Manufacturing Subjectivities:

Exploring the Role of Race and Biopower in U. S. Immigration Policies

by

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Abstract

Although the attacks on the U.S. on September 11, 2001 have brought to into focus the question of the relationship between immigration policies and the targeting of certain nationalities and peoples as ‘dangerous,’ U.S. immigration policies have historically been criticized for their racism; this thesis strives to approach this problem using a Foucauldian model of race and biopower. As such, I begin with a discussion of constructions of race, introducing some race scholars’ understandings of what race is and how it ‘works’. Then, I explore and utilize a Foucauldian theory of race, supplemented by related materials written by post-colonial scholars, as a tool with which to understand this relationship between race and immigration. Finally, with a detailed, albeit limited, discussion on the history and development of U.S. immigration policies, I apply a Foucauldian model to these policies and address some of the questions that this analysis produces.

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Introduction and Statement of the Problem

Immigration policies in the U.S. used to be under the command of the "Immigration and Naturalization Service" (hereafter INS), utilizing both executive and judicial powers to enforce those laws that applied to foreign nationals, their entry and stay in the U.S., as well as citizenship matters. During the massive restructuring of the government in the wake of September 11, 2001, however, the INS is also undergoing reorganization, and effective March 2003, is no longer the INS, but the U.S. Citizenship and Immigration Service (hereafter CIS), under the division of government currently known as the "Department of Homeland Security."¹

While the general functioning of this service remains the same, there are fundamental paradigmatic shifts in what the organization aims to accomplish. The first has to do with the restructuring within the government; since the CIS now falls under the authority of "Department of Homeland Security" immigration is now also a *security* issue (i.e. constitutive of executive powers and focused towards national security issues) much more than it was ever previously. Whereas the INS was always concerned with "protecting" American workers from cheaper, foreign employment, and society as a whole from persons with contagious diseases, as well as the likes of criminals, the mission of CIS is expanded to include the defense of U.S. society from terrorists and terrorism. Even though the U.S. government has frequently been concerned about the admission of certain political immigrants (such as Communists during the Cold War era and Anarchists at the turn of the last century), the convergence of old political and national exclusions along with newly acquired executive powers becomes a much more

¹ The migration of INS to CIS and from Department of Justice to the Department of Homeland Security was accomplished through numerous regulatory changes published in the Federal Register in March/April 2003.

potent and potentially abused set of powers. I contend in this thesis that in an attempt to identify terrorists, the U.S. government leans ever more closely to a criminological approach to immigration policies. The agency is expected to be able to generate policies that allow immigration officers to *identify* terrorists.

Much of this hype stems from a situation that occurred directly after the terrorist attacks of 9/11. Two of the hijackers aboard the WTC planes, were not only in the U.S. on legitimate student visas, but their visa extension approval notices were processed, approved, and sent to the hijackers after the attacks had been carried out—meaning that despite the high profiles of these individuals, the workers at INS failed to identify these same individuals as terrorists involved in the World Trade Center attacks. Perhaps it is ridiculous that the workers at INS failed to note something to fundamentally wrong while processing their visa applications—but, perhaps instead it's ridiculous that anyone expected otherwise. After all, if by all accounts the application is within the parameters of legitimacy, why should they not grant it? The hijackers were, after all, within the U.S. legitimately, as students and apparently fit all the criteria to be admitted under a student visa.

This type of situation is now the U.S. government's prime concern and explains why immigration now falls under the Department of Homeland Security. Not only is CIS expected to make determinations on individuals based on their personalities and actions; the State now seeks to be able to identify terrorists before they commit terrorist actions. The government seeks, now more than ever, to create the proper profile that will admit the "right" kinds of aliens² (i.e., those foreign nationals that may prove to be docile

² Although the word 'alien' is sometimes perceived to be derogatory, due to its connotations with space invaders and its unwelcoming tone, CIS and those that work with CIS frequently employ this term because

patriots)—a formula that will separate those few bad eggs amongst alien visa applicants from the rest of the hard-working people just trying to lift themselves up by their bootstraps and make a better life for themselves in the U.S.

How, then, do you think they will accomplish this task? First, they have identified several countries as high risk³, and furthermore have begun fingerprinting every single alien born in those countries, regardless of current citizenship, at the U.S. port of entry. Back in early 2003, the government asked all non-immigrant aliens, whether they were in or out of status⁴, to come into INS centers and submit themselves for processing and review. As a consequence, many Pakistanis and other Middle Eastern and South Asian nationals were detained and have remained under custody indefinitely, without trial and legal recourse (despite protections granted in the U.S. constitution). This policy of fingerprinting and enhanced scrutiny at ports of entry has been revised somewhat to apply to any foreign national coming into the U.S., due in a large part to the outcries and lobbies of various immigration watchdog organizations and ethnic communities. Significantly, however, both the initial policy that targets specific nationalities, as well as the second more broadly applicable policy demonstrates the government's faith in its ability to defend American society from dangerous foreign nationals.

this is the term used in the INA. Additionally, to use the word "immigrant" instead would be confusing, since in the context of immigration agents, "immigrant" refers directly to the foreigner's status within the U.S. That is, for example, if an alien holds a non-immigrant visa, it is incorrect to call the alien an "immigrant", since this status type is only conferred on a certain class of individuals eligible in the process.

³ The original list compiled by CIS, included the following countries: Egypt, Iran, Iraq, Libya, Saudi Arabia, Sudan, and Yemen. This list has since been expanded to include the original seven countries, in addition to the following: Afghanistan, Algeria, Bangladesh, Bahrain, Djibouti, Eritrea, Indonesia, Jordan, Kuwait, Lebanon, Malaysia, Morocco, Oman, Pakistan, Qatar, Somalia, Syria, and United Arab Emirates.

⁴ Status refers to the legal right of the alien to be in the U.S. Accordingly, "in status" means that the alien holds a current and appropriate visa which designates lawful admittance and stay in the U.S.; "out of status" means that the alien never applied for a visa or that visa has expired (i.e., they are "illegal immigrants").

