention to necessitate a comprehensive definition. Fittingly, when definitions are given they are provisional, temporary and always tentative. So while the genealogical project is itself an attempt to disrupt relatively static knowledges and practices, the concept itself attempts to avoid a limiting static definition. Definitions, specifically those presented by Foucault, are also often framed

turns them from marginal questions into “core” questions. In effect the balance may shift from the ability of the dominant paradigm to satisfy our “cognitive interests” to the dissatisfaction produced by deviations and anomalies.

negatively. In other words, genealogy is often best defined not as what it is, but more frequently, as what it is not or what it strives to avoid becoming.

As a methodology we can say now that genealogy generally has these characteristic features: First, genealogical investigations dispense with the idea of the idea of transcendental types of knowledge and the transcendental subject. Second, genealogy exhibits a general scepticism toward established truths manifest in static knowledges, practices and identities. Third, it expresses a commitment toward examining the constitution of the present as a contingent outcome of numerous competing histories. Fourth, it eschews all forms of absolutes even about its own composition and utility. Last, it acknowledges the political composition of all knowledge and forms of methodology.

This chapter has investigated the methodological utility of genealogy and while as just mentioned, genealogy seeks to render even a constitutional definition of itself as a method and form a critique somewhat ambiguous, what remains clear is what it is not. With this knowledge in mind we can approach the second chapter with a clear understanding of the type of knowledge my investigation seeks to disclose, or perhaps more accurately the type of discussion my investigation seeks to provoke.

The question now becomes what does genealogy have to do with the focus of this thesis, examining the role of changing conceptions and formulations of sovereignty and human rights on contemporary forms of governance?

Genealogy and Governmentality: A new theory of power

As discussed earlier, Foucault's utilisation of genealogy as both a historical

method and form of critique sought to reveal and accentuate the excess knowledge, meanings and identities that cannot be accommodated by present-day dominant hegemonic formations of knowledge, meaning and identity. Foucault's goal was the broad disruption of static knowledges, practices and identities. Principal among these were the fixed notions of autonomous, reasoning, and self-reflective individuals that incidentally serve as the foundation for liberalism and neo-liberalism as political ideologies (a point we will elaborate in the following chapters). The conventional cementing of identity and meaning has the effect of excluding or marginalizing contradictory and competing knowledges, practices and identities, while at the same time privileging current hegemonic distillations. In contrast, as Connolly suggests,

[genealogy] opens us up to the play of possibilities in the present. Correspondingly they incite critical responses to unnecessary violences and injuries surreptitiously imposed upon life by the insistence that the prevailing forms are natural, rational, universal or necessary (1995: 34).

With at least provisional answers to the questions posed at the outset of the chapter on the general composition, targets, capabilities and goals of genealogy, our attention now shifts to an additional, arguably more poignant series of questions that have, in many respects, eclipsed these original questions. This last section of the chapter addresses this line of inquiry and refines our analysis, introducing concepts directly related to Chapter II of this thesis. While the previous questions aimed at examining, in broad terms, the various connections between knowledge and critique, these questions specifically address the ability of genealogy to be used as an analytical tool of government. Consequently we ask what leads genealogy to pose questions about

government and specifically questions about liberalism as a form of government? As Dean has inquired, “How did it (genealogy) come to bring the analytical resources of genealogy to our ‘political reason’” (1999: 41)? Furthermore, what new type of knowledge do these tools reveal (if any) beyond those garnered from genealogy as a more general form critique?

Foucault summarizes the basis for his theory of governmentality in the concluding remarks of his lecture aptly titled “Governmentality” (1991). Here he sketches out what is captured by the term governmentality. Some of these points are further elaborated in the chapter that follows, however, for now a more general orientation to the term will suffice.

Foucault divides the type of knowledge captured by his use of the term governmentality into three points. First, governmentality is a new form of government that adopts as its object or target “the population” with the task of assuring the general “health” or welfare of all that comprise that population. This new social object is achieved through the ascendance of a new type of knowledge—political economy. For Foucault the essential technical means to secure this general welfare of the population are apparatuses of security. Second, and critical to this thesis, governmentality connotes a relationship, and according to Foucault, a “pre-eminence over”, similar forms of power, particularly sovereignty and discipline. Accordingly, governmentality sponsors a whole series of specific governmental apparatuses and knowledges that often have as their source modified and “recoded” techniques and rationalities characteristic of sovereignty and discipline (Dean 1999: 19-20). This translates into a condition wherein the object of each form of power is often imbricated by all forms of power through complementary and

competing technologies and practices. These relationships, between governmentality, sovereignty and discipline, will be form a major part of the chapters that follow. The third characteristic Foucault highlights is the long process wherein the juridical and administrative apparatuses of the state gradually come to be drawn into the apparatus and rationalities of governmentality and are thus, “governmentalized”. This long process that he describes is what he later refers to later as the “governmentalization of the state” (1991: 103). Again, the relationship between governmentality and other kinds of power, particularly sovereignty, comprises much of the focus of the chapters that follow. We therefore elaborate more on these themes later. At this time, however, it is important to engage in a crucial elaboration of the conception of power that Foucault employs as part of his theory of governmentality.

Beyond a Binary Formulation of Power

Traditional conceptions of power, often articulated through questions of legitimacy and a coercion/consent dichotomy, contribute to the fixing of static identities, practices and knowledges that comprise the common target of genealogical inquiry. These theories of power conceived of power in two ways. First, power was seen as a ‘thing’—as something that could be possessed. Second, these theories centralized power such that it was principally located in single site from which coercion was exercised, usually through physical means, over an individual or group of individuals. Those that accepted this model of power were not generally concerned that power was being exercised *per se*, rather that it was being exercised legitimately.

The pluralist view transforms this formulation by emphasizing that power can and does exist in multiple sites, not just a single location. However, the pluralist view remains preoccupied with whether this power is coercive or consensual. In this way, while there is a general recognition that power is more diffuse, the pluralist reformation remains focused on questions of legitimacy. Power remains theorized as essentially negative, in that it acts as a barrier, legitimate or not, to the essentialized freedom of the individual. Power then, is juxtaposed to freedom. In this binary paradigm, opposition to sites of power does not question the underlying assumption that power must be exercised to limit freedom but instead remains focused on who actually “possesses” power. The alternative proposed by many theorists is merely a displacement of power from one site to another (i.e. bourgeoisie to the working class, oppressor to oppressed). The central problem with this type of project is that replacing current power “holders” with contrary knowledges, practices or identities only continues to articulate power in binary terms and in fact only recognizes and reifies the underlying hierarchical ordering of power. Power remains polarized between those who have power and those who do not. To *have* power, is still to have it *over* someone or something else. Thus, power in this traditional formulation is associated with freedom and subjectivity, and lack of power, domination and subjugation. Cornell in her analysis and critique of MacKinnon’s formulation of gender relations illustrates the central problems with this construction of power (1991). She claims that for MacKinnon the only alternative to a world of male domination “is reversal of *power*. One is either a slave, or a master. The political goal of empowerment can only be obtained by reversing the hierarchy. But the hierarchy is not dismantled, even if women were to take

the upper position” (1991: 132). Cornell emphasizes that this only takes the current “reality” of power as given. For her this is largely founded on a set of “masculine” identified values that actually produce counter-effective consequences. MacKinnon’s project is thus a contradictory one since the same power structures or system—“the sado-masochistic system of gender identity”—that are supposedly being rejected are rather only confirmed and replicated. Cornell’s analysis is important for another reason. While she underscores the problem of assuming the present conditions as pre-given and thus reinforcing them, she also highlights the problem of formulating power as essentially a tool of domination.

Against these traditional formulations of power as centralized and essentially ‘negative’⁷ Foucault develops his theory of governmentality that refuses to accept the polarization of the powerful and powerless, the emphasis on issues of legitimacy manifest in a preoccupation with the dynamics of coercion and consent, and the basic reduction of power to law. Instead Foucault seeks to challenge and expand our traditional conceptions of power by, like the pluralists, diffusing it; but more importantly by focusing on the ‘productive’ aspects of power. He says, “power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production” (1977: 194).

The problem of power, Foucault insists, is no longer merely about describing processes whereby states, traditionally envisaged as principle possessors of power, act *on*

⁷ In Discipline and Punish Foucault lists a series of negative articulations of the effects of power that he says must be avoided: “it ‘excludes’, it ‘represses’, it ‘censors’, it ‘abstracts’, it ‘masks’, it ‘conceals’” (1977: 194).

citizens, the traditional objects of that power, through the central medium of law⁸. Instead Foucault wants to view the uses of power as more “complex” and “multifarious”. Thus, he emphasizes the diffuseness of power when he says,

...we find at once a plurality of forms of government and their immanence to the state: the multiplicity and immanence of these activities distinguishes them radically from the transcendent singularity of Machiavelli's prince (1991: 91).

Secondly, to reduce power simply to law, to its prohibitory and punitive face, to that which says ‘no’, leads us, Foucault says, to a “double subjectification” where absolute power, obedience and acceptance are naturalized (Foucault, 1980: 139). We must therefore move beyond an emphasis on power as essentially repressive. Foucault continues,

[I]t is a case of studying power at the point where its intention, if it has one, is completely invested in its real and effective practices. What is needed is a study of power in its external visage, at the point where it is in direct and immediate relationship with that which we can provisionally call its object, its target, its field of application, there—that is to say—where it installs itself and produces real effects” (1980: 97).

To facilitate a better understanding of the form and goals of this new articulation of power Gordon separates Foucault's understanding of governmental rationality into two broad categories. The first, or ‘broad conception’, understands the definition of government as the “conduct of conduct” which, in its most general sense, refers to any

⁸ We return to analyze the reduction of power to its juridical form more comprehensively in the chapters that follow, particularly Chapter Three. For a further discussion of Foucault's fears about a reduction of power to law see (Foucault 1980: 138-142; 1990: 82) and (Hunt and Wickam 1994).

activity that strives to shape or affect the actions of a person or persons. The more narrow reading, articulates the act of government as any action which involves relations between “self and self, private interpersonal relations involving some form of direction or control, relations with social institutions and communities, and relations concerned with the exercise of political authority” (Gordon 1991: 2-3).

Perhaps the simplest way to understand the orientation of Foucault’s concept of governmentality to questions of government and power is to recognize that these questions are not at all concerned with legitimacy or an orientation toward the “best” form of government because this, among other things, already assumes that government is necessary. Rather governmentality as a type of investigation attempts to understand government by concentrating on the “how” of governing. Foucault says, “rather than ask ourselves how the sovereign appears to us in his lofty isolation, we should try and discover *how* it is that subjects are gradually, progressively, really and material constituted” (1980: 97, emphasis added). Its focus is on how we govern and are governed, and what regimes emerge and how they foster or frustrate conditions in which these forms of governing occur. In short, Foucault largely dispenses with questions that ask “Who rules and what is the basis for that ruler’s legitimacy?” and instead seeks to examine more closely the *ways* in which governmental strategies emerge and are made effective or otherwise.

Foucault does not say legitimisation theory is empty... but only that a legitimate basis of sovereignty cannot be relied upon as a means of describing the ways in which power is actually exercised under such sovereignty... Governmentality is about how to govern (Gordon 1991: 7).

In sum, Foucault's governmentality conceptually configures power neither as entirely freedom or domination. Instead he locates it "between" a conception of power as an open, strategic and reversible set of relations and domination as the reifying and blocking of these relations into fixed hierarchical configurations (1988).⁹

Liberalism as a Target of Genealogy

Given this basic understanding of the type of knowledge sought by governmentality, I must return to the second question posed earlier: What led governmentality to pose questions about government and particularly about liberal forms of government?

At first glance, there is a tendency to imagine that genealogy and governmentality might operate as a 'natural' method of critique to liberal governmental forms and institutions. After all, questions of legitimate authority—who possesses power and is its possession legitimate—dominate classic liberal political ideology (Beiner 1992, 1997). However, such a tendency should be strongly resisted for a number of reasons.

First, governmentality, following the lessons of genealogy as a methodology, must approach liberalism not as a coherent whole or a uniform set of ideas but as a series of

⁹ Laclau and Mouffe (1985:149-193) highlight this paradox and its value. They contend that it is this antagonism that "opens" spaces for politics. They say that hegemonic forms of politics must "always suppose an unstable equilibrium between this imaginary [a "utopia" that threatens to negate the present] and the management of social positivity; but this tension, ... should be affirmed and defended" (1985: 190). They go to say, similar to Foucault, that we must avoid the binary of power as essentially good or essentially bad. They say we must "avoid the two extremes represented by the totalitarian myth of the Ideal City, and the positivist pragmatism of reformists without a project" (1985: 190). Laclau also comments on the productivity of this tension in a different way when he says that "the social is impossible without some fixation of meaning, without the discourse of closure, the ideological must be constitutive of the social. The social only exists as the vain attempt to institute that impossible object: society" (1990: 92).

historical knowledges and practices. To assume uniformity is to fall victim to the fixing of identity that Foucault and Nietzsche say genealogy strives to avoid. As should be clear, this tendency results in a necessary reduction of historical conditions that cannot be entirely captured by this characterization and consequently our analysis is compromised.

Second, we must remember that governmentality and genealogy more generally have as their target any instance of fixed or static knowledge, practice or identity. This means liberalism is by no means a 'natural' target. Any political ideology that has at its core uncritical foundations or a teleological vision of the future is equally susceptible to genealogical inquiry. Thus Marxism's insistence that the revolution of the working class is an historical inevitability is equally as vulnerable as liberalism's privileging of the individual as a bearer of inherent rights.

Last, to situate genealogy as liberalism's opposite is again to accept and reify the terms of liberalism itself, particularly the already critical binaries that constitute liberalism (i.e. free/dominated, powerful/powerless, legitimate/illegitimate, etc.). This move forces competing critiques onto liberalism's conceptual terrain and their ability to render a critique is comprised because the actual terms of the debate remain unchallenged. As discussed in the opening pages of this chapter, to accept the version of critique on which liberalism relies is to accept that this version of critique can only ever be a partial critique because it fails to be self-reflexive.

If then liberalism is not a 'natural' target of genealogy what then led genealogy to pose questions about liberal government? As I just remarked, it is dangerous to regard liberalism as a coherent and fully-formed series of ideas or practices. However, in the

interests of efficiency, we can envisage a loose grouping of ideas and practices that orbit around a series of what we might term ‘core’ or ‘foundational’ ideas or beliefs. This reduction, while somewhat problematic in light of our discussions about the reduction of knowledges and practices, allows us to conduct our brief investigation of how liberal government becomes a target of governmentality and genealogy without conducting an exhaustive genealogy of liberalism itself. Thus I recognize that this characterization is merely that, and thus not intended to capture the complexity and range of views that can broadly be called liberal. This brief investigation of the foundations of liberalism demonstrates why it is open to genealogical critique and also orients the discussion of liberal and neo-liberal strategies of governance that we take up in the chapters that follow.

Following Rawls (1978) we can distinguish two basic divisions in liberalism: philosophical liberalism and political liberalism.¹⁰ First, philosophical liberalism relies on a series of foundations, determined to be rational through rational means, in an effort to secure a normative framework in which the tenets of political liberalism can be anchored. Here we can locate the ‘core’ or common features of liberalism as an ideology. First, there is a metaphysical conception of the individual that treats individuals as fully formed subjects prior to any social relations. Thus individuals are always already capable of ‘rational’ thought and action, and are essentially constituted as individuals prior to any social relationship in which they are located. Second, this assumption about the metaphysical character of individuals translates into what Owen calls “asocial

¹⁰ We utilize Rawls’ distinction only in the interests of clarity. This does not mean that the distinction *holds* under the light of any sustained theoretical criticism (Mouffe 1993)

individualism”(1995: 7) where societies are conceived of as some version of a contract entered into by already fully formed individuals. This contract, manifest in the political form of the state, is entered into to promote cooperation for the purposes of security to pursue individual interests and promote human autonomy. Last, philosophical liberalism generally subscribes to a universalism that applies this conception of the individual and its relationship with society to all human beings, in fact articulating these attributes as constitutive of what it means to be human.

Political liberalism on the other hand does not, argue Rawls, Rorty and others, require a solid philosophical base but instead is developed through a series of political judgements that arise out of the public political culture of constitutional democracies. Thus political liberalism makes no claims, according to Rawls, about the essential characteristics of human beings, apart from their capacity to be ‘rational’, but instead justifies itself by arguing that in the context of political pluralism—thus where there are multiple conceptions of the ‘good’—liberal political theory is preferred because its emphasis on free and equal citizens is most compatible with our interest in human autonomy¹¹. As Beiner remarks, political liberalism is conceived of merely as a “principle of political organization that accords individuals the freedom to navigate a course of their own design – a course constituted by self-elected plans and purposes” (1997: 4). We take up the components and practices of liberalism more specifically in the chapters that follow. For now these ‘core’ components of liberalism help locate a basic understanding

¹¹ Rawls has amended his earlier comments on political liberalism and particularly the idea of a well-ordered society, see Rawls (1993) particularly pp. 35-40.

of the reasons why genealogy came to ask questions about liberalism and liberal government.

As discussed in the opening sections of this chapter, genealogy is a rejection of metaphysics in favour of historically grounded conceptions of the individual and the limits and possibilities of the individual. As was made clear in the discussion of the political application of genealogy in a theory of governmentality, the subject is not fully-formed prior to subjectification but is only a product of those processes. As Cruikshank nicely formulates it, “subjectivity does not exist prior to government intervention, but is rather the object and the outcome thereof” (1993: 32). Therefore we can immediately see a tension between the philosophical foundations of liberalism and the refusal of to accept transcendental knowledges or identities advocated by genealogical study.

As highlighted by Dean (1999: 48-54) and Burchell (1996: 21), liberalism also poses a challenge for genealogy in that it is itself founded on a principle of permanent critique (as we saw in our brief discussion of Kant). It remains a powerful instrument of critique in that it,

...can be turned against previous forms of government it tries to distinguish itself from, the actual forms it seeks to reform, rationalize and exhaustively view, and the potential forms it opposes and whose abuses it wishes to limit. This means that the key targets of liberalism can change according to the circumstances in which it is located (cf. Dean 1999: 49).

This “polymorphous” character of liberalism makes it a difficult target for genealogy, but a necessary one particularly because, while still a permanent critique of governmental forms, liberalism sets itself against potential new forms of government and in this way

limits rather than expands the field of possibilities open before us. As genealogy seeks to reveal through its methodology the possibilities open both here in the present as well as in the future, we see a further reason why liberalism becomes a target for genealogy.

In more empirical terms Gordon reminds us that Foucault's work on governmentality overlaps with the defeat of a socialist government coalition in France in 1978, the election of the Thatcher government in Britain in 1979, the basic collapse of a number of Marxist parties in Europe and importantly the rise of a neo-liberalism as new form of governmental thought (1991: 7). Foucault's theory of governmentality sought to explain these transformations in post-war orthodoxies of government now under attack by a new form of more active, more militant liberalism.

Conclusion: Understanding Genealogy

This chapter argued that the genealogical method, in rejecting the search for "origins", also rejects the emancipatory claims of the enlightenment project for a more realistic imagination of the limits and potential of knowledge and identity that dispenses with the possibility of transcendental knowledge. In doing so genealogy draws our attention to the exclusion and violence that often legitimises itself under the myriad banners of emancipatory discourses including, among other, human rights, sovereignty, reason and progress. This recognition potentially disrupts static and fixed knowledges, practices and identities and, if successful, cultivates a renewed imagination of critique that can further facilitate, by way of exemplification, projects of autonomy and inclusion.

Thus having sketched out the basic orientation and even potential deficiencies of the genealogical approach, the second portion of this chapter investigated the relationship between genealogy and an emerging form of political critique manifest in governmentality that seek to challenge, among other things, existing notions of power and the dominant liberal conception of the individual as an asocial, pre-political subject.

I take up the type of analysis developed in this first chapter and expand on it further in the second where I analyse specific technologies of liberal governance and investigate the consequences of their transformation as part of a broader shift from liberal to neo-liberal governmental rationalities. What will emerge are interesting, though in many ways troubling revisions to dominant conceptions of the individual and their positioning in relation to particular forms of the state. What genealogy allows us to do is to grasp these practices on their own terms, to avoid privileging or reifying them in the present.

CHAPTER TWO

SOVEREIGNTY AND LIBERAL GOVERNMENTALITY

Introduction: Genealogical Lessons

At the close of the previous chapter I introduced and briefly discussed Foucault's concept of governmentality. Governmentality, building on the lessons of genealogy as a method and form of critique makes it possible, specifically in discussions of government, to move beyond limiting constructions of power as fundamentally dichotomous and predisposed to questions of legitimacy. On the heels of these conclusions I asked why governmentality had come to pose questions about liberal forms of government in particular and offered a tentative answer to draw the chapter to an end. Chapter II continues and elaborates this discussion. Specifically I investigate particularly effective apparatuses of liberal governmentality and seek to analyse certain transformations prompted by a shift in governmental rationality. Thus this second chapter asks how is the theorization and discourse of sovereignty implicated in regimes of liberal governance? To facilitate this analysis I examine the foundations of liberal conceptions of sovereignty and the governmental rationality that supported these theories. We expand on the issue of the tautological tendency of claims to reason by remarking on a similar structure of justification that supports liberal formulations of sovereignty. This chapter seeks to fulfil two important purposes. First, it provides a clear example of the use and benefits of the genealogical method particularly as it applies to issues of modern rule. And secondly, its components lay a solid foundation for Chapter III where I will return to some of the issues raised at the close of the first chapter about potential limitations of genealogy as a form of critique. This is accomplished by highlighting the transition from liberal to neo-

liberal governmental rationalities and examining what are the implications for sovereignty, human rights and the subjects they help constitute. But before our attention turns to these question, some words of introduction.