With such a targeting of specific nationalities, argued those watchdog associations, these policies sound like racial profiling, which goes against the U.S. Constitution's Bill of Rights, protecting all people (including foreign nationals within the U.S. borders) from discrimination based on race, color, or creed.⁵ Still, the U.S. government defends its actions based on national security and its conviction that certain nationals are more threatening than others. In light of the actions of American-born terrorists, such as Timothy McVeigh and the Uni-Bomber, it seems that immigration should not be considered to be such a "problem" or a possibility for breaches in security since these examples prove that terrorists need not be from a foreign country. The idea of a terrorist attack by a foreign Muslim extremist somehow speaks to a deeply ingrained fear that has greater significance than the fact of death alone, such that to die in a terrorist attack gives the victims national heroic significance. After the 9/11 attacks, international terrorism in the U.S. speaks to the patriotic duty to live, to survive and to conquer the violence of non-state agents (such as terrorists) through a refusal to accept the death of fellow citizens by the hands of anyone other than the State.⁶ Unofficially, foreign-born

⁵ This defense of right of protection under the Bill of Rights extending to foreign nationals, is based on the very first sentence in the Constitution, where it states: "We the people..." Since it states that the people within the U.S. are constitutive of the protection (rather than "citizens" specifically), the Bill of Rights is extended to include the protection of all people, including foreign nationals residing within the U.S.

⁶ In the immediate aftermath of September 11, numerous media announcers emphasized the importance of continuing on with life as usual as a way to fight terrorism. One psychologist wrote: "perhaps all Americans know what it is to be moved from the tranquil mindset of life based on a false but wonderful sense of security to the uneasy mindset of life scarred by the possibility of devastation and loss. In some ways, since we are all faced with the promise of death, the ultimate reality has not changed. Rather, it is death moving from the future tense to the present tense that clouds life. Like the cancer survivors we wonder how long the window of wellness will last and, depending on our level of contamination, we develop few or many rituals and exercises to boost our belief in the likelihood of our survival and well being." [from Sandra Haber. "On a Clear Day" Bulletin of the Psychologists in Independent Practice, Vol. 22, No. 4. Fall 2002. p. 2]. Note in particular Haber's reaction to the changed significance of death and the way in which she links the fear of death to a national significance that affects all *Americans* (which perhaps even unwittingly excludes all foreigners living in this country who are subject to the same dangers of terrorism in a post-9/11 U.S.). Haber also likens the fear of terrorism to a sickness infecting the nation. This type of reaction is significant in light of a Foucauldian model of race and biopower; however, for the

Muslims and foreigners in general are symbols of this threat to our society. It seems that in a post-September 11 America, we live in a society where officially, the laws protect people from discrimination, and yet we notice a long list of mostly Arab and Persian names called out at “random” security checks while boarding airplanes.

Still some might ask what racism and terrorism really have to do with one another. After all, clearly September 11 has shown that there is a terrorist organization that is willing and capable of terrorist acts on U.S. soil. What I find so interesting is that the government believes that it can make policies to prevent future attacks and protect Americans by identifying terrorists before they commit terrorist acts. This belief, founded in the presumption that most terrorists will be foreign-born, uses mechanisms of discipline and regulation similar to Foucault's State racism. In this way, the government's response to Arab-Muslim extremism in immigration policies also racializes patriotism and constructs a complex and often contradictory web of race, religion, patriotism, citizenship and national belonging. I will argue in this thesis that race and immigration policy have everything to do with one another.

In the first chapter, I will briefly introduce the complexities of race and racism. By drawing from several different race theorists, I will demonstrate the difficulties in discussing race, and explain why Foucault's model of race is an appropriate tool for this project.

In the second chapter, I outline Foucault's model of race as he describes in *Society Must Be Defended* (2003). Through cross-referencing the theory of race from the

moment, I ask that the reader simply note these reactions for reflection once Foucault's model has been discussed.

lectures alongside some of Foucault's earlier pieces on discipline and truth, I explore the ways in which subjectivity in contemporary society is manufactured.

Finally, in the third chapter I recount the history and development of immigration policy in the U.S. With that knowledge, I apply a Foucauldian model of race, supplemented with additional analysis from other scholars. In particular, I explore the immigration process and the ways in which it manufactures subjectivity. I also investigate immigration's role in the production of docile patriots and terrorists.

Using Foucault's model of disciplinary power and critique of sovereignty, I demonstrate that these mechanisms of governance and the struggle for national sovereignty work in ways that constitute both normality and abnormality. Further, these notions of normality/abnormality play off notions of race (and also sexuality and degeneracy although I will only touch on these issues in this thesis), as well as other forms of identity.

In addition, I will attempt to draw connections with racism and the nation-state's fight for sovereignty. Sovereignty is a central theme for Foucault and his conceptualization of race. The State's claim to its sovereign right to defend its borders from aliens in immigration policies, tempered only by its constitution, is particularly telling of sovereignty's role in developing and implementing immigration policies. Taking a slightly different angle, however, I will show how U.S. immigration practices not only constitute and exclude those who are abnormal, but also the ways in which immigration policies, throughout the process fragment the foreign national's identity and then reconstitute the "normalized" ones into a new citizen-subject. This process demonstrates that immigration policies are not necessarily racist in the sense that they

make determinations of citizenship based on skin-tone or ethnicity. Rather, they are racist in the sense that Foucault means: by relying on a discourse of sovereignty, and defending society against degeneracy and abnormality.

Finally, using the example of the terrorist, I will demonstrate that the terrorist is a prime example of the degenerate that the State must defend society against. This analysis will include and further explicate the above-mentioned Foucauldian models and frameworks but also supplemental texts of Rai and Puar, as well as immigration sources.

CHAPTER 1: Introducing Race and Racism

U.S. immigration policies have frequently been criticized as being 'racist', sometimes long after the policy or policies in question have been retracted. Generally when using the term 'racist,' critics are referring to the practice of exclusion based on ethnic belonging, a hierarchy of skin tone, or other similar types of physical or genealogical distinction that are routinely categorized as racial discrimination. At such times, critics claim that immigration policies are explicitly engineered towards the exclusion of a specific racial group. Perhaps the most stunning example of racist exclusion remains the U.S. government's immigration policies governing the conditional employment and residence of Chinese railroad workers¹. Yet today, under current U.S. law, such types of racism are not only considered morally repugnant by the majority of American society, but are also explicitly condemned as illegal procedures and as essentially unconstitutional. At the same time, however, immigration policies are nothing if not selective tactics to categorize and determine which immigrants are most desirable for inclusion in the U.S., albeit not necessarily based on a racial (in the same sense as above) hierarchy or basis. Necessarily then, immigration policies are exclusionary, yet to what extent can these same policies be considered 'racist'?