The claim that our world is today in a state of *fundamental* transformation or an era of truly radical change should be met with healthy doses of scepticism. While it is true that we have witnessed important transformations over the last fifty years—including the dismantling of a modern empire, the rapid polarization of global capital, and a striking increase in genocide and ethnic violence—these signs should not be taken to mark a dramatic, unprecedented break from the past. As Nietzsche warned us in the previous chapter, to engage in this type of analysis only *monumentalises* the past in the service of the present. If we recall, this only bolsters and reifies present-day dominant knowledges, practices and identities by excluding contradictory and competing matrixes. It prompts us to see the past as less fractured than the present, more knowable, more calculable, essentially more easily captured and transformed by our will. To this way of thinking, the past is consequently more desirable than the present, which is contrarily marred by uncertainty, difference and conflict. Against the past which can be preserved, sanitized of difference and made homogenous, unitary and knowable, the present stubbornly resists our will to know and shape it, leaving excesses of meaning that cannot be accommodated by dominant present-day matrixes of meaning. As discussed in Chapter I, this assertion of difference threatens a teleological vision of an inevitable future emancipation, and promotes a longing for a past that never really existed, a past that is nothing more than an idealized present void of difference. But what does this all have to do with sovereignty?

With constitutional definitions, practices and identities straining under the burden of an increased recognition of plurality and contingency, traditional matrixes of meaning grounded in relatively fixed regimes of knowledge are no longer capable of “explaining” the relationships and practices that constitute our everyday lives—they have lost, what Owen calls, their “proof of power” (1995: 47). While these disruptions of constitutional meanings have had profound effects on the ability of individuals to make sense of themselves and others around them, the implications for the state and political theory more generally has been equally profound (White 1988). Sovereignty, as a touchstone of modern political theory, has not escaped these disruptions. Once the essential concept¹ that anchored theories of citizenship, the state, international relations, domestic and international security, trade, etc., sovereignty has, many claim, been rendered obsolete and untenable in the face of changing conditions of global investment, supranational integration, and the emergence of human rights and international intervention initiatives. No longer able to fully explain the emerging reality that marks both international and local political life, sovereignty we are told is at its “end”, anachronistic, an “extinct” relic of another age.²

But this is as much a claim about sovereignty’s past as it is about its present or its future. To claim that sovereignty’s ‘today’ (characterized by crisis and transformation) is entirely different than its ‘yesterday’ is to claim that it was once entirely able to capture

¹ Bartleson (1995: 12) remarks that the concept of sovereignty, despite “perennial” theoretical confusions, has remained “constitutive of what modern politics *is*, and what modern politics is all *about*”. This point is also highlighted in Walker (1990: 159-160).

² Fowler and Bunck (1995: 2, n.2-14) reproduce a substantial list of those that have proclaimed the ineffectuality or demise of sovereignty. Among these they list, Camilleri and Falk (1992), Bateson (1990), MacCormick (1993), and Khan (1992) to name a few. Foucault’s elaboration on the role of disciplinary

and mediate the fields of politics and political authority. This is a claim that unifies and homogenizes the history of sovereignty, to demonstrate it as a conceptual necessity and to provoke a longing for a more desirable past that is largely imagined.

When a political order raptures, in international as well as in national politics, its rivalling factions will send their scribes to seek out the order's origins—conservatives, to fortify its pedigree; revolutionaries, to expose its flawed foundations. More measured scholars will also interest themselves in the order, but will eschew declaiming, seeking instead simply to understand what sorts of winds first brought it about and what sorts are now carrying it away (Philpott 2001: 3)

It is this last type of understanding that I take up here with respect to sovereignty and its transformations. The first chapter demonstrated the fallacy of the search for origins and oriented us toward a genealogical approach that in this chapter seeks not to find sovereignty's essence or moment of past glory, but instead to draw out its contingent and conflicting past, to, among other things, allow us to orient and better understand ourselves and our practices in the present. As discussed in Chapter I, this genealogical approach has secondary effects as well. It demonstrates sovereignty's contingent advance to the present and in doing so potentially allows subjugated knowledges once marginalized or excluded by reified definitions or practices of sovereignty to be "released" or "reactivated" and thus again, "brought into play" (Foucault 1980: 85). Finally, again drawing from our discussions in the previous chapter, the genealogical questions of sovereignty we address here are not as Bartelson says, ones of *meaning*, but ones of *function* (1995: 12)—*how* does the concept of sovereignty emerge and function

power which he argues is "absolutely incompatible with the relations of sovereignty" (1980: 104) has also clearly effected the stability of sovereignty—a point we will discuss throughout this chapter.

as a type of knowledge and a series of practices, and what are the effects of the defining practices that prompt its emergence and transformation?

To shed light on these questions, we investigate works by Bartelson and Dillon who highlight the relevance and importance of international relations literature in demonstrating the intersubjectivity and contingency of sovereignty by investigating the composition and practices of nations and states. Dillon sheds valuable light on the often-misunderstood relationship between governmentality and sovereignty. Following Dillon's investigation I elaborate on why governmentality has come to pose questions about liberal governance. My attention centres on the development and dynamics of classical liberal governmental rationality and the important shift from these formations toward neo-liberal governmental rationality and apparatuses. Utilising rearticulated notions of economy, society, security, and law as evaluative criteria, the last part of the discussion begins the important examination of the effects of the transformation from classical liberal sovereignty and governmental reason toward the neo-liberal sovereignty and governmental rationalities that we take up in Chapter III.

Understanding Sovereignty: Certainties and ambiguities

Sovereignty, in spite of its centrality and continued importance in political theory and practice, has never been entirely understood. This stems in part from its inability to wholly "explain" the contingencies of political life, but also interestingly *because* of its growing status as an essential concept in political knowledge and practice. As Bartelson remarks, conditions of centrality and ambiguity usually condition one another. As concepts become more central, to the degree that they act as referents for other concepts

and practices, they continue to form what he calls “linkages”—inferential or rhetorical— with these other concepts. These constitutional linkages “saturate” the reference concept with myriad questions that stem from the constitutional dependence of this expanding set of interconnected concepts. This saturation results in increased ambiguity of the central concept because it is unable to effectively set limits on what it can conclusively address or define (Bartelson 1995: 13). However this does not mean that sovereignty is less useful as a result of its ambiguity. On the contrary, the uncertainty that surrounds the concept allows it to be mobilized in a wide variety of prospective and operating projects of governance, as we will see later in this chapter. Moreover, if we accept that this ambiguity is in part a result of its centrality as a constitutive concept, we can see that effective mobilization of sovereignty has far reaching effects.

Bartelson recognizes as we did in the previous chapter, the futility of the search for origins that characterizes modern searches for knowledge and understanding. He articulates this process as the “scientification” of knowledge. Against this he counterposes a Derridian inspired³ critical process of deconstruction that, like our conception of genealogy as methodology, does not aspire to “final answers”, but instead seeks to “unmask the conceptual problems which a scientific discourse runs into when trying to answer [questions about sovereignty]”(1995: 21).

To initiate this project Bartelson engages in a critical investigation of the contemporary empirical discourse of sovereignty which he claims rests within and between two competing but ultimately complementary fields of knowledge: international political theory and macrosociology. These knowledges divide questions about

³ For more on Derrida and deconstruction see Derrida (1981) and Culler (1983).

sovereignty basically along three lines: the *source* of sovereignty, the *locus* of sovereignty and the *scope* of sovereignty (1995: 21). By investigating these questions Bartelson demonstrates the traditional types of knowledge sought by both international political theory and macrosociology and emphasizes critical weaknesses in both approaches. In doing so he draws out some enduring features of the dominant conceptions of sovereignty against which he directs his critique. For our purposes, it is important to investigate these dominant conceptions of sovereignty in order to better understand the effects of their definitions.

Sovereignty as Given

In spite of its centrality as a constitutive political concept—often instrumental in determining questions of authority and power and our political relationships both nationally and internationally—sovereignty is after all an *idea*, not a fact (Hinsley 1986: 1). Even Hinsley, one of the most influential contemporary proponents of a clear principle of sovereignty, reminds us that sovereignty as opposed to its targets—power and authority—is not given.

Authority and power are facts as old and ubiquitous as society itself; but they have not everywhere and at all times enjoyed the support or suffered the restraints which sovereignty, a theory or assumptions about political power, seeks to construct for them. Although we talk of it loosely as something concrete which may be lost or acquired, eroded or increased, sovereignty is not a fact (1986: 1)

Whatever its target, sovereignty was and continues to be a claim to truth. Specifically it is a claim to truth about the need for order and stability in an inherently unstable world. Camilleri and Falk remark that sovereignty lies at the heart of a more general discourse of

power that seeks not only to describe political and economic conditions as such, but to do so in such a way as to establish and justify them as if they were inevitable and uncontested; as essentially belonging to the “natural order of things” (1992: 11).

Sovereignty prescribes as much as it describes, and what it traditionally prescribes is a world perpetually on the brink of anarchy—a world divided between order and chaos, security and danger, friend and enemy, between what is known and unknowable. In this world, the world prescribed *by* sovereignty, sovereignty is itself indispensable; it is after all the knowledge that allows us to make these initial judgments. This ‘type’ of knowledge, knowledge that has as its purpose its own reification; knowledge capable of “escaping” itself⁴, should sound familiar. This is one of the central bases on which we argued against Kant’s use of reason to claim the subsequent necessity of reason in the last chapter. In this sense sovereignty is similarly transcendental; it is ahistorical⁵. What is important to emphasize however is that it is not *a* definition of sovereignty that is in fact inherently problematic. Rather, it is a ‘type’ of definition, and the practice of the defining that is at issue. Here we can locate a common mistake made by numerous theorists. This fault is demonstrated here by a brief discussion of a recent treatment of sovereignty by Hoffman. Hoffman claims that Bartelson and Cynthia Weber specifically, and other

⁴ For us to ‘know’ how to make the distinctions between anarchy and order, between friend and enemy, etc. we must first already *be* sovereign. To be sovereign is to be able to determine these distinctions- it is a precondition of this knowledge. Thus sovereignty becomes the precondition of itself- sovereign knowledge is ultimately, like reason, always outside itself.

⁵ Bartelson refers to this characteristic of sovereignty as *parergonic* (1995: 49-52). In this way he makes a direct link to Kant who undertook an investigation of the concept of *parergon* in regards to aesthetic discourse. Kant was primarily interested in analysing the relationship between the frame and the piece of art that it frames. Bartelson explains that sovereignty as a *parergon* cannot be separated from the objects it “frames” nor can it be entirely included. He says “a *parergon* does not exist in the same sense as that which it helps to constitute; there is a ceaseless activity of *framing*, the frame itself is never present, since it is itself unframed (1995: 51).

'postmoderns' as well, subscribe to what he calls an "indefinability thesis" (1998: 17).

For him what this means is that a definition of sovereignty must be opposed not because it is constitutionally self-referential or exclusionary in its application, but instead because postmoderns are opposed to "*all* definitions" (1998: 17, emphasis added). Hoffman seems to demonstrate that he understands why defining sovereignty is problematic, but fails to grasp that Bartelson is not advocating a world void of definitions but one 'freed' in some aspects of the hierarchization produced by certain kinds of defining practices. Reminiscent of the apolitical critique of the first chapter, Hoffman sees those that subscribe to this "indefinability" thesis as trapped in a defeatist logic, doomed to wander a "anarchic" and "shapeless" world that cannot or more accurately, must not, be defined (1998: 18-19). The problem is that Hoffman fails to see that the question is not: 'to define or not to define?' Rather the question is: What are the consequences of particular practices of definition? What competing knowledges or identities are marginalized or excluded in the wake of sovereignty's claim to sovereign knowledge?

Despite what is a major limitation in Hoffman's investigation he nevertheless does raise important issues. His focused attention on issues of definition stems from his desire to separate the concept of sovereignty from the state. He argues that it is this linkage that has made sovereignty so contentious.

Only if we can conceptualize sovereignty in a way which *looks beyond the state*, will the question of contention [that surround sovereignty] itself cease to be a barrier to definition... The state, in my view, is the source of the problem. As long as we assume that sovereignty can only take a statist form, contention will paralyse rather than act as a stimulus... What makes sovereignty an impossibly problematic concept is the fact that it is linked to the state (Hoffman 1998: 19, emphasis added).

From the state Hoffman seeks to relocate sovereignty squarely in the individual such that sovereignty becomes a concept that “embraces democracy, autonomy and self-government” (1998: 20, 96-107). We will return to the issue of the changing *locus* of sovereignty with particular attention paid to the effects of an increased dependence on practices of self-government in the next chapter. My contention is that the project that Hoffman seeks to initiate is already well underway as an important element of emerging neo-liberal strategies of governance. However in its current form the autonomy and self-government that he feels springs naturally from this relocation are in practice their opposite. But this is getting ahead of ourselves. Returning to the issue of sovereignty as given, sovereignty’s close link with the state that Hoffman is so desperate to sever does play a significant role in conceptualizing sovereignty as given.

Sovereignty’s status as a concept that is essentially given stems in large part from its treatment by leading international relations theorists and its constitutional linkage to the state. The argument follows that for international relations to constitute a field of knowledge the question of sovereignty must be answerable and, in many respects, already be answered. Sovereignty’s definition is a prerequisite for the existence of states and the existence of states is a prerequisite for the field of international relations. What we must note is that there is a basic recognition that sovereignty is a difficult concept to define, but for most authors this is not a central concern. If attention is paid to this fact at all, authors pay lip service to its contestability and move on to the “serious” questions of international relations (Weber 1995: 2). What is important in this move is that the existence of sovereignty is unchallenged. Sovereignty *does* exist; all we need do is look

to a map to see that that world is divided into states and since these states *exist* so too must sovereignty. So while the precise meaning of sovereignty may be disputable, its existence is *given*- it does exist. As Walker remarks,

Its meaning might be marginally contestable by constitutional lawyers and other connoisseurs of fine lines, but for the most part state sovereignty expresses a commanding silence. At least some problems of political life, it seems to suggest, are simple and settled (Walker 1990: 1).

In sum, for international political theory to in fact remain international, sovereignty must be taken as given. Sovereignty establishes the units of analysis for international relations by establishing what is both inside and what is outside the state. This position further constructs the state as a knowable object on which we can act and anything outside the state as chaotic, unknowable and unregulatable.

This particular way of defining sovereignty has two effects that relate back to the conclusions in Chapter I. First, treating sovereignty as given ignores the historicity of sovereignty. It blinds us to the fact that sovereignty is again not a fact, but an idea. This move discounts competing versions of sovereign knowledges, practices and identities and allows dominant sovereignties in the present to further reinforce their position by strengthening a supposedly given definition of sovereignty in the past that reveals the current situation as inevitable, natural, and essentially uncontestable. Moreover, ignoring the historicity of sovereignty has particularly problematic effects for international relations theorists and realist theorists specifically which go unrecognized. By ignoring sovereignty's disjointed past, they ignore the multiplicity of state forms that the given definition of sovereignty currently encompasses and bolsters (i.e. democratic, totalitarian,

authoritarian, secular, theocratic, first world, third world, etc.). In doing so they ignore and thus leave uncriticized, fundamental constitutional and practical differences in these forms.⁶

Second, and I think most important, in terms of genealogy and our project here, by taking sovereignty as given, theorists preclude the possibility of investigating *how* the meaning of sovereignty is conceptually and practically established and stabilized. As Cynthia Weber remarks, international relations theorists must “close their eyes to what is without a doubt the most fundamental of political questions—how is the meaning of state sovereignty fixed in theory and practice” (1995: 3).

Sovereignty as Absolute and Indivisible

For Hinsley, “the idea of sovereignty was the idea that there is a final and absolute authority in the political community ... *and no final and absolute authority exists elsewhere*” (1986: 26). This definition reveals a second enduring constitutive feature of contemporary sovereignty along side its status as essentially *given*. While Hinsley’s definition seems simple enough on its face, he reminds us that sovereignty’s transformations have stemmed from the indeterminacy of its components.⁷ Thus, what exactly is meant by “final and absolute” or “political community” has posed further difficult questions to those seeking to better define sovereignty.

⁶ This limited focus has further complicated the already contentious issue of international intervention. See Donnelly (1995).

⁷ While Hinsley does recognize that transformations have accorded in sovereignty, these transformations are in evitable for him. They are stepping-stones on the path to the fulfillment of the enlightenment project.

The history of the concept of sovereignty in this regard has a rich theoretical tradition that includes seminal political theorists like Bodin, Hobbes, Locke and Rousseau. Drawing on our previous discussion, sovereignty or more specifically its subjects were for these theorists also *given* in some respects—the task then was not necessarily to prove sovereignty’s existence but to *recognize* its origin and its location, and to determine its limits.

Attention here focuses specifically on Bodin and Hobbes because their theories essentially lay the groundwork for a contemporary liberal conception of sovereignty and rationality of government. For both Bodin and Hobbes, the sovereign conceived as an absolute authority was essential to promote social order and security. As Camilleri and Falk note, for Bodin the idea that a central authority should wield unlimited power was inspired in part by a desire to bring order to politically divided 16th century France. Similarly for Hobbes, an “omnipotent” sovereign was the only alternative to a complete state of anarchy in which individuals found themselves in a perpetual state of insecurity (1992: 18-19).

It is necessary that those who are sovereigns should not be subjects emanating from any other and that they should be able to give laws to their subjects, and nullify and quash disadvantageous laws for the purposes of substituting others; but this cannot be done by one who is subject to the laws or to those who have the right of command over him (Bodin 1992: 2).

Bodin sought to recognize and reinforce the sovereign as a central authority that could wield unlimited power. This power was absolute, total and perpetual; it could not by its nature be subject to law because it was the supreme legislator. While the sovereign was subject to the “laws of God and Nature”, Bodin claimed that even a violation of these

laws did not justify removal of the sovereign—the sovereign’s status as absolute and indivisible was never in jeopardy.

Even if the result was tyranny, there could be no limitations upon the sovereign power except those that existed by the sovereign’s will. ... [B]ecause he feared anarchy more than he disliked tyranny and held that the sovereign power came from God and that its exercise must be independent of the subjects’ consent, Bodin insisted that misrule could constitute no right to restrain, depose or assassinate the sovereign (Hinsley 1986: 122).

Hinsley emphasises that despite the empirical weaknesses of limits on the sovereign they were nevertheless conceptually important. They mark the move from feudal to modern conceptions of sovereignty. Where Machiavelli had before Bodin sought to maintain a strict dualism between the sovereign and its subjects in order to free the sovereign from any limits, Bodin located both the ruled and the ruler in the same body politic, forcing the sovereign to respect certain universal moral and customary rules. For Bodin, the sovereign remained absolute, not to promote its own power as was the case with Machiavelli, but because this was in the interests of the community as a whole. The composition of the community, which lent itself to uncertainty and insecurity more than to order and security, made the recognition of an absolute authority in the form of the sovereign necessary to achieve social aims (Hinsley 1986: 121).

Hobbes, like Bodin, dispensed with a rigid division between the ruler and the ruled and also claimed that an absolute sovereign was necessary to guard against the inherent anarchy that constituted humanity’s “state of nature”, his famous “warre of every man, against every man”.⁸ However Hobbes dispenses with the limitations that

⁸ Hobbes says “Hereby it is manifest that during the time when men live without a common Power to keep them in awe, they are in that condition which is called Warre; and such a warre is of every man, against

Bodin had placed on the sovereign. He reconceived the relationship between the sovereign and its subjects not as a contract between ruler and ruled, but as a contract between the state and *every* individual. For Hobbes, individuals, imbued with inherent equality and autonomy, submit to the state — the modern *locus* of sovereignty — in the interests of security, safety and order. We will develop this further in the third chapter. Sovereignty remains absolute in this model but as opposed to Bodin who claimed that moral, or natural law was above the sovereign, Hobbes initiates a strictly positivist conception of sovereign authority that does not recognize any other authority outside itself.

While Hobbes is adamant that the state must remain absolute, he emphasizes citizens' (defined as the subjects of the sovereign) rights against the state. Because the sovereign's sole purpose in Hobbes's view is to ensure the security and freedom of its subjects, it is restricted and limited only to this original purpose. Hobbes contra Bodin was not as comfortable with the potential for tyranny that accompanied a sovereign with absolute authority who was completely unaccountable to citizens.

Hobbes and Bodin are important to contemporary dominant conceptions of sovereignty for several reasons. First, as highlighted by Hinsley, they are the first essentially *modern* theorists of sovereignty. By dispensing with the dualism that characterized past theories of sovereignty and locating both the ruler and the ruled in the same political body, they initiate a conception of sovereignty that is at once both limited and absolute (1986: 130). The once rigid distinction between the state or government and the people is abolished—the result being an expansion of the hand of government.

every man". This leads to a state where, Hobbes's famously writes, "the life of man is solitary, poore,

Second, while Bodin is still hesitant to strip sovereignty entirely of its divine origins, Hobbes derives the legitimacy of an all-powerful sovereign from an envisioned “free choice” made by individuals.⁹

Importantly, in the act of justifying the “necessary” limits of sovereignty both authors begin to entrench a version of human nature and the individual that reinforces the necessity of sovereign power and also its composition as absolute. This concern differs significantly from previous accounts of sovereignty that were ultimately unconcerned with questions of legitimacy. For example Machiavelli was mainly concerned with explaining how rulers could secure territory and act on the subjects within that territory despite the fact that they ultimately had no inherent claim to act in this way. Third, Hobbes’s treatment places sovereignty squarely in the modern state, which as we discussed earlier, may have the effect of excluding or marginalizing existing local forms of sovereignty in favour of sovereignty in the state. Last, and most importantly, both theorists not only introduce, but also clearly focus their energies on developing the limits of sovereignty. Thus, Rosenberg notes, “modern sovereignty is only allowed to be so absolute because it involves restricting much more closely what is to count as the legitimate domain of politics” (cf. Hoffman 1998: 40). In this way, my discussion of

nasty, brutish and short” (1985: 185-6).