To take another approach to this same issue, let us consider the relationship between race and law more generally. Few people would deny that racism exists in the U.S., or that the U.S. has a long history of conflicts based in racial contestations, despite a powerful constitution that explicitly grants liberty and equality for all, coupled with a litigious society that is willing to prosecute in instances of discrimination (particularly

¹ The Chinese Exclusion Act (47th Congress. Session 1. 1882), made it unlawful for Chinese workers to stay more than 90 days in the U.S., implicating criminal sanctions for not only the Chinese who over-stayed this period, but anyone aiding these workers to remain in the U.S. past the lawful period of stay.

racial and ethnic discrimination). And even though most U.S. legislation today is engineered towards supposedly banishing racist discrimination, one only need consult historical instances where the exact opposite was true. The segregation laws in the South and other similar exclusionary legal devices are appropriate examples of such race-based exclusion. But perhaps the laws that tell us the most about race in America are less obvious and yet are just as important to the reality; for example, the Louisiana state laws that clearly define racial categories in such a way that it is possible to determine the legal boundaries of racial exclusions.² Although many such laws have now been changed, stricken, or at the very least challenged, their existence is telling of the legal legacy of race in America. These laws may perhaps seem to us archaic today, but the fact that they existed and were applied so generally across entire regions suggests their significance in the history of race in the U.S.

We have then, on one hand, U.S. laws, founded in the constitution that guarantees equality and freedom from discrimination, and on the other hand, immigration policies that must necessarily discriminate in order to establish a determination regarding who is eligible for such freedoms that are not necessarily applicable to non-citizens. These two policies seem to be directly in conflict in the sense that one policy specifically outlaws discrimination, while the other not only demands it, but legally defends it as a sovereign right of all nations to regulate its borders and those who pass over those same boundaries. While immigration policies today seem to operate on a logic that is not exclusively racist (i.e., even if we exclude Mexicans and many Mexicans tend to be *mestizos*, legislators claim to be defending the U.S. workforce from cheap migratory labor), I wonder how

² Michael Omi. "Racial Identification and the State: The Dilemmas of Classification." *Law & Inequality*, 15(1), 7-23, p. 8.

related these justifications are to one another. In what ways does and should race affect the basis of determination of eligibility for entry and the granting of visas within the U.S. Citizenship and Immigration Service?

Although immigration laws (and laws generally) are required to be specific, while the moral guidelines (such as what constitutes racism, let alone race) vary broadly across places and time, there remain points of intersection between these two codes of governance. Race is a slippery term that seems to change meaning across geographical and historical contexts. As a consequence, I seek to approach this problem initially by addressing and problematizing popular conceptualizations of race. I will then critique these popular discourses of race by contrasting them with the model of race as introduced via Foucault's lectures of at the Collège de France. In turn, I will introduce critiques of Foucault's lectures informed by Laura Ann Stoler's book, *Race and the Education of Desire* (1995). Finally, further explicating themes in Foucault's lectures, such as truth, sovereignty, subjectivity, power, and strategies of governance such as normalization, discipline, and regulation, I will demonstrate how current U.S. immigration policies are conducted in terms similar to Foucault's State racism.

I wish to emphasize that when I say that immigration policies can be understood as racist according to a Foucaudian model, I am not suggesting that they are racist in the popular conception of term. Namely, U.S. immigration policies are not racist in the sense that they base their determinations of eligibility on the alien applicant's skin color or ethnicity (this could only occur in cases where the customs or immigration officer or agent is allowed discretion outside the written policies, for example). Rather, U.S. immigration policies themselves are racist because they draw on discourses of purity and

degeneracy, founded in the belief of the medico-biological defense of society; and also because these same discourses utilize mechanisms of governance centered in biopower, a process that attempts to assess the normality and potential (future) of the applicant through analysis of expert data compiled on the subject.

It should already be obvious that Foucault's model of race departs significantly from common perceptions of race and racism, since race today is often considered *only* in terms of a person's corporeality. I wish to now address this popular conceptualization of race and some discussions that arise from it in contrast to Foucault's model of race.

Ignatiev, the author of *How the Irish Became White* (1995), also attempts to work through this paradoxical understanding of race. He begins from the point of view that the Irish, at one time in American society were not considered 'white', yet not even a century later, the Irish in America were not only considered 'white', but were also one of the most influential groups in American politics and society. Another good example of the paradoxes inherent in popular race discourses is that if race is, as many suggest today, strictly defined through corpo/realities, such as skin-tone or hair texture or the physical genealogy of the person's being, then it cannot logically answer for effects of this position, such as, for example, so-called "mixed race" children (i.e., a white woman who gives birth to a black child); since if races are classified into strict and wholly separate typologies, then defining the gray areas becomes increasingly complex and the internal logic is lost. Because strictly biological definitions of race cannot adequately contribute to a logical understanding of the change in racial standing of an entire group, Ignatiev begs the question: how can this be? He offers his explanation for this difficult question in the following excerpt:

No biologist has ever been able to provide a satisfactory definition of 'race'—that is, a definition that includes all members of a given race and excludes all others. Attempts to give the term a biological foundation lead to absurdities: parents and children of different races, or the well-known phenomenon that a white woman can give birth to a black child, but a black woman can never give birth to a white child. The only logical conclusion is that people are members of different races because they have been assigned to them.³

Ignatiev's attempt to 'explain' race is important for several reasons. First, he establishes that race is not based in biological truth or otherwise justifiable in scientific terms.

Secondly, he clearly implies that, at least on certain levels, people will not only take race for granted, but they will also ignore the 'absurdities' in order to, regardless of logical impossibilities, cling to popular notions of race and corpo/realities (i.e., the truth that a person can be one race or another in the first place). Finally, he shows that the logical conclusion to the race quandary is that race is assigned to them—in other words, *race is constructed socially*. Additionally, he takes this statement one step further: that race is not only constructed, but *assigned*, which further implies 'unequal' power structures.

Ignatiev solidifies this assumption, by asserting via Theodore W. Allen that: "The hallmark of racial oppression [is the reduction of] all members of the oppressed group to one undifferentiated social status, a status beneath that of any member of any social class' within the dominant group."⁴ Ignatiev looks to the power relations between people, or groups of people, to explain the significance of race as a force at work between them.

Ignatiev's theory of the 'construction of race' is a rather popular academic response to racial formations. But even the statement 'race is socially constructed', leaves us with little understanding of its significance or the mechanisms inherent in the production of power/knowledge, history, and culture that are required in order to even

³ Noel Ignatiev. *How the Irish Became White*. (New York: Routledge, 1995), p 1.