⁹ Laclau emphasizes that for Hobbes the “contract” between individuals and the sovereign is a non-political act between given, essentially equal, self-governing subjects. Thus it is important to re-emphasize that for both Bodin and Hobbes it is not sovereignty itself that is given (as we discussed in the previous section) but rather the subjects of that sovereignty—the free and rational, though nevertheless dangerous, individuals. Laclau remarks that for,

Hobbes, in the state of nature power is evenly distributed among individuals, and, as each tends towards conflicting aims, society becomes impossible. So the covenant which surrenders total power to the Leviathan is an essentially non-political act in that it totally excludes the interaction between antagonistic wills. A power that is total is no power at all (2000: 54).

Hobbes and Bodin reveals the foundation of a classical liberal definition of sovereignty preoccupied not with how sovereign power is mobilized its effects are, but on whether its use is legitimate. As Beitz remarks, this conception of sovereignty does not seek to establish moral or ethical foundations for its use, but is instead only interested in the “arrangements of institutional prerogatives and responsibilities within the state” (1991: 238). Here we see a new rigid dualism re-emerge, but now not between the sovereign and its subjects as before Bodin and Hobbes, but between what is governable and what is not; the state and its other—civil society.

Sovereignty as Territory

Taken together the previous two attributes of the dominant conception of sovereignty reveal sovereignty as a concept that not only facilitates, but is itself dependant on, the existence of a political site or body on which sovereignty “acts”. Furthermore, because sovereignty is conceptualised as absolute, it has, or must have, the capacity for absolute or total governance of the object on which it acts. In this way sovereignty cannot exist outside of that which it constitutes as sovereign—it requires an object on which it acts. Its composition implies its object.

Where previously sovereignty had been invested in an actual personality, the monarch, in liberal formulations of sovereignty it is invested in the state, an abstract assemblage of institutions supposed to represent the general will of the citizenry and guarantor of individual rights and freedoms. This again posed questions about how sovereignty can be absolute, but also “where” exactly sovereignty was located in a

physical sense posed major questions to this formulation. The solution was the association of the sovereign with the physical territory of the state. Foucault says that,

[t]he targets of power are two things, on the one hand the territory and on the other its inhabitants. In this respect Machiavelli simply adapted to his particular aims a juridical principle which from the Middle Ages to the sixteenth century defined sovereignty in public law: sovereignty is exercised on things, but above all on a territory and consequently on the subjects that inhabit that territory. In this sense we can say that territory is the fundamental element both in Machiavellian principality and in juridical sovereignty as defined by the theoreticians and philosophers of right (1991a: 93).

Bartelson notes that sovereignty is further imbricated with the state on the conceptual level. To locate sovereignty, one need now only locate the state. This itself is quite problematic. However as I highlighted in my discussion of sovereignty as given, international political science has traditionally taken these objects as empirically identifiable and incontestable. Principal among these stable foundations are the fixity of borders. As we discussed earlier sovereignty relies in part on its ability to define an object upon which it can act. What is more, is that the prescribed constitution of this object by sovereignty, necessitates the existence of sovereignty in some form. Bartelson continues,

...sovereignty is taken to be a political or legal fact *within* an already given and demarcated territory, simultaneously signifying sovereignty *over* the same territory, and everything that happens to be inside this portion of space (1995: 29).

In this way sovereignty is the necessary condition for the possession of territory, and territory is the necessary condition of sovereignty. Either way, there are no serious challenges to their status as already given. For international political theorists, the

stability of objects like the state depends primarily on the stability of their attributes.

Thus, the borders of the state tend to be seen as fixed and unchanging. In its association with territory, the constitution of sovereignty is further depoliticised. What is most important is that sovereignty's conflation with territory further fixes the separation between the ruler and governed and thus also bolsters the binary conception of power. Territory cannot act on the sovereign; rather the sovereign acts on the territory and its inhabitants.

Our discussion of sovereignty to this point has revealed sovereignty as a type of knowledge that through various practices of definition has prompted the marginalization or near-total exclusion of competing claims regarding representation, community and political authority. As well, we highlighted the fact that sovereignty's conceptual proximity and current interdependence with theories of the state has had even more wide-reaching effects. If we think back to the conclusions of the Chapter I it is easy to associate the dominant modern formulation of sovereignty with the type of knowledge against which I contrasted the goals and orientation of a genealogical methodology.

As we discussed in our critique of Hoffman's interrogation of Bartelson, it is not *a* definition of sovereignty that is problematic, but how *particular* defining practices and the knowledge they produce may have problematic consequences. The definition of sovereignty that we have investigated so far provides some indication of this. It highlights the tendency of particular kinds of knowledge to assert themselves as natural, inevitable and incontestable in order to secure their position as hegemonic.

Governmentality and Sovereignty

The first chapter introduced Foucault's theory of governmentality as a way of expanding and applying the genealogical method to questions of power and rule in contemporary societies. There we juxtaposed dominant conceptions of power and governmentality. Contra traditional formulations of power, governmentality sought to displace the notion that claims power can be absolute or centralized in one site or body. There we also drew attention to how traditional conceptions of power did not necessarily seek to understand the exercise of power or its effects, but instead focused attention almost exclusively on issues of legitimacy. When the effects of power were investigated, they were mainly just dichotomised along a narrow distinction between coercion and consent. Again, we highlighted that the concern in the traditional model of power is not that power is being exercised *per se*, but rather that it is being exercised legitimately. Lastly, our discussion of governmentality, in contrast to traditional conceptions of power, sought to draw attention to the "productive" aspects of power. As opposed to seeing power as the essential negation of freedom, governmentality recognizes that power does not exist entirely separate from the object on which it works—the constitution of the object on which it works is itself a creation of power. Power then is not the antithesis of freedom; rather freedom can only be produced through the exercise of power. Given all this, what is the relationship between governmentality and the theory of sovereignty that we have been describing?

Even at first glance it is not difficult to see that the traditional definition of sovereignty, advances and bolsters a formulation of power that is capable of being absolute and located in a particular or privileged location or body. If this is the case, it

would appear that sovereignty is entirely contrary to governmentality. In his elaboration of the governmentality thesis Foucault's theoretical diffusion of power to a multitude of sites and discourses sought to prevent a unitary body from "possessing" the kind of absolute power that facilitates and founds the conception of sovereignty that we have been articulating. In fact, if we think particularly about our discussion of Hobbes and Bodin and their reasons for advancing such a narrow and centralized theory of sovereignty, we see that the recognition of a multitude of competing claims to power that Foucault sought to evoke is exactly what both authors were so desperate to avoid.

If we also consider the issue of territory, that we developed in relation to sovereignty above, we reveal another important distinction: contrary to sovereignty and its association with territory, governmentality is not concerned with, or does not rely on, the possession of territory. Governmentality's object is not pre-given, contra sovereignty's relation to territory or Hobbes rational individual, it is a product of power. As Foucault again affirms, governmentality describes the disposition of things.

I do not think this is a matter of opposing things to men, but rather of showing what government has to do with is not territory but rather a sort of complex composed of men and things. The thing which government is to be concerned are in fact men, but men in their relations, their links, their imbrication with those other things which are wealth, resources, means of subsistence, the territory with its specific qualities, climate, irrigation, fertility, etc.; men in their relation to that other kind of things which are customs, habits, ways of doing and thinking, etc. (1991a: 93).

Given these clear divergences the relationship between sovereignty and governmentality appears inherently contradictory and incompatible. Conceptualising the relationship between sovereignty and governmentality in this way emphasizes that the *goals* of

Foucault's use of governmentality as a means to examine modern power relations, and the uses of sovereignty are necessarily oppositional. Again, governmentality seeks to reveal that meanings, identities and practices are never simply natural, unitary, or incontestable. The goal of this recognition is to disrupt fixed matrixes of knowledge that sustain marginalization and exclusion. Sovereignty on the other hand is currently constituted and evoked in order to constitute such a matrix—to fix meanings, identities and practices in an explicit attempt to minimize difference and exclude contradictory or competing knowledges, identities and practices.

A second conceptualisation of the relationship between governmentality and sovereignty is what we might call 'evolutionary', as opposed to strictly oppositional. In this view governmentality and disciplinary power are seen to have replaced sovereignty and juridical power as the dominant technologies of power governing contemporary societies. In this model law as the primary manifestation of juridical power has been surpassed by other forms of expertise and knowledge including medical, correctional, psychiatric, etc. Thus, disciplinary power, the power employed in broad projects of government, is thought to have eclipsed juridical power, the primary type of power in projects of sovereignty.¹⁰

The central deficiency with both these characterizations of the relationship between governmentality and sovereignty as strictly oppositional or evolutionary is that they ignore critically important elements of this relationship. Dillon demonstrates this

¹⁰ We return to a more detailed discussion about shifting attitudes toward the effectiveness of juridical power versus disciplinary power and the role of law in contemporary regimes of governance in the third chapter. There we investigate two competing claims in order to emphasize the varied uses and effectiveness of human rights in projects of governance.

aspect of the relationship in an article in which he examines the effects of the pronouncement of a “new world order” following the revolutions of 1989 and 1990 in Eastern Europe, on our ability to constitute and orient knowledges and practices of domestic and international politics. He contends that following the “demise” of the global bipolarity that had characterized the cold war era, the field of international relations in the West was faced with the problem of conceptually reconstituting ‘the state’ in light of a no longer clearly defined “other”.

To understand the impact of this shift Dillon insists that we must pose a question; but not the question asked by international relations theorists; not a question that only seeks to rescue the state’s origin in the service of stability and existing fixed knowledge in the present. Instead the question posed must be a genealogical one; one that, as we have discussed, exposes its targets’ contingency; one that emphasises instead of shielding its inherent vulnerability. Following Dillon the question then is not how do we conceptually reconstitute the state and relations between states after the demise of a world riven by the tension between two superpowers? Rather, the question Dillon poses is: What are the effects of the “advent and globalisation” of a complex interplay of governmental and sovereign power that is defined and fixed through the new constitution of the state and the international (1995: 326). In other words, what are the effects of the new definitions of self/other, friend/enemy, etc. prescribed by new concepts of the state and its other? And importantly how are they actualised through the *interplay* of governmental and sovereign forms of power?

The reason why Dillon is so important is that in establishing a ‘positive’ relationship between governmentality and sovereignty he emphasizes that to

conceptualize them as entirely oppositional is to ignore their complementary and interdependent connection, and thus to ignore the effects produced through this relationship.¹¹ Secondly, through this initial recognition he draws attention to the fact that sovereignty, beyond its goal of self-reification, can actually be employed in governmental strategies to promote particular ends.

That complex interdependence, the complicity of one in the other, is reliant on their mutual reliance on one another and upon the discursive production, dissemination, and consumption of regimes of truth (Dillon 1995: 328).

For Dillon governmentality and sovereignty are two orders combined in “the modern manifold of power” but in ways that until now have been largely under-investigated (1995: 328). The mechanisms through which each “form” of power operates may be oppositional in some instances, but more important both can also effectively reinforce and supplement one another in projects of governance.

The ‘evolutionary’ model of the relationship between sovereignty and governmentality that I introduced earlier also fails to acknowledge this mutually supportive relationship. Instead it claims that sovereignty as a form of power in contemporary societies is outmoded and that the disciplinary powers at work in governmental strategies have simply replaced the failing juridical mechanisms of sovereignty. Again drawing this conclusion prevents us from seeing the combination of these powers. “The order of the panopticon”, Dillon warns, “does not replace the order of

¹¹ This type of relationship, one that appears at first glance to be entirely oppositional but is in fact mutually facilitative, demonstrates the limits of analyses aimed at prescribing and securing the origins and limits of essentially political concepts like sovereignty. This kind of relationship is only revealed by examining the effects of the concepts as opposed to focusing almost exclusively on their constitution. We expand on this theme in the next chapter when we critique Falk’s juxtaposition of human rights and neo-liberalism.

the sovereign spectacle” (1995: 328). This recognition is a critical first step in our understanding of the effects of sovereignty and the transformations in its definition that take place in the shift from classical liberal to neo-liberal governmental rationality.

From Dillon's investigation we can build on the recognition that sovereignty and governmentality are not inherently oppositional. We can also highlight two of the ways in which sovereignty and governmentality intersect and also differentiate themselves on a very general level. The first is the instrumental use of sovereignty by governmental strategies in projects of governance and the second is the construction of governable populations by mechanisms of sovereignty. Both instances help draw out the dynamics and effects of the interplay of both concepts, as well as expand on our definitions of both sovereignty and governmentality more generally.

Foucault highlights the instrumental use of sovereignty when he defines governmentality. His definition demonstrates at once governmentality's similarity and distinction from sovereignty. Governmentality is not, he says,

...a matter of imposing laws on men, but rather of disposing of things, that is to say, to impose tactics rather than laws, and if need be to use the laws themselves as tactics. To arrange things in such a way that, through a certain number of means, such and such ends may be achieved (1991a: 94-95).

Foucault's remarks emphasize that sovereignty may be employed as a tactic by governmental strategies toward the realization of some purpose or end. In this role sovereignty becomes an accomplice to governmental strategies and not merely a means to justify its own exercise and existence as we discussed earlier on.

The second instance of interdependence between sovereignty and governmentality is demonstrated in sovereignty's ability to define and in turn help constitute a governable population on which multiple strategies of governance can work. Government in this sense, like sovereignty, must have an object on which it can act. Here sovereignty plays an active role in establishing the requisite "borders" and the necessary population on which governmental strategies can operate. As sovereignty is the traditional means through which states predominantly define and act upon the populations that reside within their prescribed borders, the objects constituted by definitional claims of sovereignty (i.e. citizens, society, etc.), help provide the governmental strategies operating at this national level with the necessary population on which they may act.

Despite this interaction we cannot forget the important distinctions between sovereignty's construction of a population and governmental strategy's construction of a population. The strategies or tactics of governance revealed by governmentality cannot be positioned entirely in opposition to, or separate from, the objects they govern, as is the case with sovereignty. Instead, as we have emphasised several times, governmentality recognizes the interaction and contingency of itself and thus the objects it helps constitute. Governmentality recognizes and disrupts the separation of population and mechanisms of governance. In sum, my discussion of Dillon emphasizes the positive interconnection of sovereignty and governmentality. Governmentality, stresses Dillon, "seems to need its kings as much as kings and princes need governmentality" (1995: 328). A topic we will investigate further in Chapter III.

Classical Liberal Governmental Reason

Where the last section sought to establish a more accurate relationship between governmentality and sovereignty in order to lay some of the foundations for the coming analysis of transformations in sovereignty, this section continues this role by beginning to draw together our introduction of liberalism and governmentality from the first chapter, our discussion of sovereignty from earlier in this chapter and lastly, sovereignty's relationship to governmentality that we have just explored. From these threads we can begin to piece together the components of a classic liberal governmental rationality in order to demonstrate the effects of this style of governance. In doing so we locate sovereignty as a particularly effective technology in these strategies and we further elaborate on the effects of particular definitions and practices of sovereignty in these strategies. This investigation illustrates in more detail the interaction and interdependence of governmentality and sovereignty, it underscores the necessity of a genealogical approach to issues of power and rule in contemporary societies and most importantly, demonstrates the latent paradoxes at the heart of liberal governmental reason.

As discussed in the first chapter, liberalism becomes a target for governmentality not as an institution, ideology or even political system *per se* but as a series of practices that demonstrate a particular rationality in the exercise of government. As described by Burchell, liberalism is theorized in this approach as a particular way of making the activity of government both “thinkable and practicable” (1996: 21).

If we recall, what makes liberal governmental reason a target for governmentality is first that it is at once both an indictment of government as potentially oppressive, but also it is a rational defence of itself as a series of “necessary” practices of government. It

provides the critical tools to challenge existing or even future competing governmental forms (particularly those that emerge “outside” the state) while simultaneously insulating itself as a rationality of government from criticism.

Secondly, liberal governmental reason becomes a target because it conceptualises freedom and power in an essentially negative relationship. If we think back to Hobbes again, individuals are conceived as already constituted and inherently free prior to government but also in constant danger because of this freedom. In order to protect them from this uncertainty and in the interests of progress, these free individuals surrender at least a portion of their inherent freedom to the state. But the power thereafter located centrally and absolutely in the state is unfortunately in constant danger of superseding its mandate and becoming oppressive. As I have highlighted several times, liberal governmental reason as a result of this conception is predominantly concerned with the possibility of too much government and is less concerned with either the effects of the defining practices that determine this distinction, or the potentially negative effects of governing too little. The assumption is that intervention by government equals a loss of freedom and the absence of government its extension. In this way liberal governmental reason displays a commitment to the idea of freedom and individual autonomy. However as will become clear shortly, it practices this commitment in ways that in fact limit and deny autonomy.

The Composition of Classical Liberal Governmental Rationality

Dean sets out four broad categories that clarify the mechanism and formulations that comprise classical liberal strategies of governance. For our purposes these categories

not only help clarify components of classical liberal governmental reason, but also act as markers that help identify and elucidate the effects of a transition from classical liberal to neo-liberal governmental reason and the shifting articulations of sovereignty that are currently underway in many liberal democracies. A detailed examination of this shift comprises the focus of our next chapter.

The categories that Dean identifies include the economy, security, society and the law (1999: 113). Our discussion in this chapter will focus primarily on classical liberal articulations of economy, society and the law with some brief reference to changing articulations of security. Both the economy and society are crucial to the constitution and practices of liberal government, but simultaneously they are in constant tension with it. These sites are essential to the composition of liberal governmental reason because they necessitate the very existence of government. Their constitution opens a limited space for critique of governmental forms, while all the while maintaining this space as essentially limited. In this way liberal government appears “open” in the sense that it is a constant critique of government, but this critique is also always already limited because it fails to be entirely self-reflexive. Thus our examination of these categories helps develop our understanding of the paradoxical tendencies of liberal governmental reason toward exclusion and marginalization—the implication of which we elaborate in the last chapter. Moreover, our discussion of law and its articulation as both a distinctive instrument of sovereign power as well as a set of normative prescriptions demonstrates the imbrication of strategies of government characteristic of liberal governmental practice. Furthermore it underscores my assertion that sovereignty and disciplinary power can be mobilized by each other in projects of governance. Last and importantly, our investigation provides

objects of analysis that allow us to recognize the contemporary shifts in classical liberal governmental rationality toward neo-liberal formulations and the impact of this shift on sovereignty and, ultimately, individual autonomy.

The “Natural” Economy and the Bounded Market

The economy plays a critical role in the construction and orientation of classical liberal governance. Dean contends that there are three “events” which emerge to shape articulations of the economy in such a way as to emphasize that the constitution and persistence of economic processes are internal unto themselves and bear no relationship to positive actions by the sovereign. In other words, Dean attempts to highlight the way in which, under liberal governmental reason, the economy has, with relative success, been articulated as an entity either outside of, or in opposition to, the will of the sovereign.

Within classic liberal governmental rationality the economy is offered as a “natural” phenomenon the existence of which is prior to, and in tension with, the existence of the sovereign state. This vision of the economy, as essentially *apolitical* with no constitutive connection to the sovereign, forms the first of the three “events” that Dean posits define the economy under a classical liberal governmental regime. What this first articulation draws attention to is the existence of spheres beyond the dominium of the liberal sovereign that we introduced in our discussion earlier of liberalism and Hobbes.

The second event is the introduction and proliferation of Adam Smith's idea of an “invisible hand” that enigmatically guides the economy.¹² This characterization in

¹² Smith claimed that society as a whole is best served by the actions of self-interested individuals who act entirely in their own interests. Attempts to act for the “public good” will only result in unforeseen consequences and unwanted returns. Referring to the role of individuals Smith suggests,

conjunction with the first event results in a conceptualisation of the economy not only as a privileged site of non-politics, but also as a space entirely able to isolate itself from any attempted “interference” by the sovereign. This event therefore had the distinct effect of rendering economic apparatuses and practices in some ways “tamper-proof”.

Accordingly these first two events rely on the notion that left to its own devices the internal mechanisms of the economy (which, as Smith and others that followed have argued, can never be fully understood) naturally foster the greatest benefits to all members of the state by relying on the actions of self-interested economic subjects. Because knowledge of the economy is essentially limited and incomplete—hidden behind what Dean calls “a benign opacity” (1999: 114)—interfering with this “invisible hand” will only serve to undermine the “natural” capacity of the economy to provide the greatest good to all that comprise the state. As Burchell further remarks,

Early liberalism sets limits to the State’s capacity to know and act by situating it in relation to the reality of the market or of commercial exchanges, and more broadly of civil society, as quasi-natural domains with their own intrinsic dynamic and forms of self-regulation. On this view, interventions by the State in these domains are likely to be positively harmful. ... *Laissez-faire* is here both a limitation of the exercise of political sovereignty *vis-à-vis* the government of commercial exchanges, and the positive justification of market freedom on the grounds that the

He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it.... he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good (Smith 1978: 447-448).

State will benefit more – will become richer, and more powerful – by governing less (1996: 22).

Smith's conceptualisation of the economy, dependent on self-interested individuals striving only for their own interests, not only effects the constitution of the economy, and the sovereign by extension, but according to Foucault it also serves as a crucial stage in the transformation of the relationship between knowledge and government. Smith's separation of the economy from the sovereign in such a definitive way creates a "relative distance and autonomy" from the state and also a new field of knowledge – political economy – that can be used to critically determine the limits of the state as a knowing subject (Gordon 1996: 15). In this sense the economy is conceptualised as sovereignty's limit and is also the field of knowledge that allows this division to be constituted as such. It redefines or redraws the line between the sovereign and what can be effectively governed and assures the impossibility or ultimate folly of a nationalized economy. Most importantly, as Gordon again emphasizes, liberalism is thereafter capable of being "characterized in Kantian terms as a *critique of state reason*, a doctrine of limitation and wise restraint, designed to mature and educate state reason by displaying to it the intrinsic bounds of its power to know" (1996: 15). If we recall the discussion of Kantian critique from the first chapter, the economy in this model assumes the privileged position of an objective or quasi-transcendental evaluator from where rational judgements about the necessary limits and effectiveness of government and the sovereign can be made.