⁴ Ibid. p 1.

construct race and racial corpo/realities and understand its effects. Essentially, race-as-constructed leaves the term 'race' relatively undisturbed and uncomplicated. So, while 'race'⁵ is frequently employed in various types of texts, from academic papers to newspapers and legislation, it may be employed in several different ways, thereby reflecting several different ways to conceptualize and interact with it. Simply stating that 'race is a social construction' does not explain this phenomenon. While this, in and of itself, is not a problem, it does pose a problem for talking about race in the context of this paper and its relationship to immigration policies.

What I hope will emerge from Foucault's model, that the race-as-construction model cannot provide, is a clear map of some of the underlying power relations—those struggles, history and mechanisms through which discourses of race operate. Certainly no one framework can be completely holistic. What I mean by this disclaimer is that this racial framework is not (as arguably, all frameworks are), and cannot be (nor should it be) all-encompassing. Race is fluid, yet (at the very least) appears stable, and it is a word that is far more complex and difficult to define and is, above all, involved in discourses with a long history.

I am hesitant to even attempt a definition because of the complexity of the term. If we accept that race is socially constructed, then it must also be imbricated with other aspects of society: power, subjectivity, identity, institutionalization, normalization, etc. Many of the terms in the list above are issues that race scholars have tried to explain in

⁵ While most sociological schools use the word 'race' in quotation marks, in order to affirm its existence as a social construction, rather than a biological reality, I will write the word race without quotation marks for the duration of this thesis, unless citation requires me to do otherwise. This is not to undermine the works of anti-racist sociologists, only to avoid inconsistency and to fully discuss race without this assumption. My aim is to as completely as possible, discuss and deconstruct popular notions of race, while remaining critical of all approaches to the subject.

terms of 'race'. My suspicion is that these issues will be much more easily handled if we use the tools of Foucault who attempted to deconstruct these mechanisms and technologies of modern society. If this proposition is true, as I suggest that it is, then perhaps the underlying power relations beneath what we consider as race politics it is more important to focus upon than the construction of race (for example, the significance of skin color, per se). Because of the significance of the power relations that are the foundations for the dissemination of racism, these power relations must be deconstructed as carefully and thoroughly as possible.

At the same time, I find myself strongly cautioned by Foucault's words:

[M]y aim is most decidedly not to use the categories of cultural totalities...in order to impose on history, despite itself, the forms of structural analysis. The series described, the limits fixed, the comparisons and correlations made are based not on the old philosophies of history, but are intended to question teleologies and totalizations.⁶

Foucault is pointing to the intent of most discourses to name, classify and categorize in a totalizing fashion the object of study. Foucault wishes to question that totalizing endeavor and recognize discontinuities and heterogeneities as much as similarities and continuities. This is a critical point, particularly since one of the primary foci of this paper is on immigration policy—a discourse which intends to strictly classify, separate, exclude, assimilate, etc. My intent then, if I am to take a Foucauldian model, is to determine the “method of historical analysis freed from the anthropological theme”. Yet, since Foucault was skeptical of even his very own ground-breaking attempts, I must too, remain humble (as well as pessimistic), that such an analysis can be completed in the field of immigration on the subject of race. Moreover, Foucault himself is guilty of

⁶ Michel Foucault. *The Archeology of Knowledge*. Trans. A. Sheridan. (Tavistock Publ. Ltd: London, 1972), p 16.

major disjunctures even within his own work, thus demonstrating that perhaps totalizing theories should not be the primary goals of research.

On a more confident note, what I hope will emerge from this examination, is a more complete picture of the mechanisms behind the construction of race and how it functions in the specificity of immigration policies. What are the discontinuities? What are the similarities? In what ways are the methods intertwined and separated? My hope is that this picture will come together more like a cut crystal in the sunlight, sometimes catching glimpses of light or reflections here and there, but never being able to catch the entirety of light or reflection at any one given time.

CHAPTER 2: Society Must Be Defended and Discussing Foucault's Account of Race

Foucault's conception of race is not congruent with most contemporary discourses on race. Typically when, for example, an American newspaper mentions race, they are referring specifically to divisions primarily based on skin-tone, often with an implied relation to heredity or bloodlines. But for Foucault, the power relations that underlie race are what provide race with its social significance, whilst the particulars of difference encapsulated in a corporeal assertion of racial categories are only secondary. Specifically, the very processes that allow us to discern white from black—essentially the production and formation of knowledge that provides the vehicle through which power is exercised—are more primary than what actually (physically or biologically) constitutes the differences between people of different races. As such, Foucault emphasizes that race is not so much grounded in the particulars or categorizations of the body, but rather in technologies of governance and dominance that were developed in Europe from approximately the sixteenth century (even if those strategies of governance focus on the body).

Foucault carefully develops an idea of race and is accordingly meticulous in separating the first term from other terms, such as 'race struggle', 'racism' and 'State racism'. For Foucault, each of these terms have different roles and significance through his history of 'race', each correlating to the development of the concept as a whole and which arise according to the different technologies and governance strategies.

Thus, Foucault's definition of race (and consequently, racism), is much more general and perhaps even vague, while still maintaining certain aspects of its historical

specificity. What I mean by historical specificity is that Foucault's theory of race is closely related to the rise of certain technologies of the self and the regulatory processes during the eighteenth century that accompanied a shift in the locales of power/knowledge. And although Foucault talks at great length about the historical development of race, his main focus remains on the history of an internal, social war, rather than the history of race, exclusion, or anything else. But what Foucault means by 'war' is also different than the use of the term in popular discourse. Specifically, his war is an *internal* social war, waged not between societies, but within existing nations and communities. The enemy within today's State racism is not the traitor, as it was under the sovereignty of the King, but the abnormal, the degenerate, the monster, and bio-medical deviant. His conceptualization of race is centered on that same social war waged within society and how this war is articulated in bio-medical discourses that define racism as it is today, not by necessarily answering *who* is the other but *how* the other becomes the other. To that end, Foucault correlates the shifts in the development of race (i.e., race struggle, racism, or State racism) to changes in governance strategies and knowledge formations.

I do not want to trace the history of what it might have meant, in the West, to have an awareness of belonging to a race, or the history of the rites and mechanisms that were used to try to exclude, disqualify, or physically destroy a race. I was...and I am...trying to look at the emergence in the West of a certain analysis (a critical, historical and political analysis) of the State, its institutions and its power mechanisms. This analysis was made in binary terms: The social body is not made up of a pyramid of orders or of a hierarchy, and it does not constitute a coherent and unitary organism. It is composed of two groups, and they are not quite distinct, but also in conflict. And the conflictual relationship that exists between the two groups that constitute the social body and shapes the State is in fact one of war...The State is nothing more than the way that the war between the two groups...continues to be waged...That, and not racism is my basic problem.¹

¹ Michel Foucault, *Society Must Be Defended: Lectures at the College de France 1975-76*. Ed. by Mauro Bertani and Alessandro Fontana. Trans. by David Macey. (New York: Picador, 2003), p 88.