The introduction of this new field of knowledge of political economy marks Dean's third "event" in the conception and orientation of the economy in classical liberal governmental reason. Political economy seeks to understand social and political events

and actions through economic terminology and judges the value of these events and actions using economic criteria. The ascendance of political economy as an increasingly important field of knowledge for ordering both economic and social life signals the economy's move from an external "site" of action toward a "bio-economic" reality. As Dean articulates it, the expansion of the economy and markets as a model for social and political relations alters our conception of the economy and its various others – particularly sovereignty – such that it is "decisive in the establishment of liberalism as a form of governance *through* rather than *of* the economy" (1999: 114). The economy because of its perceived distance and antagonistic relationship with the mechanism and strategies of government is envisioned as a "neutral" criterion for these mechanisms and their results. Consequently we can begin to identify a number of knowledges and practices that begin to articulate and judge their own effectiveness and relationships through the language of markets. Most striking is the degree to which the economic criteria prescribed by political economy as a field of objective knowledge has been adopted into spheres once constituted with little or no reference to these criteria (i.e. medicine and education). As we will see in the coming discussion on the neo-liberal articulations of economy, this shift has important consequences.

Before proceeding to our discussion of the role of "society" in classical liberal governmental reason, a few words of caution. The transformations in governmental reason and conceptions of the economy just described are by no means complete, strictly instrumental or functional in the theoretical sense of the word. They do not mark a complete or total transformation of actual economic practices or even our knowledge of them. Nor are they simply inevitable transformations or stages in some steady march of

emancipatory progress. Rather these articulations sponsor new ways of understanding events and practices such that they capture our imagination by effectively explaining particular experiences, identities or practices at least for a short time. If we recall the first chapter, they offer what Owen called “proof of power”. As Gordon warns, despite the significance of Smith’s text in the articulation of a new field of knowledge and the consequences that arise from the application of this new knowledge to existing forms of knowledge and practice, the book and what it prescribes should not be understood as “a moment of total discontinuity in governmental thought” (1996: 16). We must resist, as I said at the outset of this chapter, the temptation to think that singular events like these can mark a distinct break from the history from which they emerge. Thus, again as highlighted by Gordon, “*The Wealth of Nations* is not an ivory-tower edifice of theory, any more than it is a propaganda tract on behalf of the rising bourgeois class” (1996: 16).

What our examination of these transformations in economy does reveal is important. First, certain definitions of the economy provide an effective mechanism that facilitates liberal governmental objectives without necessarily expanding the role or power of the state directly. Second, arenas in which individuals operate without direct “interference” from the state are argued to be there to promote and secure the conditions for individual freedom of action. Third, the economy is seen as a “natural site” governed by laws that are unknowable and therefore these spheres are unregulatable, unchallengeable and essentially unchangeable. Fourth, because these sites are unknowable they represent the opposite condition of sovereignty (thus the state) that assumes that the sovereign is all knowing and absolute in the sense that a particular object can be acted upon absolutely. Fifth, and most importantly, from this supposedly

oppositional space economy is able to launch relatively “objective” critiques of governmental strategies because it is “untainted” by governmental objectives and “politics” more generally. In this way the economy is essentially a game played by different rules than all other games. Last, liberal governmental reason is designed to, as Hindess puts it, “foster the form of life appropriate to a community of such autonomous individuals” (1996: 65).

At the close of our discussion of liberal governmentality’s articulation of economy it is important to emphasize that this model of economy extends to all relationships of government. Thus, government must be used as efficiently as possible. When this assumption is coupled with the belief that individuals are paradoxically most altruistic when greedily pursuing their own self-interests, we are left with a vision of government that is not only minimal, but ultimately always limited and determined in large part by the dictates and orders of the market.

Constructing Society

In spite of its heavy dependence on the mechanisms of economy to orient and regulate interaction between individuals, classic liberal governmental reason recognizes that the desired conditions wherein individuals can maximize their “inherent” freedom cannot be secured through the economy alone. The problem is that in order to facilitate and maintain the conditions necessary for individuals to engage in the economy – to practice their freedom – liberal government must establish a “space” wherein the relationship between the “natural” economy and the autonomous self-interested individual can flourish. To establish and secure this space liberal government must rely

on mechanisms of sovereignty and law. This again highlights a clear instance where mechanisms of sovereignty aid in the creation of objects on which governmental apparatuses might act. However as a consequence of this relationship a tension arises between the freedom of the economy and the need to secure this “natural” space (and the relations that operate within it) through State (sovereign) intervention. Consequently inside this model the interests of the legal and political subject are in a constant state of tension with the economic subject. As a result liberal governmental mechanisms must prescribe and secure a difficult balance between these two often-competing orders.

Liberalism begins, Foucault says, with the recognition of the heterogeneity and incompatibility of the principles regulating the non-totalizable multiplicity of economic subjects of interest and those operating in the totalizing unity of legal-political sovereignty (Burchell 1991: 137).

This tension highlights the transformation in conceptions of security in strategies of liberal governance. This transformation is manifest in two ways. First, security conceived in liberal governmentality moves from a preoccupation with the physical security of the State and its members—from external threats to order—toward a conception that recognizes that threats to the stability of liberal governmental order may emerge internally as well. Consequently, the stability of particular spheres like the economy and society that help maintain the general conditions that permit liberal governmental order to persist become the central concern for classical liberal understandings of security. In this way, “liberty”, as emphasized by Foucault, is a necessary condition of security in liberal governmental regimes (Gordon 1991: 19-20). This is the second way that questions of security are transformed in classic liberal governmental regimes. Where the previous “police” conception of security saw the security of the State or sovereign as primarily

dependent on the exhaustive regulation of ‘all men and things’, liberal governmental reason reasons that the most effective way to attain security is to secure the conditions under which individuals might practice their freedom (Dean 1999: 116-117). Hobbes and Bodin’s original concern with stability and order remain an essential concern, however the means by which this is secured is dramatically altered in many ways.¹³

Hindess draws attention to another dimension of the transformation of security in liberal governmental reason by distinguishing between political and governmental rationality. He argues that political rationality while certainly implicated in governmental projects does not necessarily seek governmental outcomes. Instead it is focused primarily on the advancement of a particular individual or group’s interests often *contrary to* the population’s interests manifest in the state and its policies. With this in mind Hindess says that the question of security becomes “how to ensure that the politically oriented activities of the governed population do not disrupt the proper workings of various state agencies” (1997: 263). What remains is an articulation of security predominantly oriented toward ensuring that liberty is practiced both in the *right way* and the *right place*. What we see then is that the mechanisms of security begin to also focus inward. The armed men that once stood atop the walls to protect us from the dangerous other have come inside—to stand between us and the walls supposedly there to protect us and secure our freedom—to reveal that it was not really us they have been protecting all along, but in fact the walls. We expand this notion of a “responsibilized” freedom in the next chapter.

¹³ However as we will discuss at the close of this chapter recent events have aptly demonstrated that police conceptions of security are still never far below the surface.

The problematised space referred to above in which the relationship between the economy and the individual can flourish is civil society or simply “society”. It is through the articulation of a specific form of society, like the economy, that classical liberal government is able to mobilize the inherent tension between the politico-legal and economic subject to promote the security of sites or spheres where individuals can best practice their freedom.

The question then is what articulation of society best facilitates these conditions? Dean identifies three notions of the classical liberal articulation of society that help develop, orient and bolster classical liberal governmental reason (1999: 124-128). Investigating these articulations of society underscores among other things, the ways in which government is accomplished without direct action by the state.

First, society like the economy is assumed to be a natural and identifiable entity. As Burchell puts it, society “is already always there, the natural-historical form of human species life. Society is ‘as old as the individual’” (1991: 134). Society in this first reading is comprised of a population, economy and the mechanisms that mediate and govern these spheres. It also finds itself located in a specified territory that is secured by the processes that seek to promote and secure the economy through legal and political channels. Thus technologies of security and law also find themselves positioned, at least in part, in society.

The second prescribed attribute of society by liberal governmental reason is that it is a totality. Like the economy, society must be defined in such a way that divisions between what is inside and outside society, again, what can be governed by the state and what cannot, are made relatively rigid or optimally appear natural and self-evident. Thus

to identify these “borders”, certain tendencies or similarities in the population must be identified and be conceptualised as irreducible to the actions of the singular individuals within that population. These tendencies construct society as a unitary entity with certain observable characteristics that may not be identifiable in any one individual within that population. This new type of knowledge is only really possible after the introduction and “sciencization” of statistical technologies in the early 19th century. Prior to the introduction of these technologies and the ability to assess the generalisability of data collected there was in actuality no such thing as society or a “social problem”. Instead, all practices and relationships were reducible to the individuals that engaged in them. Society was, before statistics, not a totality; it had no “attributes” of its own outside of the individuals that somehow naturally constituted it and it could therefore not be identified or demonstrated.

As I highlighted in the brief discussion of the transformation of questions of security in liberal governmental reason, while society is a totality and always already there, it is nevertheless in constant danger of fragmentation or collapse due to the tension between the interests of the politico-legal subject and economic subject. This tension constitutes society such that questions of security necessarily intersect with questions of social well being. This is the third constitutive attribute of society as prescribed by liberal governmental reason. Society is conceived as, what Gordon quoting Foucault called, a “self-rending unity”(1991: 22) and what Dean describes as “a domain of cohesion and solidarity, but also of breakdown and dissolution” (1999: 125). The recognition of the tension inherent in liberal conceptions of society invests liberal governmentality with the critical capacity to recognize that societies are complex and not wholly oriented and

determined by economic interest but also by non-economic prerogatives such as the preservation of identity, family or community. Hence the egoism of the economic subject is mediated by potentially altruistic or moral tendencies of the social subject. As Dean remarks, under liberalism *Homo Æconomicus* becomes an *ideal* within the more “concrete and real” relations of civil society (1999: 125). What is most important to recognize is that this ideal is thereafter utilized by liberal governmental strategies to order and manage those societies. Rose also highlights this when he says “persons and activities were to be governed *through* society, that is to say, through acting upon them in relation to a *social* norm, and constituting their experience in a *social* form” (1996: 40). Importantly this conception of society as inherently unstable assures technologies of security – those once associated with an omnipotent sovereign – remain an essential component in these stabilizing and ordering projects that seek to render society and the state governable.

Law and Norms

I save much of the discussion on the transformation or utility of law until the next chapter. For now it suffices to say that Dean argues that law has no special affinity with liberalism and that its role in contemporary regimes of liberal government is more akin to a norm and consequently it is not predominantly mobilized by juridical mechanisms of rule but disciplinary ones. In some ways Dean’s analysis characterizes the problems I associated with those that advance an ‘evolutionary’ conception of the relationship between sovereignty and governmentality. He diminishes the role of sovereign or juridical power, a central component of law, in favour of disciplinary power and in doing

so essentializes the effects of law in strategies of governance. Thus he overlooks the effects of the positive relationship between sovereignty and governmentality we sketched out earlier. Dean finds himself in good company following this line of thought. Foucault also claimed that we have entered a period of “juridical regression” wherein mechanisms of law find themselves incorporated into “a continuum of apparatuses... whose functions are for the most part regulatory”(1990: 144). In this instance Foucault says he does not want to diminish the position of law, claiming it does not simply “fade into the background”. This repositioning of law as merely another governmental technology is uncharacteristically deterministic for Foucault. This articulation connotes an easy and almost seamless union between law and other regulatory knowledges and practices. Law is seen to slip easily under the broader umbrella of regulatory technologies at work in strategies of liberal governance. This trivializes or ignores the divisions and tensions that arise when law and broader strategies of government meet. While governmental strategies can employ technologies of sovereignty in governmental projects and vice versa, their intersection is never seamless or completely invisible. These moments of friction are critically important because they potentially reveal the same conditions that we seek to expose by employing the genealogical method. Mainly, that each project, either of government or sovereignty, is contingent and politically constituted. This recognition may disrupt a project’s claim to be natural, self-evident or unchallengeable and in turn potentially mediate the exclusionary effects of its definition or defining practices. Thus the collisions and tensions that Dean largely ignores may open critical spaces, at least temporarily, from where we might better locate and orient ourselves in the

present.¹⁴ Again, we will discuss the intersections of different forms of power and the claim that law is less relevant to the study and understanding of contemporary technologies of power in the next chapter.

Despite this weakness, the assertion that law and liberalism share no necessary affinity is an important one. It underscores two things. First, that there are no essential or necessary features of law. And second, that law need not be an inevitable feature of liberal societies, merely certain articulations of law can be effective instruments of particular forms of liberal governance. As Foucault remarks,

Liberalism sought that regulation in ‘the law’, not through a legalism that would be natural to it but because the law defines forms of general intervention excluding particular, individual or exceptional measures; and because the participation of the governed in the formulation of the law, in the parliamentary system, constitutes the most effective system of governmental economy (1997: 77).

Current formations of law lend themselves to liberal governmental reason for at least three reasons, identified when we discussed the relationship between sovereignty and governmentality. First law generalizes and formalizes; and in this way it is able to create, or at least significantly aid in the creation of, a population on which it may act. This process of definition also sets limits on what the law can and cannot do, and where the law can and cannot intervene. Second, through this process of generalization it marginalizes or excludes the particular. And last, law also permits the governed to be

¹⁴ Examples of what I have called collisions of technologies or strategies of rule are numerous. Moreover, as I will argue in the next chapter, shifts between different strategies of rule have intensified as we move from what I elaborated here as classical liberal governmentality toward neo-liberal governmental rationales. For more sustained discussions of particular kinds of these intersections see especially Valverde and Weir (1988), and Smart (1990, 1992) who highlight the regulation of women’s bodies and sexuality by the law and other systems of expertise. See also Hunt (1999), Valverde (1995) and Little (1998) for broader discussions of historical intersections between law and other apparatuses of moral regulation.

involved in mechanisms of their own governance. Law is positioned such that its practices are said to act as what Dean calls “instruments of review and mechanisms of accountability” on government and governmental initiatives (1999: 123). To this it is important to add that the language of law—the language of sovereignty, liberty and rights—situates law and state regulation in opposition to individual freedom and autonomy for the most part. In this way, law is again both able to emphasize the role of the governed in their own regulation. Most critically, it emphasizes that this self-government must be practiced in essentially limited ways that do not threaten the overall stability or the underlying assumptions of the state as sovereign by fundamentally challenging the role, boundaries or necessity of certain “freedom-securing” spheres such as the economy. And also that self-government and government more broadly is recognized as fundamentally necessary.

Having elucidated some of the principle assumptions of classical liberal governmental reason through our examination of articulations of economy, society and the law, we now turn back to our discussion of sovereignty to investigate how sovereignty is implicated in these formations and how these articulations have transformed sovereignty. Thus, how then are sovereignty and its practices implicated in the constitution of classical liberal governmental rationality? And how do these processes in turn transform sovereignty?

Liberal Governance and Sovereignty: Reworking the individual and the state

As we discussed earlier, monistic articulations of sovereignty remained dominant and relatively fixed before Bodin and Hobbes. As Hinsley remarks,

Men retained the almost universal belief that the political society had been instituted in obedience to God's will and to immutable natural law in a process which had left the Ruler on the one hand and People on the other with separate and inextinguishable rights (1986: 130).

Here sovereignty's insistence on the separation and hierarchical ordering of the subject and object is most stark. One of the important effects of this feudal conception of sovereignty was that it provided the boundaries of self/other, friend/enemy, known/unknown etc. What we highlighted was the consequences of sovereignty's practice of definition and its ability to exclude or trivialize competing identities, knowledges and practices. The transformation toward liberal articulations of sovereignty begins with Bodin and is followed by Hobbes. What made these seminal in the development of liberal conceptions of sovereignty was that both theorists problematised the rigid duality between the ruler and the ruled and replaced it with a contractual model of sovereignty wherein the power to govern was conferred to the sovereign by an actual or imagined contract with "the people" in exchange for territorial and institutional security. As summarized by Bartelson, "power concentration gives way to power dispersion; the transfer of sovereignty from kings to people" (1995: 39). This rearticulation or dispersal of sovereignty allows the participation of the governed in their own governing, at least formally. However the question becomes whether there is any *actual* transfer of the power to define what is and what is not to be governed? Is there any real democratisation of this constitutive power? Even at first glance this appears suspect. Hinsley remarks that the principle aim of liberal sovereignty is merely the legitimisation of the continued hierarchical ordering of power (Hinsley 1986: 131). Power, conceived of here as the ability to govern, in this model does not actually transfer or disperse to

citizens but remains invested in an absolute and centralized representative body that is fundamentally unchallengeable as an institution of order. Thus the actual relations of power and its effects have remained relatively fixed with only the conceptual locus of sovereignty shifting from a strictly defined metaphysical justification to a supposedly more political articulation. Now sovereignty, or the ability to “dispense with things”, derives not from God but from the newly recognized pre-political individuals that comprise society.

The shift in articulations of sovereignty from its feudal to its liberal form is best characterized by the shift from “sovereignty” generally, to the adoption of Rousseau’s concept of “popular sovereignty”. Popular sovereignty specifically aims to recognize that sovereignty derives from the individuals that comprise society. This rearticulation of sovereignty shifts its origins from an external source to an internal one. However, ironically the constitution of the individual in classical liberal governmentality relies just as centrally on metaphysical origins of the liberal individual, articulated as essentially self-interested, inherently free and importantly self-knowing. This was made clear in our brief discussion of Hobbes. Consequently sovereignty’s origins arguably remain as external as ever.

I turn now to a discussion of how the elements of liberal governmental reason that we just elaborated are facilitated, at least in part, by the liberal articulations of sovereignty that I laid out earlier in the chapter. If we draw on our discussion of the construction of a particular version of society, the articulation of the economy as a natural apolitical arena and continued importance of law we see how these articulations as

governmental strategies depend on the assumptions promoted and facilitated by liberal conceptions of sovereignty.

First, liberal governmental reason relies on the “boundaries” secured by sovereignty so that subjects can freely engage in economic processes to promote their own self-interest which consequently fosters the greatest good for the society as a whole. Secondly, a rearticulated ‘popular’ sovereignty facilitates the constitution of a type of society that negotiates with the economy to maintain a balance between economic and politico-legal imperatives. As I highlighted, technologies of security and thus traditional instruments of sovereignty like law remain an important part of this process as they shift under liberal governmentality from a concern strictly with threats to society from external forces to the recognition of threats to institutions that facilitate this version of society from internal sources as well. Third, and very importantly, internalising sovereignty in the newly constituted society imbues it with the “critical space” and ability to resist *external* attempts to limit the supposed inherent freedom of the subjects that constitute it. Fourth, the shift from traditional articulations of sovereignty toward more “popular” forms has, through new formations of law and particularly the assertion of rights that may be levelled against the State, the effect of equipping some societal actors with the ability to resist certain forms of domination or oppression. The problem that remains is that liberal governmentality still fails to eliminate the rigid duality between subject and object that it problematised at its inception. In other words, where liberal reason swept out the absolute and centralized sovereign, we now locate society and the economy. These, and the assumptions that ground them, have in a sense become our new sovereign. Assumptions about their boundaries and composition are now what divide lawful and

unlawful action, right from wrong, public from private and freedom from oppression.

In most respects our ability to define these as we always have remains unchanged. The problem remains that the underlying assumptions about the necessity and inevitability of this form of government, the necessity, naturalness and 'common sense' composition of these boundaries remain essentially unchallenged. So while the shifts in conceptions of sovereignty are said to be a vehicle of emancipation from the domination of authoritative rule, under liberal governmentality we still fail to move beyond a preoccupation with legitimacy and monumentalised origins that I warned about earlier. In this way, what is clear is that the exclusion of competing identities, knowledges and practices that results from a fixing of meaning as a strategy of governing remains, not just in spite of, but as a crucial part of, classical liberal governmental reason.

Conclusion: Sovereignty as a strategy of liberal governmental reason

In drawing this discussion about sovereignty and liberal governmentality to a close it is important to briefly re-emphasise the effects of the transformations in governmental reason and the implications and role of conceptions of sovereignty in these transformations specifically along two lines. The transformation to liberal governmental reason and sovereignty significantly alters first, the constitution of the individual and second, the state and the various connections between the two.

In the first instance, as was clear from our discussion of the classical formulations of sovereignty, markets, and society, the individual is imbued with a particular essence or fixed identity. Thus under Hobbes we saw that the individual is necessarily rational, self interested and essentially free prior to government. This conception of the autonomous

reasoning individual is furthered emphasized and reinforced by Smith's notion of the "invisible hand" that only produces the greatest good when individuals act in their own self-interest free from the misguided intervention of the state.

Consequently in the second instance, the state emerges as the negative counterpart of the individual. While individuals are inherently free, the state is inherently intrusive. As we saw government and the state are formulated as a single entity. In this way liberal government sets clear limits on what can be governed and what cannot. The problem I argued remains the necessity, naturalness and 'common sense' composition of these boundaries and importantly this form of government. Liberal government, and particularly the shift from feudal conceptions to popular sovereignty, was premised on a vision of popular sovereignty as a vehicle of emancipation from the domination of authoritative rule. However, under liberal governmentality we fail to move beyond a preoccupation with legitimacy and monumentalised origins that I warned about in Chapter I. In this way, the binary conception of power and the effects of this formulation that I also warned against in Chapter I are further reified and constituted as unchallengeable.

This discussion of sovereignty and its connections to liberal governmentality has attempted to do several things. First, it was an opportunity to assess the utility of the genealogical method. Specifically it allowed us the chance to demonstrate genealogy's effectiveness particularly in investigations of contemporary systems of rule. Again, what it revealed was the contingency of liberal governmentality and some of its central strategies of governance. Thus, this chapter did not embark on a journey to find sovereignty's essence or moment of past glory. Rather, it revealed sovereignty's

contingent and conflicting past in an attempt to challenge its constitution as inevitable and essentially emancipatory.