In the quote above Foucault not only affirms that his focus is on the social war, but additionally that race is imbedded in power structures, relationships, and mechanisms of governance, rather than being only dependant on hierarchies or identities. Further, the above quote demonstrates that he is concerned with uncovering *the processes underneath* race and racism. The discourse of races, therefore, is a discourse of war waged on members within a society and this discourse is articulated through mechanisms of governance and power that serve to regulate that same society. At the same time, Foucault warns us that societies cannot be so neatly contained into "coherent" organisms, complicating the terms with which we understand society and social problems, just as he resists totalizing theories.

Since Foucault's focus in the lectures remains fixed on the power relations that enable the creation of a discourse of race, let us take a moment to clearly explicate this connection between power and discourse—or power/knowledge.

Production of Knowledge and the Exercise of Power

Foucault holds the connection between power and knowledge as critical in his historical analysis. Knowledge is not simply a set of facts, but also the creation of *truth*. What is critical for Foucault is that *process* by which knowledge is carefully separated from falsity, immediately allows for, depends on, and creates the existence of a vast body of untruths. In this way, the very process by which knowledge becomes truth-knowledge is inextricably bound to the exercise of power (i.e., the very act of establishing the truth that “the sky is blue,” automatically excludes a counterclaim that the sky may be any

other color as also true, but also establishes the simple "fact" that there *is* a sky, with all its implications). In Foucault's own words:

The important thing here...is that truth isn't outside power, or lacking power...Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true.²

In this manner, truth is not simply stating what is true, but the process by which we arrive at truth (i.e., by classifying and separating hierarchies of truth from the many faces of that which is untrue). Therefore, Hunt and Wickham put it very succinctly when they say: "For Foucault, truth is not counterposed to falsity or error, but rather regimes of truth lay down what is true and what is false. Truth operates through exclusion, marginalization, and even prohibition of other competing truths...Truth is not separated from power; power is exercised through the production and dissemination of truth"³

While, for Foucault, power is exercised through the vehicle of knowledge, his conception of power is not unilateral—that is, there is not a class within society who know everything and those who do not know anything; those that 'have' all the power and those that are dispossessed of it. Rather, society reformulates and is constituted by, sometimes painfully, the power relationships and truth-claims in society:

In short power is exercised rather than possessed; it is not the 'privilege' acquired or preserved of the dominant class, but the overall effect of its strategic positions—an effect that is manifested and sometimes extended by the position of those who are dominated. Furthermore, this power is not exercised simply as an obligation or a prohibition on those who 'do not have it'; it invests them, is

² Michel Foucault, *Power/Knowledge: The Selected Interviews and Other Writings 1972-1977*. Ed. & Trans. Colin Gordon. (New York: Pantheon Books, 1980), p 131.

³ Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance*. (Chicago: Pluto Press, 1994), p 11.

transmitted by them and through them; it exerts pressure upon them, just as they themselves, in their struggle against it, resist the grip it has on them. This means that these relations go right down into the depths of society, that they are not localized in the relations between the state and its citizens or on the frontier between classes and that they do not merely reproduce, at the level of individuals, bodies, gestures and behavior, the general form of law and government...⁴

Power/knowledge constitutes relationships in society. And power "works" because it is constitutive of social relationships, but also precisely because it is not exerted on them, but through discourse. This also means that power produces positive effects as well (i.e., pleasure).

He further clarifies this relationship between power and knowledge in society in the following excerpt:

What I mean is this: in a society such as ours, but basically any society, there are manifold relations of power which permeate, characterize and constitute the social body, and these relations of power cannot themselves be established, consolidated, nor implemented without the production, accumulation, circulation and functioning of a discourse. There can be no possible exercise of power without a certain economy of discourses of truth, which operates through and on the basis of this association.⁵

Foucault suggests in the above quote that to exist outside of power is to exist outside of society, and is absolutely inconceivable because we cannot conceptualize such a space. That is, the ways in which we understand who we are, what we do, and how the world works is framed through a discourse—a discourse wedded to the production of knowledge. Knowledge in turn is incoherent without the power relations, since knowledge “induces regular effects of power.”

Similarly, society is constituted through power relations; power is ‘exercised rather than possessed’, and those power relations, those mechanisms, those exercises, are

⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison*. Trans. Alan Sheridan. (New York: Vintage Books 1995) p 27.

⁵ Foucault, *supra* note 2, at 93.

firmly rooted in discursive formulations of knowledge/truth. Moreover, for Foucault, power binds society thoroughly not simply because of the discourse/knowledge/power framework above, but also because no one individual or group can unilaterally wield it against others. In this way, he can safely say: “It seems to me that power is always already there, one is never outside it, that there are no margins for those who break with the system...”⁶

He continues:

We should abandon the belief that power makes mad and by the same token, the renunciation of power is one of the conditions of knowledge. We should admit rather that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.⁷

Now that I have elaborated on a Foucauldian conceptualization of the ways in which power is exercised in conjunction with the production of truth, Foucault’s racial model and its relationship to a genealogy of governance makes much better sense. For him, a discourse of race cannot be separated from the modes of governance that produce it. At this point, then, I wish to explore the relationships between power and race in the following section.

Linking Power to Race: Foucault's Genealogy

Foucault's race narrative begins with the idea of a ‘race struggle’ in the sixteenth century and stems from the following interconnected phenomenon in Europe emerging during that period: the decline of sovereignty; the rise of the dialectic and binary; and the

⁶ Foucault, *supra* note 2, at 141-142.

⁷ Foucault *supra* note 4, at 27.

development of a 'counterhistory'. The 'race struggle' coincides and is dependant on these emerging revolutionary ideas that developed in opposition to sovereignty.

Significantly, what Foucault identifies as the first appearance of a discourse of race, emerged directly out of the decline of the King's sovereignty:

...in this history of races and of the permanent confrontation that goes on between races, beneath and through laws, we see the appearance, or rather the disappearance, of the implicit identification of people with monarchy, and nation with sovereign, that the history of sovereignty—and sovereigns—had made apparent.⁸

It is apparent in the quote above that the appearance of the 'race struggle' is directly correlative to the decline of sovereignty. The race struggle at this point is no more than the binary created between the sovereignty of the King and revolutionary ideals and governance. But how and why does Foucault identify this decline in sovereignty as attributable to the development of the discourse of the race struggle?