The second principal goal of the chapter was to lay the framework for our investigation of the transition from classical to neo-liberal governmental rationality that we take-up in the next chapter. To do so we established criteria from which we can investigate these shifts and discussed in detail the composition of liberal formulations of the economy, society, and the law with some brief remarks on security. These discussions further demonstrated the contingency of liberal governmentality and classical liberal formulations of sovereignty, and also highlight the complexity of contemporary strategies of governance. These discussions lay the groundwork for the chapter that follows which assesses the shift from classical to neo-liberal governmentality and the effects of these transformations. What is evident from both our discussions here and those that follow in the next chapter is that sovereignty and its classical foundations in the autonomous reasoning, though inherently dangerous, individual continue to inform and orient our political understandings of, and practices in, contemporary liberal democracies.

CHAPTER THREE

HUMAN RIGHTS AND NEO-LIBERAL GOVERNMENTALITY

Introduction: From Liberal to Neo-Liberal Governmentality

In the last chapter I elaborated on connections between liberal government and governmentality that we began at the close of Chapter I. I did so by first investigating the assumptions that buttress modern conceptions of sovereignty and then turned to the tenets of liberal reason and particular transformations in sovereignty as part of projects of liberal governance. This discussion demonstrated a strong connection between governmentality and sovereignty and emphasized certain positive aspects of a relationship that is too often imagined as entirely oppositional. I further discussed the consequences of this oppositional positioning and sought to underscore the potentially negative and limiting consequences of a binary articulation of these strategies of contemporary governance.

While aimed at providing a clear example of the benefits of a genealogical form of critique laid out in the first chapter, particularly in investigations of contemporary forms of rule, Chapter II also served to provide a foundation from which to undertake the discussion that comprises this chapter. Specifically the last portion of chapter two established three main criteria from which we could assess transformations in contemporary rationalities of governance. The start of this chapter takes up this type of project and investigates transformations from the classical liberal governmentality toward neo-liberal governmental reason. Like the previous discussion I will utilize the economy, society and law as indicators to access these changes and to again discuss the effects of

these transformations both on, and as a consequence of, changing articulations of sovereignty and its subjects.

This chapter also elaborates on preliminary remarks introduced in the last chapter on the interaction of law and liberal governmentality. It pays considerable attention to this relationship following an introductory discussion of neo-liberal governmental rationalities and its consequences before turning to the novel question that orients this chapter. How, with sovereignty, are human rights implicated in projects of governance? More specifically, how are contemporary formations of human rights implicated in projects of neo-liberal governance?

My argument is that the relationship between human rights and neo-liberal governance is, like sovereignty and governmentality, most often characterized as strictly oppositional. My contention however, is that this positioning fails to acknowledge the role that contemporary formations of human rights play in orientating and bolstering the logics of neo-liberal governmental rationality and vice versa. This chapter attempts to bring into relief this misunderstood relationship and to investigate its consequences for our understanding of contemporary systems of rule. As I remarked in the last chapter, this type of analysis, while not entirely impossible in the traditional model of critique criticized in the first chapter, is at the very least highly problematic due to its predisposition to reify contemporary definitions and defining practices. Investigating the role that human rights play in contemporary modes of governance underscores the inadequacies of this traditional model of critique. However investigating genealogical critiques of human rights re-raises potential problems brought to the fore in Chapter I surrounding genealogical critique. These final remarks then bring us full circle, to raise

the questions of method and critique posed in Chapter I; to again demonstrate the utility of the genealogical approach, and to again stress the potential for exclusion and marginalization that genealogy avoids. Last this preliminary application of a genealogical approach to contemporary formations of human rights disrupts our increasingly triumphalist assumptions about the imminent potential of human rights in struggles for individual autonomy and freedom.

Neo-Liberal Governmental Reason

We begin this chapter with a discussion of the shift from what I described in the previous chapter as classical liberal governmental reason toward neo-liberal governmental rationality. As demonstrated by the preceding discussion of transformations of sovereignty, shifts in modes of governmental reason can dramatically reorganize relations between the state, society and the individual. At the outset we should note that these transformations are in no way uniform. Different modes of governance recruit and reorganize a variety of apparatuses and technologies in the pursuit of their various governmental ends. This further demonstrates the contingency of changes in governmental reason and disturbs the teleological vision of progress we began to interrogate in the Chapter I. After a brief introduction I investigate the current shift from classical to neo-liberal modes by again investigating changing formulations of economy, society and the law.

The question as to what exactly we mean by neo-liberal and neo-liberalism requires some preliminary discussion. Both Dean and Rose draw an important distinction between “neo-liberal” and “advanced liberal” governance that is worth noting (Dean

1999: 149-150, 207, 210, Rose 1996: 50-61). Dean says a neo-liberal governmentality refers to particular styles of a certain general mentality of rule. It is a categorization that allows us to separate such mentalities from other similar or competing mentalities such as neo-conservatism. Advanced liberalism on the other hand refers to a much broader constellation of various “assemblages” of rationalities, strategies and technologies that characterize ways of governing in contemporary liberal democracies. Dean says these may include neo-conservative and communitarian rationalities of government and thus advanced liberalism connotes a field of rationalities that vie for political and governmental hegemony (1999: 149-150). This distinction is important for several reasons. First it again reinforces the contention that transformations in mentalities of rule do not follow an evolutionary track, but involve an agonal relationship between competing knowledges, identities and practices. And second, the distinction draws attention to the disconnect between contemporary distillations of neo-liberal political ideology and governmental *practice* on the one hand, and neo-liberal governmental *reason* on the other.

There is little doubt that the rhetoric of political neo-liberalism, emphasizing the role of markets and rational responsible individuals, permeates multiple contemporary discourses and institutions. However these articulations do not necessarily reveal the rationality for, or more importantly, the effects of neo-liberal governmentality. Purvis emphasizes the necessity of this distinction when he warns that it is necessary to separate “the clichés of New Right rhetoric from the more theoretically informed approaches to the supposed crisis of the post-war regulatory state” (2002: 39). The former focus on the necessity and utility of an immediate withdrawal of state regulation in all its forms. The

assumptions that orient this prescription are those investigated in the last chapter. Thus the belief that mechanisms of the market freed from the intrusion of the state will effectively foster the greatest good for all remains the driving logic.

Extensive retreat of the state is seen to be the only appropriate antidote for the past of mismanagement and overmanagement. Markets, it is suggested, will naturally tend toward an equilibrium that will ensure a maximal allocation of resources and wealth. Only markets, under these formulations, have the built-in capacity to reach such an equilibrium (Purvis 2002: 39).

Markets in this way are seen to be games with rules different than all other games. But while neo-liberal political rhetoric celebrates this supposed retreat of the State, the retreat should be more accurately described as a transformation. Far from limiting its role, neo-liberal governmental reason bequeaths a critical role to the State in promoting its particular formation of freedom and order. Where the market had previously been formulated as beyond the influence of the State, its success now fundamentally depends on State intervention.

Alongside the celebrated withdrawal of the state, neo-liberal political rhetoric is also dominated by an uneasy union of discourses of individual choice and freedom on the one hand, and responsibility and order on the other. This language of “freedom and choice” has been the rallying cry of neo-liberal political parties in Britain, the United States, and Canada in recent decades. But as we will see, this language is actually at odds with the effects of neo-liberal governmentality. Even a cursory investigation of the strategies, tactics and effects of neo-liberal governance reveal the intensification of the marginalization and exclusion of competing knowledges, practices and identities that neo-liberalism claims it is targeting. As will be clear, this false promise of freedom and

choice is itself an effective strategy of rule. Like the State, we see that practices of freedom and responsibility are merely repositioned and reformulated for changing governmental ends.

The Origins of Neo-Liberal Political Hegemony and Governmental Reason

Following the end of the Second World War a neo-liberal rationality of government begins to take shape as a critique of emerging welfare state models. Contrary to the widely held conviction that the post-war regulatory state could utilise new social knowledges and technologies to both secure conditions for continued capitalist production and also promote social inclusion and cohesion more generally, a particular group of theorists known as the *Ordoliberalens* argued the opposite. They contended that the dramatic expansion of the state during and after the war would inevitably lead to inefficiencies in the organization of social and economic life that retard the aims of the original intervention. Moreover, they argued that the rapid expansion of the State “set nations on the very path toward the total State that had been manifested in Nazi Germany and could be seen in Stalin’s Soviet Union” (Rose 1996: 50). Thus the experience of National Socialism was an inevitable consequence of increased state regulation. One of the most influential theorists in promoting this view was Friedrich Hayek who, in a series of books, most notably *The road to serfdom*, cautioned that “once you admit that the individual is merely a means to serve the ends of the higher entity called society or the nation, most of the features of totalitarian regimes which horrify us, follow of necessity” (1944: 111). Following Hayek ordo-liberals concluded that the policies that established

the modern welfare or regulatory state were antithetical; they were subversive of the freedoms and democracy they sought to secure.

The Right were not alone in their criticisms of the regulatory state. Over time the Left became equally critical of the outcomes that resulted from the forms of intervention that had emerged. One of central problems was that state administration of assistance and aid programs were necessarily regulated by large-scale bureaucracies that tended to have the effect of homogenizing and universalising citizens' identity. This occurred in a variety of ways, often through the process of constructing criteria such as "eligible" and "deserving".¹ Dean emphasizes the tension between a centralized bureaucracy and the decentralized essentially fragmented composition of civil society. He remarks that

the paradoxical consequence of the linking of the social with a centralized bureaucratic and fiscal apparatus was that society loses its identity: the idea of a civil sphere beyond the state that is a constant source of energies, dynamism and renewal threatens to collapse under the weight of its administration (1999: 150).

A second concern from the left was that the relationship between the state and citizen had been configured in such a way as to sponsor a "privatist retreat from citizenship and a particular 'clientization' of the citizen's role" (Habermas 1992: 10-11). The regulatory state was in this way seen to threaten the autonomy and creative "dynamism" that was the essential constitutive component of civil society. Consequently the regulatory state was seen to be collapsing the essential borders between the state and society that was a central assumption and prescription of liberal governmental reason. Amidst these warnings and recognitions of the limits of the regulatory state, the competing neo-liberal strategies and rationality of rule that had from the outset questioned the legitimacy of the welfare state,

begin to make substantial inroads into the political discourses of western democracies. With its projected emphasis on “choice” and the freedom and autonomy of the individual, neo-liberalism stood in stark contrast to the universalising and homogenising tendencies of the post-war regulatory state.

The Constitution of Neo-Liberal Governmental Rationality

Neo-liberal governmental reason tends to mobilise strategies to address frustrations with the exclusion and misrecognition that endured as part of the formal regulatory expansion of the post-war state. Unfortunately what is evident is that the assumptions that ground the practices and strategies through which neo-liberal governance attempts to sponsor new inclusion and freedoms actually have the reverse effect and merely reposition and often intensify existing instances of exclusion and marginalisation. While in one sense they do sponsor a new series of freedoms, these only become practically accessible to a select segment of the population. Moreover the exclusion and lack of autonomy said to be characteristic of the ‘social’ government of the regulatory state is narrowed and magnified in such a way that the recognition and autonomy of traditionally disadvantaged social groups are exponentially reduced. The full impact of these reformations becomes clear with the comparative examination of the constitution and effects neo-liberal formations of the economy, society and the law that follows. By again utilizing the criteria of economy, society and the law we can highlight some of the salient differences in liberal and neo-liberal governmental rationality and most important draw attention to the troubling assumptions and consequential effects of neo-liberal governmental reason.

¹ For an engaging discussion of the institutionalization and effects of these criteria see Little’s “The Struggle Over the Meaning of Deserving, 1965-1995” (1998:139-163).

The Revised Economy and the Expanded Logics of the Market

Economy and markets continue to occupy a central position in the constitution and rationality of neo-liberal government. However in contrast to the classical liberal formulation investigated in the last chapter, a neo-liberal formulation of the economy and markets rejects the belief that the market is a natural site best operationalised as a technology of governance through a strictly *laissez-faire* approach to its regulation. By extension neo-liberal governmentality does not accept the assertion that the sovereign cannot effectively intervene in the economy. If we recall the previous chapter, I pointed out that the classical liberal economy was envisioned as essentially “tamper-free”. Following Smith, the economy was said to be regulated by an internal logic—an invisible hand—that was essentially unknowable and most importantly ungovernable. The principle role of markets in the classical liberal model was to effectively establish the limits of, and apolitical critique of, government. Neo-liberal governmental reason continues to recognize that the market still acts as a limit on government but rejects the contention that markets should remain insulated from governmental intervention. Thus rather than seeing markets in a binary relationship with government as in classical liberal formulations, neo-liberal formations of the market emphasise the *necessity* of sovereign intervention in order to foster and secure the conditions necessary for continued capitalist growth and the conditions necessary for individuals to best practice their freedom. Dean and Gordon draw attention to the significant rearticulation of the economy by neo-liberal governmental strategies. Dean remarks that contrary to classical articulations which emphasized the natural composition of the economy, for neo-liberal formations “the central problem is how to contrive the conditions necessary under which entrepreneurial

and competitive conduct can be allowed to come into play and the market can hence operate” (1999: 157). Gordon similarly remarks that under neo-liberal governmentality

the market is no longer to be thought of as being a spontaneous (albeit historically conditioned) quasi-natural reality, recognition of whose existence constrains government to the practice of laissez-faire. The market is not a natural social reality at all; what is incumbent on government is to conduct a policy on society such that it is possible for a market to exist and function (1991: 41).

Thus an effective market, now the *raison d'être* of government, depends on the positive intervention of the sovereign to construct and secure the necessary political, legal, institutional and even individual relationships and conditions to secure its particular version of responsibilized freedom and institutional order. This is the logic found at the centre of political rhetoric calling for more “favourable investment climates” and “incentive” and training programs for entrepreneurs.²

Clearly then markets play an important, though a significantly different role in neo-liberal governmental rationality. Again as we saw in the previous chapter, under classical liberal governmentality markets were articulated as essential in that they comprised a site supposedly free from government and politics from where governmental

² The extent to which the governmental drives to produce entrepreneurial individuals has penetrated civil society is demonstrated by a recent example. This past summer some controversy arose when the Boy Scouts of Canada introduced their new “investment” badge. Scouts were encouraged as one part of the badge requirements to pick stocks they would invest in (examples given were McDonalds, Nike and Disney), pretend to invest and track its progress in the market. After completing the requirements the scout is rewarded with the badge as well as a certificate from the Canadian Securities Administrators. Some commentators argued the goal of scouting was not to encourage participation in money markets. The description given to Scouts interested in the badge for why investment was important was as follows.

One area that all of us need to understand better, is the world of investments. From looking after our day-to-day banking, to managing a retirement fund (RRSPs) or education savings plan (RESPs) most adults find themselves needing to know more than ever about the world of money! (Scouts Canada Website
<http://www.scouts.ca/scouts.asp?cmPageID=216>> Accessed 20 November 2003)

strategies and objectives could be evaluated and legitimised. Now the market functions not so much as an external critique of government, but rather as the primary reason for it.

Importantly the transformation from the economy as a natural or privileged apolitical site of interaction toward a formulation of the economy as interdependent with mechanisms and institutions of security and the sovereign should not be taken to suggest that the economy's role as a governmental technique is in any way diminished. On the contrary as I highlighted in Chapter II, under neo-liberalism the market begins to be adopted as the base-model for all social and political relationships. Neo-liberal governmental rationality determines this expansion of market relationships and logics based on the belief that the natural tendency of markets is toward efficiency and social order. This is supported by the assumption that self-interested individuals working only in their own interests create, what Hayek called "spontaneous coordination" or "coordination without commands" (cf. Giddens 1994: 34) giving rise to social cohesion and order. As Friedman and Friedman go on to remark,

Economic activity is by no means the only area of human life in which a complex and sophisticated structure arises as an unintended consequence of a large number of individuals cooperating while each pursues his own self-interest (1980: 25).

Thus, certain knowledges produced by market rationalities are broadened further as part of neo-liberal governmental reason to incorporate the study and transformation of *all* behaviours. Where the market had once been isolated from power and politics, in neo-liberal governmental reason its rationality effectively infiltrates all spheres of life. Gordon further demonstrates this point when he says that under neo-liberal governmentality,

Economics thus becomes an ‘approach’ capable in principle of addressing the totality of human behaviour, and consequently, of envisaging a coherent, purely economic method of programming the totality of governmental action (Gordon 1991: 43).

In sum, the reimagination of the market as part of neo-liberal governmentality places significantly greater emphasis on the role of economies and markets as technologies of rule in comparison to a classical liberal governmental model. We see a weakening of the notion that the economy is a natural site, and a move toward an understanding that recognizes the utility of sovereign intervention. However what is most significant is that like classical liberalism neo-liberalism prescribes a particular construction of individuals and their relationships. With the expansion of market logics to an increasing range of social relationships, these relationships are reconstituted in the language of consumers and clients. Thus relationships that traditionally had been negotiated through identities like patient and student have been transformed and reconstituted to conform to a dominant single market logic—individuals are constituted as entrepreneurial, competitive, responsible consumers; today we are all “clients”. Furthermore, as a consequence to the reorganization of individual roles and identities we see a transformation of the construction of the social in order to both instigate and accommodate the neo-liberal construction of the responsible individual. We will now turn to the revision of the social and its role in neo-liberal governmental reason before returning to discuss the implications of the transformation of formations of the market and society for the individual and the potential for individual autonomy in regimes of neo-liberal governmental reason.

The Disappearance of Society

Neo-liberal governmental reason seeks through inter-woven strategies of responsabilization and freedom to reify the individual as both the privileged object of governance as well as its subject. The relative success of this process involves de-emphasising the role played by society in facilitating the freedom sought by the individual. The security and degrees of freedom available to the individual become their own responsibility. In this model the individual's capacity to assess and manage risk is conceived as absolute.

Like the transformation of markets, there is a shift from society as a necessary site that exists in direct opposition to the state and governance as in the classical liberal model, toward a formulation where society is seen as shot through with government and must essentially be "bypassed". Thus in neo-liberal governmentality the individual is acted upon directly, and expected to act, in a direct relationship to technologies and mechanisms of government.

In elaborating on the transformation of society Dean discusses at length the infamous assertion by Margaret Thatcher that "there is no such thing as society". He remarks that this is possibly the best example of neo-liberal rationality's reformation of the concept and role of society. Thatcher remarked that

I think we've been through a period where too many people have been given to understand that if they have a problem, it's the government's job to cope with it... They're casting their problem on society. And, you know, there is no such thing as society. There are individual men and women, and there are families. And no government can do anything except through people, and people must look to themselves first. It is our duty to look after ourselves, and then to look after our neighbour (cf. Dean 1999: 151).

Given this new formulation of society how might we understand the shift from liberal governmental rationality toward neo-liberal formations? If we recall last chapter under the classical liberal model, society was conceived as a dynamic site in which the relations of markets, and the interests of the economic, political and social subject were negotiated within the broader relations of security. Moreover, society was a site from which critiques of government could emerge because, like the market, society was envisioned as fundamentally separate from the technologies of rule as they emerged directly from the State. Furthermore, society was a medium *through* which individuals were governed. Social norms facilitated by new knowledges of the social played important roles as technologies of governance. Given all this how then should we understand the dramatic transformation of society as essential in liberal governmentality to essentially non-existent in neo-liberal governmentality?

First, there is always a disconnect between neo-liberal political rhetoric and neo-liberal political reason. Thus Thatcher's remarks do not necessarily reveal the composition of neo-liberal governmental reason's constitution of society. Nevertheless her comments do characterize the shift to a neo-liberal mentality of rule. However, as in the case of those who announce the demise of the state, this statement should not be taken to mean that society has somehow vanished or that the social subject has remarkably disappeared. On the contrary, society continues to play a vital, though much less obvious role than it did particularly in the regulatory state. The remark by Thatcher is particularly interesting because conceptions of society and the nation ironically played a critically important role in bolstering neo-liberal governance in Britain while she was Prime

Minister (Hall 1983). Society then, like the market, has only merely undergone a reformation within neo-liberal reason.

Again as with the transformation from classical liberal to neo-liberal governmental reason, the causes of such a transformation are heterogeneous. The turn away from an emphasis on society as an apparatus to foster the well-being of its citizens is in part a reaction against welfare state expansion discussed earlier. Society's role as a guarantor of freedom and order is replaced in neo-liberal rhetoric with society as a "crutch". As emphasized by Thatcher's quote earlier, a "strong" conception of society leads people to neglect their self-responsibility in favour of a reliance on society to provide for their well-being through governmental mechanisms like grants and public housing. Hence the relationship of responsibility of the welfare state for its citizens "from cradle to grave" is actually reversed so that society is no longer seen to owe a duty of care to individuals; rather individuals now owe a duty to society to be "productive" entrepreneurial members of society. Society then is redeployed in a strategy to at once contextualize the individual and at the same time to insulate them. The transformation is signalled by a change in language from abstract "society" to more recognizable, but no more clear, language of 'community'. As Rose remarks "the relationship between the responsible individual and their self-governing community comes to substitute for that between social citizen and their common society" (1996: 56). He goes on to refer to these transformations as a "new pluralization of 'social' technologies". These he says form part of a larger process that can either be described as a "de-governmentalization of the State" or a "de-stateization of government". Essentially "the social" is transformed from the target and object of governance to governmental apparatuses and strategies refocused

squarely on the individual. As is clear the process consists of a systematic dismantling of various governmental apparatuses and technologies that had been gathered under the umbrella of the state as part of the regulatory State project and these strategies repositioned in to new “private” sites of governance. Society then does not simply “disappear” it is reconstituted in a process of what Burchell calls *autonomization* where society is permeated with the logics of markets (1996: 27). In this way society achieves a kind of similar natural equilibrium as long as members act as market logics dictate—as long as citizens use their freedom responsibly. Society then does not simply “give way” to a market logic but works within its assumptions to constitute neo-liberal’s particular version of the responsible and entrepreneurial individual. This in turn promotes security and stability of neo-liberal institutions and thus is said to allow individuals to best practice their freedom.

To conclude, we see that society, while not disappearing, undergoes a substantial rearticulation as part of larger attempts by neo-liberal governmental strategies to solidify the individual as an autonomous and responsible subject. As Dean remarks society is essentially “bypassed” as an object of governance. Where security under classical liberal governance had sought to assure stability and order by fixing particular forms of institutions like society and economy, neo-liberal governance narrows its technologies more squarely on the individual. In a kind of tautological relationship, particular forms of the individual become necessary to secure particular forms of the social and economy so that they may in turn, through intervention or lack there of, secure the freedom and autonomy of the individual— now then both the subject and object of government.

Neo-liberalism and the Responsible and Sovereign Individual

The most important effects of the transformation from classical to neo-liberal governmental rationality are its reformations of the individual and its relationship with, and role in, the technologies and strategies of governance. In this section, I discuss the impacts of these transformations particularly as they impact on the autonomy and critical capacity of individuals. This rejoins a portion of the second chapter as I offer some remarks on how the transformation of the individual in neo-liberal governmentality impacts and is impacted by reformulations of sovereignty. As with my remarks on the discussion of the shift to classical liberal governmentality and the relationship to conceptions of sovereignty, a few observations about the impacts of the shifts to neo-liberal forms help both reinforce the relationship between governmentality and sovereignty as forms of power and also sheds light on the effects of neo-liberal governmental rationality and its articulation of the individual.

As mentioned in the investigation of the revised versions and roles of society and economy above, one of the central goals of neo-liberal governmental rationality is the shifting emphasis on the individual as the primary guarantor of the liberal state of security.³ In this way, sovereignty in a sense is shifted from its institutional locus in classical liberal governmental reason to a point where sovereignty resides in the responsible neo-liberal individual. Thus, the liberal problematic of security is assured not by the stability and continuity of the social or the economy, but rather through the

³ O'Malley discusses these transformation in terms of 'Prudentialism'. He says they involve three specific changes. First, the retraction of "socialized risk-based" techniques of management from the population. Second, there replacement through privatized risk-based techniques and last, the articulation of these shifts in combination with the strategic mobilization of juridical remedies and disciplinary interventions that reinforce individual responsibility. He demonstrates these shifts by examining transformations in areas of health and crime control. He argues that a result of these shifts "[t]he prudent subject of risk must be

specific constitution of individuals as responsible and entrepreneurial—through the prescription of a limited range of reasonable actions. This is a significant shift that serves several governmental objectives. It promotes an articulation of responsible reasoning individuals as autonomous agents capable of determining risk and orienting their behaviour in such a way as to maximise individual well-being. Second, as I mentioned in my remarks on the transformation of society, this shift removes the burden of responsibility for individuals' welfare from the broader community or State by "relocating" it "back" in the individual through forms of self-responsibility. Most importantly this facilitates neo-liberal governmental strategies' shift to governing individuals through processes of responsabilization and self-governmentalization. This results in a significant transformation in the means by which governmental technologies work on and through the individual. Before turning to this point it cannot be emphasised enough that this shift in the technologies of government toward a location "in" the individual does not mean that the individual is now somehow "freed" from governmental strategies because they are at their centre. Rather the shift only points to a reformation of the *way* individuals are governed. As Dean notes, "neo-liberal critiques of the welfare state sought to redeploy the 'free subject' as a technical instrument in the achievement of governmental purposes and objectives" (1999: 155).

Again this formulation helps explain why neo-liberalism has proved so politically attractive. A renewed focus on the individual offers hope to those frustrated with the homogenisation and exclusion they experienced as part of the welfare state. Neo-liberalism's ability to locate its project in the language of individual freedom offers an

responsible, knowledgeable and rational. To rely on the State to deal with the harmful effects of known, calculable and individually manageable risk appears feckless and culpable" (1996: 202).

easy formula to recognise identity and particularity, as opposed to the universalising effects of welfare state forms. However, the effects of neo-liberal reason highlight the fallacy of this assumption.

Where classical liberal government had mainly located technologies of government at arms length from the individual in apparatuses like society and markets, neo-liberal governmental reason seeks to govern more efficiently by bypassing these sites and acting directly on the individual. Burchell remarks that,

neo-liberalism seeks in its own ways the integration of the self-conduct of the governed into the practices of their government and the promotion of correspondingly appropriate forms of techniques of the self ... individuals may alter their relationship to themselves in their new relationship with government, without it being clear that the outcomes that are supposed to justify this rationality of government are in fact being achieved (1996: 29).

The mechanisms of government, far from being less intrusive, move that much “closer” to individuals and arguably become that much more opaque and intangible as they are further entwined in processes of self-identity and self-actualisation. Burchell further highlights that we are increasingly asked to be the subjects of our freedom such that our energies become devoted to achieving a particular form of subjectivity; a subjectivity that we are led to believe contributes to our capacity to practice our freedom in the first place. So rather than becoming “more free” governmental technologies in neo-liberal governmental reason increasingly “impinge upon individuals in their very individuality” (Burchell 1996: 30). A few further comments on transformations in conceptions of sovereignty help demonstrate the critical problem with this reformulation.

In the Chapter II I emphasized the problematic effects of classical sovereignty’s insistence on the fixing of particular knowledges and identities. There I remarked that

sovereignty contributed to the reification of static meanings and identity by fixing and essentializing the duality between subject and object. Moreover I argued that this rigidity in definition—which essentially established the borders of the political—led on the one hand to the marginalization and exclusion of competing knowledges, practices and identities and on the other, constituted dominant matrixes of meaning as natural, self-evident and unchallengeable. In this way certain matrixes of meanings were rendered outside the reach of the sovereign and thus ungovernable. If we recall my description of Hobbes, society, while “a self-rendering entity”, was nevertheless pre-political.

There is a similar fixing of meaning and similar exclusions that occur in a neo-liberal shift in formations of sovereignty. Because the individual is conceived as both the subject and object of government, its relationships with other objects become more uncertain. As in classical liberal sovereignty the rationality—the defining assumptions—that establishes the divide between what can and cannot be governed is reified. In the case of neo-liberalism this is the rationality that allows the individual to practice their freedom; the rationality that constitutes the individual as responsible, rational, and entrepreneurial. Unlike in formations of popular sovereignty in place under classical liberal governmentality in which governmental apparatuses and technologies were for the most part visibly located in the apparatuses of the State, and where there was a clear separation between the objects and subjects of governance, sovereignty under neo-liberalism returns us in many ways to a feudal notion of sovereignty with the autonomous individual replacing the monarch as a essentialised sovereign with no interdependent relationship to any social object.

Things that were once settled by some external reality—traditional law, say, or nature—are now referred to our

choice. Issues where we were meant to accept the dictates of authority we now have to think out for ourselves. Modern freedom and autonomy centres us on ourselves (Taylor 1990: 81).

More than causing a critical turn inward, this freedom is a disciplined freedom; it is a freedom to be competitive and entrepreneurial; to be self-governing and self-sufficient; it is most importantly a freedom that must be used responsibly. Moreover it is freedom within limits but freedom that *recognizes* no limits. As the technologies of governance become more intimately tied to the individual they ultimately become indiscernible from the other processes of self-identification and self-actualisation. In this way, technologies of governance become more difficult to identify and thus more difficult to resist. As Hall remarks, the destabilisation of the social and individuals' relationship with it, marks the epoch as one in which identities are decentred, dislocated and placed in continuing states of crisis (1992: 275).

All of this is not to say that these governmental technologies of the self are entirely new, or that the individual was never before governed through processes of self-government. To say so would be to accept that government has merely been that which acts *on* the individual; it would be to juxtapose freedom and government, coercion and consent. In short, it would be to support a binary formulation of power and government that I argued against at the close of Chapter I. Instead, our examination of reformations in the individual and its relationship with society and the market reveal the contradiction between neo-liberal rhetoric on the one hand and the effects of neo-liberal governmental reason on the other. It highlights the *way* in which individuals are constituted and governed in the pursuit of neo-liberal governmental ends. It reinforced that the exclusion

and marginalization experienced as effects of welfare state governmental apparatuses do not disappear under neo-liberal forms, rather they are repositioned and intensified.

To conclude our examination of the shift from classical liberal to neo-liberal reason our attention now turns to transformations in law. The analysis of law further highlights shifts in the ways in which governmental strategies and apparatuses are transformed in neo-liberal government and the effects of these shifts. These remarks on law also provide a bridge to the final section that assesses the role of human rights in neo-liberal governmental reason.

Law and Norms: against the ‘evolutionary’ thesis

How then is law implicated in neo-liberal governmental reason? So far our investigation has shown the shift from classical to neo-liberal governmental rationality as a project that de-emphasises law and sovereign power in favour of subtler forms, mainly specific projects of governance and a rise in the role of disciplinary powers. Dean argues, following Foucault, that law’s role in contemporary regimes of government is more akin to a norm and consequently it is not predominantly mobilized by juridical mechanisms but disciplinary ones.

Dean’s reduction of the role played by law (and by association juridical power) re-raised some of the problems discussed earlier stemming from an ‘evolutionary’ conception of the relationship between sovereignty and governmentality. First, it essentializes law to its judicial face despite the fact that Dean says that “an analytics of government do not concern its general meaning, function or role” (1999: 118). Second, it neglects the mutually reinforcing relationship between different forms of power—the

way that power can work simultaneously on the subject in a variety of ways. Thus it neglects the ‘positive’ relationship between sovereignty and governmentality that I underscored when discussing Dillon. Nor can it account for the ways in which disciplinary and juridical power converge to constitute law, etc. However on the other hand, those that claim law has merely become another vehicle of disciplinary power alone also fail to recognize the “divisions and tensions” that arise when law and broader strategies of government meet. While governmental strategies can employ technologies of sovereignty in governmental projects and vice versa, their intersection is never seamless or completely invisible. These moments of friction are critically important because they potentially initiate the same conditions that we seek to expose by employing the genealogical method. In this way they reveal the contingent and contestable constitution of projects of governance, including projects of the self. These realizations open critical spaces that might allow us to better situate ourselves in the present.

These problematic assumptions about the diminishing role of law in contemporary projects of governance are only intensified in investigations of neo-liberal governmental reason to the degree that few authors that examine these transformation even mention law’s role in neo-liberal projects of governance other than to pay tribute to its memory.

This treatment of law, while I think highly problematic, is nevertheless also unsurprising. As I remarked last chapter in my introduction of the role of law in classical liberal governmental reason, those that subscribe to the idea that law’s role and relevance is diminished in contemporary systems of rule generally follow Foucault’s lead in their dismissal.

In response to this orientation to law Hunt and Wickam (1994) interrogate Foucault's "expulsion of law". A brief elaboration of their main ideas helps further clarify the limits of Dean's analysis by investigating the source of his orientation. Hunt and Wickam conclude that despite Foucault's specific treatment of law, which they say is uneven at best or deterministic at worst, the questions which consumed the majority of Foucault's later work clearly reflect a concern with the tension between freedom and government and this is a principle concern of law; thus, Foucault has something to tell us about law.

Hunt and Wickam point to several critical mistakes by Foucault when reaching his conclusions. First, his conception of law tends to limit its scope to the classic positivist notion that laws are merely commands that derive from the sovereign—commands backed by sanctions acted out on physical bodies (1994: 60). Second, they charge that Foucault has oversimplified law by first failing to recognize legal practices and priorities other than those associated with the criminal law, and second by not recognizing the multiple sources of law.

Foucault's derivation of law from monarchical power eliminates a more adequate history of law as emanating from sites of royal power, popular self-regulation, customary rights, competing jurisdictions ..., local and regional autonomies, and other forms of law (Hunt and Wickam 1994: 60)

The authors go on to contend that Foucault has equated law with conceptions of sovereignty as absolutism and in doing so failed to recognize the connection between law and governmental power and law and disciplinary power. Foucault's dismissal of law, while unfortunate, is predictable in light of his broader project to displace the classical liberal conception of power. As discussed in Chapter I and II, this classical formation of

sovereignty prompts and legitimizes the exclusion of certain discourses, knowledges and practices. Liberalism is preoccupied with whether the exercise of power, usually conceived through the lens of coercion and consent, and usually originating directly from the sovereign, is legitimate. For Foucault this focus on who legitimately “possesses” power leads to a dangerous ignorance of *how* power is actually exercised. Thus in his desire to initiate a new understanding of power, Foucault sought to displace law, to render it subordinate, or at least secondary, to disciplinary power.

We must eschew the model of Leviathan in the study of power. We must escape from the limited field of juridical sovereignty and state institutions, and instead base our analysis of power on the study of the techniques and tactics of domination (1980: 102).

In doing so however Foucault reduces the character of law, which as Hunt and Wickam argue prevents him and those that follow him in his dismissal from appreciating the complexity of the relationship between contemporary forms of power.

Tadros (1998) has criticized this reading of Foucault on law. He argues that Hunt and Wickam mistakenly reduce Foucault’s conception of law and legal power to an isolated concept of judicial power. Tadros’ central concern seems to be solidifying Foucault’s impact on the study of law more than in actually promoting a clearer understanding of the operation of legal power. Tadros discusses what he believes to be the shortcomings of Hunt and Wickam’s analysis and then goes on state his intentions. He says, “if Hunt and Wickam are mistaken about the relationship between the juridical and the law, a re-evaluation of the relationship between the *other* mechanisms of power and the law is called for” (1998: 77). The problem here is that this is the same end to which Hunt and Wickam are moving. It is not necessary for them to be mistaken. In fact

both sets of authors clearly emphasize the importance of examining the ways in which both juridical power and disciplinary power act through the law and are both implicated in contemporary strategies of rule. Moreover, both camps also highlight that Foucault must also have recognized this in some way. The problem that seems clear, at least for Hunt and Wickam, is that Foucault is remarkably inconsistent. They remark that despite some formulations that recognize the imbrications of sovereignty and disciplinary forms, most notable in Foucault's assertion that sovereignty, discipline, and government form a triangle (Foucault 1979: 18-19), he nevertheless shows a distinct "preponderant tendency to oppose law and discipline" (Hunt and Wickam 1994: 51).

Tadros perceives Hunt and Wickam's critique of Foucault's treatment of law as a move to reduce Foucault's conception of power to a strictly juridical one. Furthermore, he contends that Hunt and Wickam are merely interested in establishing the "ahistorical minimum conditions" that constitute law (1998: 101). Tadros concludes, quite in line with Foucault and I think contra Hunt and Wickam, that "legal governance can *only* be effectually evaluated if it is seen as the result of a historical evolution in which the juridical structure of the State has been *displaced* by a mobile, flexible, and self-reproducing technology of power which responds to an entirely different field of knowledge; the field of lives as opposed to the field of acts" (1998: 102). In effect Tadros falls victim to the same trap as Foucault. The critical point that Tadros misses is that in drawing attention to the disciplinary face of law, we need not simply discount law's continuing juridical component. The law has not simply lost its juridical face as Tadros claims (1998: 100). If we fail to realize this, we overlook the continued importance of the state and other forms of "big power" in projects of governance; we discount the face of

the law that “cannot help but be armed” (Foucault 1990: 144). Moreover, as I remarked in my critique of Dean, we fail to consider the interconnections between powers and thus limit our ability to understand the complexity of governmental projects. In doing so we ignore the potential critical spaces exposed in the frictions where contemporary forms of power meet.

In the end for Tadros the law is reduced merely to “a machine which oils the modern structures of domination” (1998: 102). His analysis does not discount the importance of this role for the law, however he falls victim to a reduction of the law that he equates with Hunt and Wickam. Instead of reducing law to its juridical function, he has instead reduced it to a mere “relay” for disciplinary power (Tadros 1998: 101).

Given all this, we can return to the question we posed at the outset of this section: how is law implicated in neo-liberal governmental reason? In my discussion of law in liberal governmental rationality I argued that law lends itself to liberal governmental reason in at least three ways: it formalizes and legitimizes, it generalizes and in doing so necessarily homogenizes and excludes particularity, and last, it provides an opportunity for subjects to be involved in the mechanisms of their own rule. These roles continue in neo-liberal governmentality. Moreover law is further implicated in at least two other ways that stem in some part from its transformation to more closely resemble norms.

First, similar to what I discussed in the transformation of society, economy and the individual, certain “new” types of law have grown in the period in which we see the shift from liberal to neo-liberal governmentality. These include international regulatory regimes such as GATT, NAFTA, WTO etc.⁴ More than ever before, our lives are

⁴ Human rights also obviously fall into this category, however I have chosen to separate them because we discuss them more specifically in the last portion of the chapter. What is important to note in the meantime

significantly affected by these governmental regimes implemented through international negotiation and agreements. However, in line with the shift to neo-liberalism, these apparatuses are less and less accessible or open to scrutiny and critique. This is the case in two senses. First, spatially they remain at a distance from individuals. The negotiations, which constitute their bases, are closed to the vast majority of the public and many agreements are usually negotiated under a tight veil of secrecy. This exclusion is justified by highlighting the self-evident and rational motive for signing these agreements, implying that opposition to these agreements is irrational. So secondly, as many of these agreements follow and dramatically expand the market logic I discussed earlier, they are envisioned as reasonable and rational courses of action. For individuals, failure to subscribe to these assumptions first immediately marginalizes the dissenter as some sort of “radical”. But most importantly those that challenge these agreements, in any capacity, are seen as threats to security. Challenging the logic of these agreements challenges the market and market logic that supports them. In this way, individuals who challenge these agreements are threats to security, not in an immediate physical sense⁵, but because they are acting “irresponsibly” and “irrationally”; they are challenging the conditions that, for neo-liberal rationality, secure their freedom in the first place.

The second way law is implicated in neo-liberal governmentality is not new *per se* but is significant in its form in neo-liberal governmentality. As suggested earlier under liberal governmental reason law begins to function more and more as a norm. Of course

however is that human rights as a growing part of international law, also share the characteristics I am associating with “new” types of law.

⁵ Though clearly, as demonstrated by police actions in Seattle, Quebec City, the APEC summit in Vancouver, Genoa Italy etc., those who oppose these trade agreements, when organized, are often constructed as some unruly mob bent on violence and the destruction of property.

as is clear from my discussion of Hunt and Wickam's remarks, this does not mean that law diminishes or becomes any less important, on the contrary law is further shot through with disciplinary power and in this way actually expands. So what then do we mean when we say law becomes more like a norm?

Ewald says of norms that they are undoubtedly related to power, and are characterized by an "implicit logic" that allows power to reflect on its strategies and define its objects. They rely he says, less on physical force and violence than on the force that "enables us to imagine life" and the force that allows us to change this life (1990: 139). He goes on to posit that what makes the norm different from the law is that the norm is both a standard that is arrived at, but is also the means by which we arrive at that standard—it is tautologically constituted (1990: 154-5). Norms seek the normalization of populations of objects in their general sense—a state of settled similarity and homogeneity. Thus normalization, as defined by Ewald in relation to industrial standardization, "is the institution of the perfect *common language* of pure communication" (1990: 151, emphasis added).

Given this, what is clear is that the law begins to function more in a standard-setting or policy capacity. Law as part of a neo-liberal governmental rationality becomes more about prescribing a range of acceptable policy positions and range of foundational values than it does about policing prohibited acts or conduct. As I stated previously, there is no question that this face of law is still ever present. As Poulantzas warns, we should not underestimate the mobility with which the repressive face of the law can be mobilized; law is as much armed men, as it is ideological prescriptions (1978: 76-92). However, law's predominant role in neo-liberal governmental reason is shifted to

legitimization and enunciation of ranges of reasonable and rational values and conduct. These then are mobilized by strategies of neo-liberal governmental reason to promote or bolster particular compositions of the individual, which are posited to establish the limits of government and secure the continued conditions of freedom and autonomy.

Given our understanding of the transformations in law as part of a neo-liberal governmental rationality, we now turn our attention to the role of human rights in these strategies. Despite their increasing significance in contemporary political projects, their role in governmental projects had received little attention from governmentality theorists. What will be clear in the treatment that follows is that the relationship between human rights and strategies of governmental reason are more complex and require significantly more attention.

Human Rights and Neo-liberal Governmentality

In a recent book, Richard Falk discusses current directions in international relations under the ubiquitous banner of globalization; he notes that “for better or worse” globalization has become the descriptive label of the current historical period (1999: 1). The focus of his book is to examine the current interactions between global capital and governments operating at the level of the State. From this analysis he hopes to shed light on the capacity of economic globalization to secure or formulate the conditions for wider goals such as peace, security and economic and environmental sustainability.

It is important to discuss Falk’s recent work here for two reasons. First, Falk recognizes that the processes of globalization he is examining have been accompanied by the ascendancy of a group of ideas he identifies as “neo-liberalism”. According to Falk

this turn toward a neo-liberal “scheme” points in the direction of “autonomous markets and facilitative states”. While his analysis of neo-liberalism is not as sustained as the one undertaken at the outset of this chapter, his analysis throughout the book indicates common defining elements. Importantly he notes that proponents of the neo-liberal project contend that they have been responsible for promoting expanded economic growth and also, most importantly, “the spread of moderate patterns of governance, especially electoral democracy”(1999: 1-2).

After drawing attention to the composition of current projects of globalization, Falk focuses on what he describes as a series of “countermoves” to neo-liberalism. He believes these countermoves take place at the level of civil society and can broadly be classified as instances of cosmopolitan democracy. This leads me to the second reason I include Falk in this investigation. In his analysis of new directions of resistance and a reinvented “state and citizens contract”, Falk focuses on the role that human rights play in the processes of globalization generally, as well as more specifically in the movements that oppose current formulations of the globalization process. He begins his analysis by emphasizing the “surprising emergence” of human rights in the last half-century. He draws attention to the origins of the Universal Declaration, its realist signatories and what he calls an “aura of hypocrisy” that surrounded the entire topic for much of its life. Falk contends that the “initial impetus in support of human rights on a global level was facilitated by th[e] dual recognition that the normative standards being adopted were either redundant or unenforceable” (1999: 94). Importantly he concludes that the emergence of human rights as a guiding contemporary discourse of international politics was unlikely at best.