The significance of a shift in sovereignty for Foucault has effects far beyond the simple question of who is the leader of a people. Rather, the emergence of revolutionary ideas in the sixteenth century disrupted an entire mode of governance whereby the King established his authority and sovereignty. As discussed above, the exercise of power is directly related to the production of knowledge; as a consequence, the threat of revolutionary ideas/governance to the sovereignty of the King has effects for more than that of governance—it shakes the foundations of the very production of knowledge under that system of governance.

As the race struggle emerges, developed through the vehicle of the dialectic, not only does sovereignty itself go into decline, but this shift in perspective also has repercussions on the unifying effects of sovereignty's history. In the same vein of the

⁸ Foucault, supra note 1, at 69.

binary, however, this relationship of domination also allows for a relationship of revolution—a discourse that is centered on, for example, the binary of domination and liberation, rather than centered on the law, history and word of the sovereign. But this dialectical split between sovereign and revolution also allowed society to be conceived as a binary society, and consequently separated into two different races. Once the binary established difference within society, it marks for Foucault the beginning of a discourse of race (as Foucault understands it, as specifically deriving from the social war within one society). Once the dialectic is established and the kingdom is divided into binary society, can the race struggle clearly emerge.

Just as importantly as the power relations are produced and reproduced under sovereignty, so is the way in which history is conceived and deployed within this power structure. History has at least two primary functions in the exercise of sovereignty, since under sovereignty: “The point of recounting history...was to use the continuity of the law to establish a juridical link between [Kings] and power, because power and its workings were a demonstration of the continuity of the law itself.”⁹ The second, related purpose of history under sovereignty is that the “[g]enealogical function of historical narratives was to demonstrate the uninterrupted nature of the right of the sovereign and, therefore, the ineradicable force that he still possesses in the present day.”¹⁰ What these functions of sovereignty amount to, are the unitary conception of power emanating from the uninterrupted power of the King, proscribed through law and reinforced through its immutable history. Hence, Foucault’s race struggle marks the development of new technologies of governance that accompany sovereignty’s demise:

⁹ *Ibid.* at 66.

¹⁰ *Ibid.* at 67.

...the history of the race struggle, is a counterhistory...Not only does this counterhistory break up the unity of the sovereign law that imposes obligations; it also breaks up the continuity of glory...it is in fact a divisive light that illuminates one side of the social body but leaves the other side in shadow or casts it into darkness.¹¹

Note the use of the word 'counterhistory' in the quote above; its use re-establishes the idea of the fragmenting of the King's unitary history, word, and law.

While this conception of the dialectic allowed for the development and establishment of the binary modes of society and the decline of sovereignty, racism did not yet exist as a concept relating to biology and relations to the State. In order to conceive of race and racism in these terms, another transformation of race must occur. Significantly, Foucault sees society as divided into a binary—two races separated, not by biological distinctions, but rather by forces of domination, history versus counterhistory, etc. Initially, he regards counterhistory (binary, multiple, of the people, secrets, darkness, revolution, prophecy) in direct struggle/conflict with history (sovereignty, king, law). However, once this binary is established, and a cycle of dominance and struggle is consolidated as the primary relationship, then a vacuum of power is created allowing for the possibilities of the next stage in development of race following the race struggle: racism. As such, consider the following quote:

...at the time when this conversion was going on, it was in fact only natural that attempts should be made by one side to recode the old counterhistory not in terms of class, but in terms of races—races in the biological and medical sense of that term. And it was at the moment when a counterhistory began to take shape—but it will be a counterhistory in the sense that adopts a biologico-medical perspective that crushes the historical dimension that was present in this discourse. You thus see the appearance of what will become *actual racism*.¹² [Emphasis added.]

¹¹ *Ibid.* at 70.

¹² *Ibid.* at 80.

What is so significant about the above quote is that fact that Foucault consciously separates his notion of race (defined as struggle for dominance) from the counterhistory (truth-claim) that race is biologically stable. In this way, Foucault explains the appearance of the biological specificity of many race discourses—the “truth” about race. It is this “biologico-medical perspective that crushes the historical dimension” and becomes “actual racism”. Foucault is pointing to the process by which this emerging counter-history moved away from the unitary notion of history, to a conflictual history and then attempted to erase history through the import of biologico-medical discourses into the race struggle. In this way, the race struggle emerges in conflict with the sovereignty of the King and racism emerges in that vacuum of power after the decline of the King, and State racism emerges to fill that vacuum with a national sovereignty that is reified through a bio-medical discourse of (racial) purity. “Historical discourse was no longer the discourse of sovereignty, or even race [in the sense of the binary], but a discourse about races, about a confrontation between race, *about the race struggle that goes on within nations and within laws.*”¹³ [Emphasis added]

Before we can truly understand the significance of what Foucault means by “actual racism” in the bio-medical sense (which is ultimately the foundation for State racism), let us first discuss the technologies that were simultaneously developed throughout this time, during the period of the race struggle.

New Technologies for Governance: Discipline, Regulation and Normalization

A couple of centuries after the emergence of the race struggle, during the eighteenth century, certain types of knowledges (both technical and industrialized

¹³ *Ibid.* at 69.

knowledges) came to be in an economico-political conflict.¹⁴ Because of this struggle between those knowledges (keeping in mind simultaneously the links between power and knowledge), and because there was value (both economic and political) accorded to the selectivity of knowledge (that is, that it remained both specialized and “secret”), the eighteenth century also saw the rise of “a huge effort being made to homogenize, normalize, classify, and centralize [for example, and in particular,] medical knowledge.”¹⁵ Moreover, these efforts, or all these projects applied to the example of medical knowledge, “had four goals: selection, normalization, hierarchicalization, and centralization. These are the four operations that we see at work in a fairly detailed study of what we call disciplinary power.”¹⁶ And disciplinary power is significant inasmuch as it allows the State to “eradicate false knowledge or nonknowledge.”¹⁷ Discipline, therefore, is an individualizing technology, meaning that it deals primarily with all people on an individual level, ranking them, or manipulating maneuvers, behaviors, and corporeality on an individual basis. Disciplinary power can achieve the aforementioned goals because it establishes truths about the subjects who are inscribed into that system of power.