Despite the many important points raised by Falk, this latter point, that the emergence of human rights was surprising, is highly problematic I suggest that the emergence of human rights as a dominant discourse of politics in the last half of the past century is not at all surprising. Drawing on my earlier discussion of the shift in the importance and role of law in neo-liberalism governmental rationality, it is undeniable that the shift away from more positivist rights toward broader, more abstract conceptions of human rights is implicated in, and in part facilitated by, the bolstering of neo-liberal governmental reason.

In support of this somewhat controversial claim we need to conduct a brief genealogy of human rights to facilitate a basic understanding of their current distillation, their contingent progression to the present and the continuing effects of their definition. Douzinas has initiated such a project in a recent book. The book traces the history of human rights by presenting a competing history of natural law in which natural rights represent the human struggle against oppression and domination. Douzinas makes an important contribution to an area drastically under-investigated by governmentality theorists. Unfortunately, his treatment is not without significant problems and these do require our attention and analysis. However I rely on Douzinas here for his discussion of the genealogy of human rights. He identifies several important shifts in the formulation of rights from their origins in natural law through to their more contemporary articulations in national and international covenants and constitutions. This alternative history, he says, challenges human rights' "dubious respectability" (2000: 376) by attempting to lay bare their limits and contradictions. What is of particular interest for our purposes are the more recent transformations identified by Douzinas. The first, which we will label the

‘positivization of natural rights’, is where, according to Douzinas, “the standard of right” was transferred “from nature to history and eventually to humanity or civilization” (2000: 20). The second transformation, closely linked to the first, was what he calls “the legalization of desire” (2000: 20). Douzinas argues that these shifts determined the trajectory of contemporary formulations of human rights. Most interesting is the fact that these shifts generally correspond with the shifts I identified from a “police”, to a liberal, to a neo-liberal rationality of government when investigating formulations of sovereignty last chapter. While Douzinas never explicitly discusses the implications of the shifts in rights in terms of changing governmental rationalities, what he provides are some preliminary remarks on how human rights have a contingent composition and uncertain routes by which they emerged in the present. His analysis then seeks not to fall victim to the critiques I leveled against those engaged in whiggish approaches to history in the first chapter—he does not attempt to monumentalize past formation of rights to reify present distillations. Nevertheless, as mentioned, Douzinas’s account is somewhat problematic. His conclusions are, I will argue, overly deterministic and his prescription for action as it relates to human rights reveals a potentially misguided and unlikely vision of politics and an overestimation of the critical potential of human rights. Interestingly these critiques of Douzinas’ determinism resurrect some concerns around genealogy as a form of critique. As noted in the introduction to this chapter, this discussion returns us full-circle, to again ask one of the principal questions of this thesis: Does genealogy as both a method and form of critique furnish us with a better understanding of contemporary systems of rule?

Having laid out the path along which the remainder of this chapter will wind, we return to Falk’s analysis to highlight a critical deficiency in his analysis of the

relationship between neo-liberalism and human rights beginning first with his assertion that the ascendancy of human rights was surprising in light of its idealist origins.

Falk: Essentializing an oppositional relationship

Falk begins his discussion of the emergence of human rights by drawing attention to the historical conditions in which human rights emerge in the international arena. As mentioned previously, Falk contends that human rights received support at the global level mainly because they were recognized as redundant by some, and unenforceable by others. Falk remarks that liberal democracies were particularly interested in achieving redundancy in an effort to stem the potential activism of their respective citizenry armed with new rights, while authoritarian governments agreed to the new set rights mainly because they believed that there was little to no chance of any real external or internal pressure for their enforcement. For Falk the climate of the cold war had a significant impact on the formation and early direction of human rights. The tensions between the two superpowers, and a dominant realist worldview prompted human rights concerns to be quickly set aside in light of strategic concerns. Amidst these tensions Falk points to several developments that prompted the addition of human rights concerns to the global agenda. Among these he includes the anti-colonial movement, the anti-apartheid campaign, the increasing accessibility of the UN to Asian and African nations, and importantly the increasing role of civil society groups fuelled by increasingly better information. While a prolonged discussion of these movements is not critical to the argument at hand, Falk's conclusions are important. He remarks that despite the significant gains made following the movements I just listed above, we should not

“romanticize or exaggerate” these developments (1999: 98). The orientation of human rights activism had, in the beginning, only emphasized the failures of communist and third world countries in order to promote “Western-style” civil and political liberties to its citizenry. Most western “defenders” of human rights were critically unreflexive about the limits of civil and political rights and had all but stripped out any considerations for the economic, social and cultural rights that were as much a part of the international instruments that guaranteed civil and political rights.

Important for our analysis, Falk reminds us that despite the progress made toward ensuring human rights concerns a place at the table, the formulation of human rights had done remarkably little to challenge the realist conception of the role and authority of states. He says that,

human rights progress, while definitely subversive of statist pretensions in certain key respects, still remain generally compatible with the maintenance of geo-political structures of authority and wealth in the world, and as such, exerted only marginal influence (1999:98).

Despite this important shortcoming, among others, Falk still contends that human rights have made significant in-roads in international politics and have had important effects on state-society relations. For Falk, these advances “far exceed” what might have been expected.

Falk’s discussion of the origins and early development of human rights demonstrates his contention that human rights, despite their suspect origins, have nevertheless made considerable progress toward assuring their political significance at the international level. However, his concern turns to several “countervailing tendencies” that he says limit or constrain the future promise of human rights. These tendencies are

those he associates with processes of globalization, and are mainly economic, but also social in character. Falk contributes to the present discussion in two important respects. First, he recognizes the emergence of a neo-liberal ideological climate and second he articulates a position that sees the emergence of human rights as surprising—a position founded on the assumption that human rights must be necessarily positioned *contra* neo-liberal government. Before moving on to critically assess Falk's claims, I will briefly outline the tendencies that “constrain” further development of human rights, among which he locates a neo-liberal ideological climate.

Falk contends that with collapse of the Soviet Union and with it the socialist other, there is a current policy consensus that he defines as neo-liberalism. For him, this policy consensus inhibits the spread of human rights for a variety of reasons. He argues that in

this atmosphere, support for economic and social rights, as specified in the international law instruments on the subject ... , is virtually non-existent, although still enjoying nominal and rhetorical support. Addressing the basic needs of the poor is entrusted, essentially, although not completely or evenly, to the operations of the market and the alleged spillover benefits of economic growth, privatization and increasing investment. Normative claims that insist on immediate and obligatory action by the state to overcome the social distress caused by poverty and joblessness are subordinated to a *posture of deference* to market forces and to a variety of economic restructuring priorities (1999: 100, emphasis added).

While it is clear that calls for the enforcement of economic and social rights have in recent times largely fallen on deaf ears, this does not alone position neo-liberalism and human rights as strictly contradictory. Within Falk's analysis we can locate a particular inadequacy in his description of both the role and relationship of states and markets under

neo-liberal government. His analysis points to the relationship of the state and market as one of mutual exclusion whereby the State essentially gives way, or as he puts it adopts a “posture of deference” to market forces. The state, he argues, entrusts the general welfare of the population to mechanics of standard “tickle-down” economics. However, as was clear from our earlier discussion of the role of markets and the state in neo-liberalism, the state does not simply give way to the market as was the case in classic liberalism, rather, the state engages in promoting market based models in all spheres of government. Furthermore, by Falk’s own admission the new focus on human rights remains preoccupied with civil and political rights (1999: 101). The point remains that Falk’s positioning of human rights in an entirely oppositional relationship to neo-liberalism overlooks the role human rights may play in securing and bolstering neo-liberal governmental rationality.

As was clear from the previous discussion of transformations in law under neo-liberal governmental reason, law’s role shifts such that one of its primary features in neo-liberal governmentality to prescribe of standards and values rather than repress particular conduct was intensified. I also argued that as law functions more as a norm and this significantly changes the ways in which law acts on the individual. This assertion built on my examination of the individual in neo-liberal governmentality, governing populations through process of responsibilization, the refocusing of sovereignty and the reduced capacity of critique.

Chapter II discussed the mutually reinforcing relationship between sovereignty and specifically liberal governmentality. Like this relationship, current formations of human rights have been mobilized as strategies of governance. What is evident is that

unlike Falk and others we cannot simply position human rights as opposed to power and we cannot simply get caught in a stale debate about civil and political rights versus social and economic rights. Instead what is important to consider is that human rights in their current formulation may serve as a governmental strategy through which the conditions of neo-liberal governmental rationalities are forwarded, bolstered and secured.

To this point the debate around rights has been polarized between those who see rights as mere tools of domination and those who see rights as tools for emancipation. In the first instance, we cannot simply reject rights. In simply locating them within either a “power as bad” or law as ideology paradigm we fail to recognize their role and potential in governmental regimes. Simultaneously however we should not wholly embrace human rights as an essential emancipatory discourse that we can position “outside” or directly opposed to power or historicity. Again, if this is the case we simply fail to recognize human rights as potential strategies or technologies in governmental projects. Instead, we first need to examine the actual *effects* of human rights and importantly the conditions and consequences of their definition. While Falk, like so many others, tries to move away from the strictly polar conception of power we have addressed throughout this thesis, he positions human rights as fundamentally opposed to relations of domination, and in doing so fails to realize the full implications of their role in projects of governance.

As remarked in the introduction to this section, to begin to address this deficiency in most treatments of human rights I follow some important components of Douzinas’ genealogy of human rights. This analysis seeks to reveal the political foundations of human rights in an effort to disrupt their reified and doctrinal foundations and expose

their contingency; such a result may open critical spaces from which we can better orient our selves in the present.

Douzinias: A genealogy of rights

Douzinias agrees that the rise of human rights was not really surprising at all. He reiterates that this was not about reaching some final stage in a steady emancipatory march or evolutionary trajectory, rather, their emergence is for him a foreseeable, though not inevitable, consequence of the conditions of uncertainty that constitute late-modernity.

It is no coincidence that human rights “triumphed” at a point of maximum angst about life chances and malaise about the collapse of moral certitudes and political blueprints. The enormous potential for diversity released by the demise of Communism was accompanied by an unprecedented desire for unity and order. Its signs are apparent all over the world. They are expressed as despair about the loss of state autonomy, national virility and parental, specifically paternal and male power; families, of “scroungers” and “welfare mothers”; as hatred against “bogus” refugees and criminal children, muggers and corrupt policemen; as fear about nationalistic warlords, ex-communist mafias and juvenile thugs; or, as millenarian angst, identity crisis and *fin-de-siècle* blues (Douzinias 2000: 375).

Douzinias begins by identifying the central paradox at the heart of human rights. He argues that there is little doubt that human rights have “won” the ideological battles of modernity. Today they unite left and right, entrepreneurs and the homeless, environmentalists and tobacco executives; they have become *the* language through which all of us make claims about both the universal emancipatory potential of modernity, and our ability to secure it. But in spite of their rhetorical triumph and proclaimed “victory”,

it is undeniable that this “era of human rights” has witnessed more violations of these principles than ever before in history (Douzinas 2000: 1-3). If progress was to be measured in terms of basic respect for the lives of our fellow humans, then even a single incident, like the relatively recent genocide in Rwanda, sweeps away any claim that we are more “enlightened” today than we were in the past. As Marcel remarks, “it is an undeniable fact that human life has never been so universally treated as a vile and perishable commodity as during our own era” (1964: 94). This is the paradox of human rights.

Douzinas asks whether the recognition of this facet of human rights—their empirical failures—threatens their emancipatory promise? To begin to answer this question he examines their “conditions of existence”, to explore the trajectory of principles from classical natural law to contemporary human rights, their historical political contexts, and to investigate the consequences of their “triumph” in the present. “[T]heir history”, he says “demands that we re-assess their promise away from the self-satisfied arrogance of states and liberal apologists and attempt to discover political strategies and moral principles that do not depend exclusively on the universality of law, the archaeology of myth or the imperialism of reason” (2000: 8).

As I remarked in the introduction, I include Douzinas here because he attempts to construct a genealogy of human rights, an important contribution to an area that has been largely ignored by genealogists. But just as important is his ultimate failure in this task, which returns us to some of the potential criticisms levelled at genealogy as a critical methodology. An attempted genealogy of human rights offers a unique opportunity to

expand and clarify the orientation, purpose and potential of genealogy as method and critique.

We can locate several major shifts in the history of human rights and rights more generally. Douzinas investigates at least three distinctive shifts in their advance to the present. For my current purpose I will elaborate on two of these. By way of introduction, there are a number of reoccurring themes that run through this discussion. First these shifts should demonstrate that rights, quite contrary to popular opinion, have not followed an evolutionary trajectory to the present; they are not merely vehicles on some imagined one-way road to emancipation. Secondly, rights were and continue to be implicated in the governmental rationality and the strategies and projects of governance in which they emerged. To illustrate this crucial point I will draw connections to the two major shifts in governmental reason discussed earlier. What is obvious is that rights in any form cannot be *fundamentally* opposed to power, since they are necessarily part of the structures of power.

Revisiting Hobbes: Natural law to positive rights

Douzinas argues that the first major shift that takes place in rights occurs, conveniently for us, with Hobbes. Pre-Hobbes rights had firmly resided in classical formations of natural law. Drastically simplified, classical natural law was based on a necessary connection between natural right and justice. Douzinas argues that natural right was not moral law *per se*, which prescribes actions based on a series of “universal” moral principles. Rather he says, it was a “methodological principle which allowed the philosopher to criticize sedimented tradition and the jurist to discover a just solution in

the case at hand” (2000: 68). Natural rights then act as critical tools to potentially destabilize exclusionary matrixes of meaning but also provide semi-stable frameworks for dispute resolution. In this way natural law is Janus-faced; a point that Douzinas glosses over too easily. Natural right, he says, enters into history when there is struggle against degradation and domination, but it is intimately tied to conceptions of justice and these he recognizes have often been associated with a “moralistic, patriarchal attitude, in which distributions and communication protect the established order” (2000: 68).

Into this context of natural rights emerge formations of positive rights. Douzinas remarks that what makes Hobbes such a pivotal figure in the transition of rights was that he was the first philosopher to basically dispense with an emphasis on justice and replace it with the modern idea of rights, and particularly individual rights. Natural rights do not entirely disappear in Hobbes but what develops is a clear separation between right and law, terms that had in natural law basically been used interchangeably. Hobbes says that “they that speak of this subject, use to confound Jus and *Lex*, Right and *Law*; yet they ought to be distinguished” (1985: 189). Hobbes contended that decisions needed to be based not on philosophical speculation, a notion of a cosmos that tends toward harmony, or the interpretation of divine commands, but rather should be derived from the “nature of each man” determined through Reason (Douzinas 2000: 70).

The act of constituting “man’s nature” had several major consequences. First, in defining this nature Hobbes radically separates the individual from society and trusts them into the perilous “state of nature”. In this state of nature, there is no law *per se*, except, Hobbes argues, a limited conception of the natural law of self-preservation. In this state of nature, man exists in a pre-social and thus pre-political world. Second,

Hobbes' definition of the state of nature transformed natural law from an idea founded on a vision of a state of nature as a benevolent equilibrium to its opposite—a state of continual insecurity layered with an immanent capacity for conflict.

Once this separation of egoist man and benevolent society takes place, Hobbes makes a further move that dramatically alters the concept of natural rights. He links rights with the notion of freedom, and defines freedom as the fundamental absence of law and social imposition. This is significant enough on its own, but this transformation also shifts the notion of justice to positively correspond with individual desires and wants. Hobbes argues these can be objectively determined by examining individual behaviour, and these observations are more valuable than subjective claims to understanding of the orientation of the universe or the will of God. But most significant is law's essential juxtaposition with right. Hobbes concluded that law contravened the principle of rights because it is clearly a restriction on man's inherent freedom; moreover, it imposes duties, also the opposite of freedom, and therefore is surely the opposite of rights. He remarks that "RIGHT, consisteth in liberty to do, or to forbear; Whereas LAW, determineth, and bindeth to one of them: so that Law, and Right, differ as much, as Obligation, and Liberty" (1985: 189).

We can see here the foundations of the system of binary power I have been criticizing throughout this thesis taking shape. The binary is set as law is inscribed as the essential negation of freedom. What should also be becoming clearer is the way formulations of particular kinds of rights constitute "man" with a particular character or essence—what Douzinas calls the "Crusoe-like" figure (2000: 71)—and this prescribes particular relationships between individuals and society.

Douzinis draws attention to two major consequences of the separation of natural law as rights, and the reduction of natural law to the limitless wants and desires of the individual. First, because for Hobbes desire is equally shared by all, freedom as well is also equally shared. As Douzinis remarks, “when nature is emancipated from the harmonious and hierarchical order of the ancients, it becomes absolute equality, a ... force which knows only the justice of desires and the constraint of force and law (2000: 74). Second, as eluded to above when I mentioned this thesis’s continuing critique of a binary conception of power, Hobbes’s vigorous assertion of the absolute composition of freedom as *essentially* ‘good’ and law as *essentially* ‘bad’ because it violates the essential good, means that his original theory lacks the capacity to identify “good laws” or “bad freedoms”.

It is this constitution of the individual and the “natural” adversarial relationship with others that leads to the “warre of every man against every man”. So while according to Hobbes man is essentially free in the state of nature, the danger of violence and continual insecurity robs him of the good life. To prevent against this state of anarchy individuals come together to form a covenant and essentially transfer natural rights to the sovereign or “Common Power”. Once established, Douzinis says, the natural rights that were transferred to the sovereign through an imagined social contract become intertwined with the civil law established by the Sovereign to protect the rights of individuals. Thus, “natural law in a final feat of trans-substantiation becomes identical with civil law” (Douzinis 2000: 77).

With this coupling Douzinas explains that justice was also radically redefined. The measure of justice became the degree to which freedom had been violated. In this way, injustice becomes limited only to a violation of the social contract.

For where no Covenant hath preceded, there hath no Right been transferred, and every man has right to everything; and consequently, no action can be Unjust. But when a Covenant is made, then to break it is *Unjust*. And the definition of INJUSTICE, is no other that *the not Performance of Covenant*. And whoever is not Unjust, is *Just* (Hobbes 1985: 202).

In sum, we see two critical transformations of rights after Hobbes. First, the concept of justice is simply equated with obedience to law. And secondly, and most importantly, we see the transformation from a formulation of natural rights to essentially a scheme of “state-given” individual rights and positive rights.

If we recall the earlier discussion of the connection between liberal formulations of sovereignty and liberal governmental reason, there I drew the conclusion that sovereignty had played a pivotal role in promoting and bolstering classical liberal governmental rationality. There can be little doubt that rights, and the assumptions that ground their definition, also played a significant role. At its most basic, Hobbes’ formulation of rights promoted and legitimized the liberal formulation of sovereignty as absolute and the final legitimate authority which in turn was implicated in classical liberal governmental reason and strategies and in particular a binary formulation of power. In other ways, formulations of rights contributed to particular constructions of the limits and potential of liberal individuals, their relationships with one another and thus the composition of both society and markets.

Relocating Rights: Positive rights to human rights

Human rights emerge following the end of the Second World War and are “established” with some certainty in the adoption of the Universal Declaration of Human Rights in 1948. Thereafter, Douzinas notes, hundreds of human rights conventions, treaties, agreements and declarations have been officially adopted by the United Nations, launching what he says is a long campaign of “standard-setting” (2000: 115). As Burergenthal also remarks, the last 50 years have witnessed a “vast expansion” of the meaning and quantity of human rights legislation (2000: 28). What lead to this rapid expansion? Or more accurately what transformations have taken place in the formulation of rights from positive rights to human rights that prompted such an expansion in rights?

There are a number of important shifts that occur in the transformation of rights from positive rights to human rights formulations. These can be broadly categorized into two strands: shifts in philosophical foundations and shifts in institutional foundations of rights. Both shifts were prompted in large part by the realization that positive rights had not only failed to save, but more perversely had contributed to, the extermination of six million Jews. In short, rights guaranteed by states were no longer seen as sufficient to assure the basic rights of individuals. The paradox of the position that held rights could be entrusted to the mechanisms of popular sovereignty was highlighted by Arendt’s remarks that

it is quite conceivable that one fine day a highly organized and mechanized humanity will conclude quite democratically—namely by majority decision—that for humanity as a whole it would be better to liquidate certain parts thereof (1979: 299).

In an effort to compensate for the contradiction that states as guarantors of rights under positive law formations are most often the worst violators of the rights they were entrusted to protect, the source of rights are in a sense shifted away from sovereign states, and “back” to individuals—but with an important distinction. As Douzinas observes, this “mutation” does not move rights back to human nature as we saw was their source in Hobbes, but rather to a new object, *humanity*. National sovereignty and the social contract as the originate site of individual rights are replaced by international covenants that have become “Constitution[s] above constitutions and the Law behind laws” (2000: 116).

Before we continue a note of caution, as I remarked in the discussion of shifts in sovereignty, we are not primarily interested in whether there is an *actual* transfer of the source of rights. As I suggested in Chapter II, with the shift in the source of sovereignty from the “divine right of kings” to “the People” there was not really any actual change in the structures of power, rather the reformulation of the locus of power is nevertheless significant. In this case, positive rights as codified by national governments have not disappeared or been replaced; clearly they remain important aspects of our lives. If we take Canada as an example, the central guaranteeing instrument of civil rights, the Charter of Rights and Freedoms, was negotiated and entrenched almost 40 years after the Universal Declaration was drafted. The point is that the source of and duty to protect rights begins to shift away from national governments and is relocated somewhere in a triangle comprised of the international community, national government and the individual.

Douzinas demonstrates the flawed logic that grounds the assumption that power is actually shifted “back” to individuals through human rights. He remarks that the sweeping language of those many declarations, which proclaim humanity as their source, practically translate into: “What the People have determined is what the governments have expressed and negotiated and what has been put in the Charter” (2000: 117). This formulation thus outlines the triangle of human rights. The argument is not that because nearly all individuals are necessarily excluded from the process, this negates its value. While this may have some merit, it forces us into concerns with procedural legitimacy and as I argued Chapter I this is for genealogy not merely a moot point, but a distraction. Rather, the most important detail is, as Douzinas puts it, that

State power, public and private domination and oppression have been dissolved into this perfect chain of substitutions: peoples and states have finally merged and the governments or the international organizations speak for both, as there is no other way for that mythic beast, the “people of the world”, to express itself (2000:117).