The rise of disciplinary power, despite its possible implications for the dissemination of racist structures, is not directly implicated with racism. Disciplinary power is useless as an application for racism, let alone State racism, since it deals with individuals (the body, the mind, the soul, etc.). Although the norm also operates on the

¹⁴ *Ibid.* at 179-180.

¹⁵ *Ibid.* at 181.

¹⁶ *Ibid.* at 181.

¹⁷ *Ibid.* at 181.

disciplinary level, serving to separate, distinguish, and place individuals within a hierarchy, it is unable to govern on a social level.

The regulatory powers developed in the eighteenth century, however, introduce several powerful new ways to govern through establishing the norm, not on an individual level, but rather through the focus of society as a whole.

something new [is] emerging in the second half of the eighteenth century: a new technology of power, but this time it is not disciplinary... This new technique does not simply do away with the disciplinary technique, because it exists at a different level, on a different scale, and because it has a different bearing area, and makes use of very different instruments.¹⁸

Thus, while discipline contended with individual bodies and how they are normalized, by contrast, this new technique of regulation “addressed a multiplicity of men”. Not only does regulation address discipline on a different level, but it also produces through this knowledge of the ‘multiplicity of men’ a new object of study: the population. In this way, discipline and regulatory power complimented one another: “So after a first seizure of power over the body in an individualizing mode, we have a second seizure of power that is not individualizing, but...massifying, that is, directed not at man-as-body, but man-as-species...we have...the emergence of something that is no longer an antomopolitics of the human body, but what I would call a ‘biopolitics’ of the human race.”¹⁹ Regulation through the creation of knowledges about the population, also produce a discourse of the social body—and as a consequence we can begin to see a discourse that conceptualizes society in biological terms, as well as disciplinary terms.

Discipline is individualizing, focusing on the human body; regulation is massifying, focusing on the population. Biopolitics is the language of the medicalization

¹⁸ *Ibid.* at 242

¹⁹ *Ibid.* at 242-243

of the population of a whole. Biopolitics is the discourse of health of the social body in Western societies. Foucault further outlines this development in the quote below:

Disciplines, for their part, dealt with individuals and their bodies in practical terms. What we are dealing with in this new technology of power is not exactly society (or at least the social body, as defined by the jurists), nor is it the individual-as-body. It is a new body, multiple body, a body with so many heads that, while they might not be infinite in number, cannot necessarily be counted. Biopolitics deals with the population, with the population as a political problem, as a problem that is at once scientific and political, as a biological problem and as power's problem.²⁰

In this way, we can infer from the above passage that biopolitics also seeks to identify social ills, and proscribe 'medicine' to these diseases to the social body (as opposed to the medicine from a doctor that is proscribed to an individual). Biopolitics creates political problems, couched in quasi-biological terms, just as it also seeks to cure these same problems with a bio-sociological medicine. "Biopolitics deals with the population, with the population as a political problem, as a problem that is at once scientific and political, as a biological problem and as power's problem."²¹ If Foucault is correct in this assertion, then we can clearly see the difficulty in separating racism as a social ill from understanding it as biologically based.

The problematization of the social body couched in terms of biological, even evolutionary survival, thus makes racism amenable to also be referenced in biological terms (which also helps to explain the difficulty with separating the concept of race from its biological sense at the beginning of the paper). Moreover, the changeover to State sovereignty and its reified duty to protect not only its individual citizens, but the overall health of the social body, ups the stakes in terms of what is meant exactly by a 'race struggle'.

²⁰ *Ibid.* at 245

²¹ *Ibid.* at 245

Remember, too, that Foucault's main focus is the history of war, rather than the history of race, exclusion, or anything else. In this sense, Foucault is tracking the rise of society's war against itself: the ways in which the rise of the binary reconfigured power relationships creating a schism within what was once a united society (united under the sovereignty of the King and His genealogy). In this binary, mechanisms and technologies of the State were employed to establish truth from the untruths, and to categorize, separate, govern and regulate the body politic. In such a system, the abnormals, the monsters, the sexual deviants, the madmen, the 'dangerous individuals' must be identified, separated and 'corrected' if possible.

Thus, even though 'actual racism' emerged from the development of these technologies, the State slowly became the protector of the social body. Foucault's theory of race is clearly not, then a scapegoating theory, but a theory wherein the State becomes the biological protector of the whole species:

...the State is no longer an instrument that one race uses against another: the State is, and must be, the protector of the integrity, the superiority, and the purity of the race [as species]. The idea of racial purity, with all its monistic, Statist, and biological implications: that is what replaces the idea of the race struggle.²²

While the State is the primary organizer of these new technologies, regulation serves as the center-piece in the development of racism:

This is a technology which aims to establish a sort of homeostasis, not by training individuals, but by achieving an overall equilibrium that protects the security of the whole from internal dangers. So, a technology of drilling, as opposed to, as distinct from, a technology of security; a disciplinary technology, as distinct from a reassuring or regulatory technology. Both technologies are obviously technologies of the body, but one is a technology in which the body is individualized as an organism endowed with capacities, while the other is a technology in which bodies are replaced by general biological processes.²³

²² *Ibid.* at 81

²³ *Ibid.* at 249

In the quote above, Foucault is not only emphasizing the ways in which the regulatory technology deals primarily with the social body. He is also bringing this idea of technologies back to his main objective: the study of war. Thus, this regulatory technology is meant to defend the social body (i.e., a technology of "security" rather than "drilling"). When Foucault says in the quote above that "bodies are replaced by general biological processes," he is pointing to the dual effect of the regulatory device itself. In essence, the regulatory technology cannot be individualizing because it deals with *biology of the social body*. Secondly, Foucault says, this second technology aims to "achieve homeostasis" and furthermore, "protects the security of the whole from internal dangers." Not only do regulatory technologies aim to keep the social body healthy by maintaining "homeostasis," by administering upon itself social and actual medicine upon the population as a whole (hygiene, sanitation, the requirement of medical records, shots, etc.), and an understanding of the general health of the social body. But even more than this, it seeks to secure the social body from dangers *within* itself (i.e. protect the purity of the social body from abnormals, degenerates and the like).