The composition of the rights relationship between the individual and the sovereign state is effectively altered with the introduction of the international community. We will return to this shortly, before doing so there are two other related transformations that require attention.

First, Douzinas argues that the universality of human rights is not a normative principle but rather an “empirical universality” (2002: 117). He argues that in this way human rights are principally about how many countries have signed how many treaties; they are about who adopted which agreements and when. Human rights he posits are not normative universal claims because they do not expect universal adoption of the norms they prescribe. Universalism he says, should not come with an “opt-out facility” (2000:

122). He goes on to contend that when normative universality is reduced to calculable ends, human rights become “the lowest common denominator of state interests and rivalries” (2000: 117). There are two aspects to this argument. The first, that human rights are not universal normative claims is simply wrong. Human rights are universal normative claims in a sense in which all other rights claims are not; they aim to speak to *every* individual around the globe.

Whether governments envision these rights as practicable or enforceable is a valid concern, but not really the point. More important is to recognize the way in which these rights propose to construct *all* individuals and their relationships with government, and how these norms are negotiated and possibly internalized. The normative claims forwarded as human rights are directed toward, negotiated and potentially internalized by everyone who considers him or herself human. At their most basic level, human rights construct individuals as members of a new humanity, now newly defined in a circular reference to human rights. Relying on humanity as a criterion for human rights is problematic for a number of reasons, many of which derive from our ability to amend our idea of who counts as human.⁶ Moreover the construction of the category of humanity is envisioned *not* as an act of political constitution but as an act of recognition of an existing object. Humanity in this way is given; it is self-evident; it is *non-political*. By way of their tautological constitution human rights are seen as equally non-political. Thus one’s

⁶ Rorty discusses this facet of human rights at length and comments specifically on a series of human-other distinctions that have historically been mobilized to exclude certain groups of humans from humanity (1998: 167-169). Arendt likewise expresses some trepidation in locating rights in humanity. She says that deriving rights from one’s “humanity” would mean that the “right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible” (1978: 298).

humanity, and the constitution of that humanity, becomes a non-negotiable identity in our construction of self.

The second aspect of Douzinas's contention, which is much more sound, is that human rights can be used by states as commodities to be bargained with. This is an important consideration when determining questions about universal enforcement of human rights however it has little to do with the constitution of human rights as universal normative claims.

The second significant transformation that occurs in the shift from positive rights to human rights is a transformation in the nature and limits of state sovereignty—a point noted in the discussion of sovereignty's role. Douzinas argues that despite international law's new recognition of the individual through human rights, and despite the perception that new limits had been imposed on the state, there was virtually nothing in human rights documents that narrowed or limited the sovereignty of states. Rather, Douzinas argues that human rights initiated a new type of positivism. "Human rights" he argues "were a major tool for legitimizing nationally and internationally the post-war order" (2000: 118).

As I argued, Douzinas' genealogy is important because it reveals the contingent conditions which allowed human rights to emerge in their current state in the present. More importantly our discussion here demonstrates how formulations of rights are linked to governmental projects and how positioning them as fundamentally oppositional to power leads us to neglect their roles and effects in governmental strategies. However despite Douzinas's valuable genealogy and the rhetorical flare of his arguments there are several unfortunate deficiencies in his prescription for human rights. First, in spite of his recognition that natural law is as much a key that opens the shackles of repression, as it

may be the key that locks them, he nevertheless laments what he sees to be the monumental loss of natural law in the wake of positive law. Douzinas sees a re-emergence of natural law elements in human rights and argues that they draw on an essentially critical orientation in their constitution. While he draws many distinctions between natural rights and human rights, in one instance saying that human rights do not draw their force from a predicted future utopia, but rather from the “pain and contempt felt by the citizens of the states which have proclaimed their triumph” (2000: 379-80), he remains committed to the essential value of human rights as strategies of critique. He even calls human rights a “transcendent ground of critique against the oppressive and commonsensical” (2000: 7).

But this commitment to not just *revealing* but promoting a particular and essential constitution of natural and human rights compromises the genealogical method that grounds his examination. He remarks that,

As human rights start veering from their initial revolutionary and dissident purposes, as their end becomes obscured in even more declarations, treaties and diplomatic lunches, we may be entering the epoch of the end of human rights and the triumph of a monolithic humanity (2000: 380).

What Douzinas gets wrong is that human rights are not *in their nature* tools of resistance. While he seems to recognize this at points throughout the book, he nevertheless holds out human rights as essentially emancipatory in their orientation. He tries to mediate this by arguing that it is not in their ends that they are emancipatory, but in our attempt to make them so. Their end he says, is the promise of “not yet”, a promise that suggests that they remain just outside of history, or politics, or the individual—just far enough so that they can, in moments of exceptional oppression, storm “in” to swell the sails of emancipatory

politics, ultimately fail, and then retreat back to their privileged position of quasi-transcendental evaluator.

Second by discounting positivist construction of law, Douzinas fails to appreciate the potential disruptive frictions that may emerge between forms of power that may be exposed in their collisions with other powers and technologies of governance. As I said, he laments the transformation of natural rights to positive rights and sees the increasing codification of human rights as essentially stripping them of their essential radical potential. For him it would seem that human rights must remain ideals only—aims that must be continually worked toward, but aims that must never be defined lest we jeopardize their essential radical nature. To demonstrate the misdirection in this position we should recall the discussion of Hoffman’s critique of Bartelson. Hoffman, I said, critiqued Bartelson by claiming that he and other ‘postmoderns’ subscribed to the “indefinability” thesis and remained trapped in a defeatist logic, doomed to wander a “anarchic” and “shapeless” world that cannot, or more accurately, must not be defined (1998: 18-19). In response I said that the problem was that Hoffman fails to see that the question for Bartelson was not: ‘to define or not to define?’ Rather the question was to what degree are the definitions presented as self-evident, natural, fixed and unchallengeable? Hoffman’s critique would have been best levelled at Douzinas; for Douzinas it seems rights *must* essentially remain indefinable. For him the question *is* “to define or not to define?” but slightly amended to reflect its legal character—“to codify or not to codify?” *that* is the question.

Despite these deficiencies, what is clear following Douzinas’ brief genealogy of the shift from positive rights to human rights is that in their current form human rights

play a supportive role in promoting and bolstering fundamental elements of neo-liberal governmentality. If we recall the discussion from earlier in the chapter we saw that neo-liberal governmentality decontextualizes and self-governmentalizes individuals by constructing them as the primary source of their own governance. In this way neo-liberal governmental logic became more sedimented and difficult to challenge because of its intimate relationship with processes of self-identity and self-actualization. This constitution of the neo-liberal individual is accomplished in several ways. First, it is facilitated by a significant transformation and reorganization of the relationship between the individual and the State. I argued that the state as an identifiable source of government was reduced, but said that this was part of a strategy to promote self-responsibilization. As I just remarked, in the shift to human rights the role of the state is also transformed in a similar way. The state, while formally still the guarantor of human rights, is formulated to have a less important role because it is no longer necessarily the source of human rights. The source and responsibility for human rights becomes located somewhere in a triangle comprised of the individual, the state and the international community. Second, under neo-liberal governmental reason law begins to more closely resemble norms. Our analysis of this revealed that law, as part of neo-liberal governmental reason's attempts to promote self-governing responsible individuals, tends to prescribe "standards" more than they prohibit actual conduct. If we then consider our discussion of human rights as primary examples of prescriptive norms it is evident that human rights are a neo-liberal strategy of law *par excellence*. At a minimum, human rights support and bolster a neo-liberal governmental formation of laws and thus in turn bolster formations of neo-liberal governmental reason. In other more complex ways they

aid in the construction of a decontextualized self-governing individual, whose processes of self-identity are further fused with new standards of reasonable ranges of action and thought.

As I laid out in the introduction to Douzinas's genealogy of human rights, investigating the transformations and mutations of rights demonstrates that they do not follow an evolutionary trajectory to the present. Second, rights were and continue to be implicated in the governmental rationality and the strategies and projects of governance they may partially initiate or in which emerged. Again, what is apparent is that rights in any form have not and cannot be fundamentally opposed to power, since they are necessarily part of those power relations.

Conclusion: Human Rights as Effective Strategies of Neo-Liberal Governmental Reason

In closing, it is important to briefly highlight some of the principal findings and concerns advanced in this chapter. The principal aim was to demonstrate the effects of the transformation from the classical liberal governmentality toward neo-liberal forms. In particular I was interested in laying bare the inherent paradoxes of neo-liberal governmentality by elaborating on the continued exclusion and reduced critical capacity of the individual on which neo-liberal governmental rationality works. What was clear was that neo-liberal governmental rationalities, despite a proclaimed interest in the freedom and autonomy of individuals, only further reify or reconstitute dominant knowledges, practices and identities. Worse still, the resultant marginalization and exclusion is narrowed and intensified such that particular groups of already disadvantaged individuals are more specifically targeted and their limited autonomy even

further constrained. We further saw that shifts toward neo-liberal governmental reason dramatically rearranged the relationship between individuals and apparatuses, technologies and strategies of government. Building on the criteria utilized in Chapter II, we undertook to demonstrate these relationships by investigating shifts in formulations of society, markets, law and sovereignty.

In the discussion of society we saw that while under liberal governmentality “society” had played an important role in securing liberalism’s conditions of freedom, its role in neo-liberalism has been significantly reworked such that the prior relationship where society was held to owe a duty of care to the individual, is essentially reversed so that now individuals conversely owe a duty to society to be productive members.

Similarly, we determined that the market and its functioning logic are dramatically expanded in neo-liberal governmental rationality. Under liberal governmentality the market was constituted as a “natural” site from which critiques of government could emerge, but into which governmental technologies did not “intrude”. Under neo-liberal government, the market, while still seen to produce the greatest benefits and egalitarian outcomes, *requires* governmental intervention to assure its ability to function properly. Thus the primary function of government in neo-liberal governmentality is to promote and secure the foundational logic of the market in *all* areas of life to allow individuals to best practice their freedom.

In order to accommodate and promote market logics in new areas, governmental strategies and technologies are refocused from promoting particular conceptions of society and economy to constituting a particular version of the individual. This version is, as in liberal governmentality, rational, but now additionally responsible and

entrepreneurial. Where the liberal problematic of security had been tied to the stability of particular institutions like society and the economy, it is now focused squarely on the neo-liberal individual.

What our investigation of the effects of the shift from classical liberal to neo-liberal governmentality revealed was that the apparatuses of neo-liberal government, now more intimately intertwined with processes of self-identity and self-actualisation, become more difficult to identify, to challenge and thus more rigid and unreflexive. In this way, they only reify existing dominant foundations and assumptions and thus result in the exclusion and marginalization they claim to remedy. Most importantly, they do not expand but only further limit the degrees of freedom and autonomy available to individuals by prescribing a narrow range of acceptable conduct and thought.

In elaborating on the transformations of law from classical liberal to neo-liberal governmentality I expanded on the critique I began last chapter of Dean's remarks that law becomes less important and essentially gives way to disciplinary power in liberal and neo-liberal governmentality. I underscored that this formulation of law was deficient because it leads to a less complete understanding of the strategies and technologies of rule in contemporary societies. Moreover, besides this leading to a failure to recognize how different forms of power may work together in projects of governance, it also importantly fails to recognise the tensions and frictions that may appear when different strategies of government meet. It assumes an easy transition from juridical to disciplinary power and in doing so fails to highlight the potential critical "spaces" that may temporarily emerge in which the process of critique may take place.

I went on to elaborate on these critical weaknesses by briefly discussing the origins of Dean's remarks on Foucault's assertion that in liberal regimes of law becomes less important. As Foucault says, "growing importance is assumed by the action of the norm, *at the expense* of the juridical system of the law" (1990: 144, emphasis added). I drew on Hunt and Wickam's analysis of the weaknesses of Foucault's "expulsion" of law and argued that law remains an important player in neo-liberal governmental reason.

The final section of the chapter expanded on this assertion by specifically examining transformation in rights and forwarded a controversial view that human rights may not only fail to challenge neo-liberal governmental reason, but may in fact help secure and bolster it. I critiqued Falk's formulation of the relationship between neo-liberalism and human rights which positioned the two as fundamentally oppositional and argued that this formulation essentialized human rights as tools against domination and repression. Similar to my critique of Dean I argued that this positioning failed to account for the potential effects of human rights in neo-liberal governmental strategies. In order to assess the validity of my claim I followed Douzinas's genealogy of human rights.

Douzinas's investigation of the shifts from natural right to positive rights and from positive rights to human rights demonstrated the contingent constitution of human rights and their intersections with the shifts in governmental rationalities that we had already investigated. This allowed a recognition of their role in existing and potential governmental strategies and particularly human rights role in neo-liberal governmental rationality. This investigation was not an indictment of human rights nor was it an exercise in redemption. Instead it sought to disturb the dominant formulation of human rights as *essential* tools of resistance; as vehicles that spirit us toward an inevitable future

emancipation where we are freed from the uncertainty of history and politics. Instead we examined human rights as contingent formations and politically constituted. Chapter III not only challenged the idea that human rights must necessarily oppose neo-liberal governmentality but suggested that they may more accurately bolster and secure its logics. However, as I said, this was also not meant to be an indictment of human rights. In the end we cannot claim that human rights are compromised because they are implicated in governmental strategies. To do so would be to subscribe a conception of power as domination; it would be to essentialize rights as formations that must necessarily work *against* power. Similarly this position does not conclude that human rights merely act as some legitimizing ideological veneer that shields the machinery of capitalist exploitation and relations of hierarchy and exclusion. My analysis at this stage does little more than present an alternative account of the history and uses of human rights in contemporary formations of neo-liberal government in an attempt to disturb their “dubious respectability”.

But the next question remains unanswered at the close of this chapter: *can* I make judgements about the value of these formations of human rights? Douzinas clearly does, and this step, from description to prescription, arguably destroys the genealogical foundations of his project. The issue of whether genealogy can be critical, whether it can make judgements returns us full circle to the Chapter I. There we investigated the critical potential of genealogy and concluded, drawing on Owen, that genealogy did allow us to make narrow judgements about autonomy and the fixity of knowledges, identities, and practices. The composition of history *as* history and not evolution gave some basis on which critiques against practices that sought to render these matrixes of meaning

effectively closed could be grounded. Moreover we found that the critical value of genealogy was not in what it prescribed but in what it revealed. Douzinas' genealogy of human rights re-raises these central issues and so we return to them in the conclusion that follows.

CONCLUSION

The last chapter closed with more of a question than an answer. It was the same question that I began with in Chapter I: Can genealogy be critical? Can it make judgments? Specifically, can it make judgments about contemporary rationalities of government? In Chapter I, I suggested, following Owen, that genealogy did not practice its form of critique by legislating how it is we must make judgements, but instead by exemplifying a commitment to autonomy through genealogy's practice and orientation. Through its alternative histories genealogy reveals the contingency of its target's progress to the present. In doing so it disturbs and challenges the target's claim to be natural, inevitable, universal, or the manifestation of common sense. This process also exposes the matrixes of meanings that cannot be accommodated by fixed definitions and potentially "reactivates" them or brings them back into play. This is what grounds genealogy's commitment to autonomy.

Yet as we also discussed in Chapter I, there may be some remaining problems with genealogy. Genealogy alone is unable to ground particular projects of autonomy or inclusion because it is unable to make normative judgments about what it reveals. Thus at its most basic it cannot determine between "good exclusion" and "bad exclusion", for example. At the close of Chapter III, I argued that genealogy did allow us to make narrow judgements about autonomy and the solidity of knowledges, identities, and practices. Drawing on my conclusions from Chapter I, I said that the composition of history *as* history and not evolution gave us some basis on which critiques of practices that sought to render these matrixes of meaning effectively closed could be grounded. But admittedly there remains some concern with the normative capacity of genealogy. However it should

be emphasized that my goal here was to examine its utility as a form of critique and in this capacity it is exemplary. However some important questions remain, and unfortunately at the close of this thesis, must remain unanswered. For example if genealogy is what reveals history as history and this knowledge in turn provides a semi-systematic bulwark from where we can justify and make judgements about the study of genealogy, this seems to suggest a latent tautology that has not been adequately addressed. But these questions are for another time and another project. Importantly however, at the close of this discussion we can clearly see the utility of the genealogical method in targeting and revealing the foundations of contemporary systems of rule.

In Chapter II, I investigated the history and development of sovereignty and commented specifically on its role in promoting and securing particular formations of liberal governmental reason. I did so by examining the constitutions of specific institutions traditionally associated with liberal governance to assess their role in the promotion and security of liberal governmental rationalities. Thus we saw the importance of formations of the state, society, markets and the law. These discussions demonstrated the contingent progression of these various institutions into the present and their particular constitution as part of liberal rationalities of rule. Moreover, our elaboration revealed the complex ways in which governmental strategies work on the individual to construct them in a particular way. This investigation of sovereignty underscored the fixity of liberal boundaries and the exclusion and marginalization that is the result.

Chapter II also addressed the ways different types of power may work together in projects of governance through intersections that are never entirely seamless and easy. Intersections of various types of power on the same object are important as they may

reveal themselves as power and this may open up critical “spaces” similar to the ones we encourage by engaging in the genealogical method.

Chapter III pursued two major discussions. The first was primarily interested in the transformation from the classical liberal governmental reason to neo-liberal formulations that orient contemporary liberal democracies. While there were a number of significant points advanced in this discussion, three deserve re-emphasis. First, neo-liberal governmental rationalities, despite a proclaimed interest in the freedom and autonomy of individuals, only further reify or reconstitute static knowledges, practices and identities. Moreover, the marginalization and exclusion that neo-liberalism claims to be addressing is, if actually reduced, only narrowed and intensified such that many already disadvantaged individuals and groups are more specifically targeted and their limited autonomy further constrained. Second, in neo-liberal governmentality the market is significantly transformed such that its logics colonize almost all areas of life. The primary function of government in neo-liberal governmentality shifts to promote and secure the foundational logic of the market in *all* areas of life because this is envisioned as a logic wherein individuals can best practice their freedom. Third and most important, neo-liberal governmental reason dramatically rearranged the relationship between individuals and the apparatuses, technologies and strategies of government. As these strategies of government move “closer” to the individual and become more intertwined in processes of self-identity and self-actualisation they become more difficult to identify and thus more difficult to resist. This coupled with the promotion of a particular version of the individual as rational, responsible and entrepreneurial, further politically decontextualizes the individual and constitutes them as the new sovereign in their own

lives. Ultimately the investigation of the effects of the shift from classical liberal to neo-liberal governmentality revealed was that the apparatuses of neo-liberal government, now more intimately intertwined with processes of self-identity and self-actualisation, become more difficult to identify, to challenge and thus are more rigid and unreflexive. In this way, they only reify the existing dominant foundations and constitutive narratives and thus the exclusion and marginalization they claim to remedy. In short they do not expand, but only further limit, the autonomy of individuals by prescribing a narrower range of acceptable conduct and thought.

The second major component of Chapter III began with a discussion of the role of law in neo-liberal governmental reason. Drawing on Hunt and Wickam's discussion of Foucault and law, I argued that a reduction of law to either its juridical or disciplinary face prevented us from understanding both the complex ways in which different powers act on the individual, and the effects these imbrications produce. Importantly, I added that failure to recognize that the intersection of types of power is never seamless or its transformations uniform prevents a recognition of the critical spaces that may be opened in these moments.

This set the stage for the final discussion of the thesis, which sought to examine the role of human rights in neo-liberal governmental rationalities. This was an important investigation because, as I argued there, despite the increasing constitutive and explanatory role played by human rights in contemporary understandings of political life, most governmentality theorists have been reluctant to begin to assess their place in governmental strategies and rationalities. At the same time, most treatments of human rights still essentialize them as tools of human emancipation *par excellence*. Human

rights are envisioned as diametrically opposite to neo-liberal governmental rationalities. However as we saw in my brief genealogy of rights, formulations of rights have been implicated in both sponsoring and bolstering the projects of governance against which and into which they emerge. This is no different in the case of human rights; they promote a particular version of the individual that is more than ever envisioned as a natural, pre-political object—a member of *humanity*. Moreover, I emphasized the way in which the individual was further politically decontextualized and responsabilized as the source of, and duty to protect, human rights shifted from the state in classical liberal governance into a triangle of the international community, the sovereign state and individual.

The limited genealogy of human rights was aimed at disrupting our understanding of human rights as natural, inevitably or essentially emancipatory. This was further aimed at disrupting a binary conception of power. In closing what is undeniable is that the narratives of sovereignty and rights are not behind us. Rather, they have undergone significant transformations as part of a shift from a liberal to a neo-liberal governmental rationality. This shift has had dramatic effects on the way in which we constitute our relationships with the state, one another and even our selves. This thesis endeavoured to draw out some of these effects, to demonstrate their contingent constitutions, and to allow us to recognize their source and their purpose.

As a final note it is crucial to remark that the chapters that make up this thesis have not simply been an interrogation of classical or neo-liberal governmental rationality based on my perception that they exclude particular groups and are therefore “bad”. Exclusion is a necessary consequence of government, but not its *only* consequence.

Inclusion also requires governmental intervention; it is not a natural state, it cannot be found or located, it cannot be determined once and for all, and it is certainly not inevitable. Rather it is achieved, sometimes only briefly, in the act of its cultivation and this is necessarily an act of government. This is the fundamental point that liberalism misses. In juxtaposing power to liberty, freedom to government, and in the pursuit of a future inevitable emancipation of the individual freed from external restraint and coercion they have initiated a project that ultimately, if not vigorously resisted, traps us in selves not of our own making.

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