What is common between the technologies of discipline and regulation is normalization, and it is central to the functioning of both:

In more general terms still, we can say that there is one element that will circulate between the disciplinary and the regulatory, which will also be applied to body and population alike, which will make it possible to control both the disciplinary order of the body and the aleatory events that occur in the biological multiplicity. The element that circulates between the two is the norm. The norm is something that can be applied to both a body one wishes to discipline and a population one wishes to regularize. The normalizing society is therefore not...a sort of generalized disciplinary society whose disciplinary institutions have swarmed and finally taken over everything—that, I think is no more than a first and inadequate interpretation of a normalizing society. The normalizing society is a society in

which the norm of discipline and the norm of regulation intersect along an orthogonal articulation.²⁴

The norm, therefore, is a more flexible tool for governance, regulation and institutionalization. The norm is a mechanism that may be applied to both the technology of discipline and to the technology of regulation, yet means something different as the two norms of the technologies are superimposed (“intersect along an orthogonal articulation”).

Only once these technologies and mechanisms had been fully developed, Foucault tells us, did State Racism fully emerge. In this way, racism is a culmination of all these tools for the governance of a modern, heterogeneous, society. We can see the threads of each of these developed technologies of discipline, regulation and normalization and the ways in which they contributed to the development of racism:

What is racism? It is primarily a way of introducing a break into the domain of life that is under power’s control: the break between what must live and what must die. The appearance within the biological continuum of the human race of races, the distinction among races, the hierarchy of races, the fact that certain races are described as good and that others, in contrast, are described as inferior: all this is a way of fragmenting the field of the biological that power controls.²⁵

While racism is only secondary to war in Foucault’s conceptualization of society, regardless, it performs a major function and intersection between the technologies outlined above. Racism relies on the biopower created from the functionalities of regulation, which in turn allows a discourse to be articulated which outlines the necessity for biological purity of the whole of humanity; but racism also and simultaneously

²⁴ *Ibid.* at 253.

²⁵ *Ibid.* at 255.

functions because biopower, via medical discourses and knowledge²⁶, is also able to function under disciplinary powers in order to individualize race. In this sense, racism is both individualizing and generalizing (via a quasi-bio-medicalization). Racism is individual in the sense that it can identify, hierarchicize, and isolate for correction specific persons over other persons as well as certain races over other races. Secondly, it is regulatory and general, in the sense that this is something that is also conceived as biological and thus more generally applicable to the population as a whole.

As a continuation of the definition of racism that Foucault defines above, he says of the functions of racism:

Racism also has a second function...the death of the other, the death of the bad race, of the inferior race (or the degenerate, or the abnormal) is something that will make life in general healthier: healthier and purer.²⁷

This seems a logical conclusion of the first part of Foucault's definition of racism, since it simply makes explicit what he only alludes to before: that racism necessarily relies on a hierarchy firmly based in biopower (the regulation of life and death of the population), for the defense of society as a whole. In addition, the State may justifiably remove from society, or even kill those that threaten the biological security of the pure, normal society for its own benefit and survival.

This justification to kill is clearly differentiated by Foucault in his genealogy of sovereignty. Thus, while the King had the authority to "kill and let live", the modern nation-state adopts "the reverse of the right of the social body to ensure, maintain, and

²⁶ "Medicine is a power-knowledge that can be applied to both the body and the population, both the organism and biological processes, and it will therefore have disciplinary and regulatory effects," from *Ibid.* at 252.

²⁷ Foucault, *supra* note 1, at 255.

develop its life.”²⁸ This means that the old code for the right of the sovereign to kill his subjects and let them live is reversed into the right of the State to govern all functions of life, health, and vitality of the social body at all costs. As a consequence, “the sovereign right to kill appears in a new form; as an excess of biopower that does away with life in the name of securing it.”²⁹ The rationale is that those who threaten the biological purity (future vitality) of the society/species, must be eliminated. “More importantly, [racism] establishes a positive relation between the right to kill and the assurance of life...Racism now activates this discourse establishing a biological confrontation between ‘my life and death of others.’ It gives credence to the claim that the more degenerates and abnormals are eliminated, the lives of those who remain will be stronger, more vigorous, and improved.”³⁰

At this point, it is important to remind the reader that Foucault’s racism is not simply a war amongst individual members of society, but instead is (specifically identified as) State Racism. The means that is it firmly rooted in the history of racism as outlined earlier in this paper, and is also necessarily about sovereignty. Foucault discusses this as well:

...[W]e are far removed from the ordinary racism that takes the traditional form of mutual contempt or hatred between races. The specificity of modern racism...is bound up with the technique of power, with the technology of power...We are dealing with a mechanism that allows biopower to work. So racism is bound up with the workings of a State that is obliged to use race, the elimination of races and the purification of race, to exercise its sovereign power.³¹

²⁸ Laura Ann Stoler, Laura Ann Stoler, *Race and the Education of Desire: Foucault’s History of Sexuality and the Colonial Order of Things*. (Durham: Duke University Press, 1995), p. 83.

²⁹ *Ibid.* at 84.

³⁰ *Ibid.* at 84-85.

³¹ Foucault, *supra* note 1, at 258.

State racism, as Foucault defines it, could not exist without the technologies that emerged alongside it. In fact, it is *so* bound up with the State's use of power, that the State is "obliged to use race, the elimination of races and the purification of race, to exercise its sovereign power." What this means is that (State) racism, as an effect of biopower, and alongside implications for regulation, normalization, and discipline, is required in order for the State to assert sovereignty because of the history of the race struggle itself. The State used the race struggle's own discourse against itself in defense of its own sovereignty, and in turn, uses this defense as the discourse couched in the terms of a quasi-biological defense of society as a whole. In the simplest terms, the defense of society is the defense of the State's sovereignty. Thus, each individual has the obligation to the State to life in general, but also the life and biological continuity of the social body as well.

Foucault's State racism, finally, is not only exemplified in extreme cases of State racism and acts of violence against its own citizenry in the name of biological purity. Rather, for Foucault, "It is at [the] moment that racism is inscribed as the basic mechanism of power, as it is exercised in modern States. As a result, the modern State can scarcely function without becoming involved with racism at some point, within certain limits and subject to certain conditions."³²

Stoler's Critique of Foucault's Theory of Racism

Although Foucault's account of race and its relationship to forms of governance is seemingly sufficient to proceed with analysis of the ways in which immigration policies and racism converge and diverge, Laura Ann Stoler would likely disagree. In her loving

³² *Ibid.* at 254.

critique of Foucault in her book *Race and the Education of Desire*, Stoler questions Foucault's ability to write an accurate account of the development of the notion of race (and sexuality) in Europe without considering the effects of Empire-building. She argues that although Foucault discusses race extensively, he divorces race from its historical formation in Europe's interactions outside Europe through imperialism. Stoler's critique does not center on Foucault's method, but rather his scope. In her analysis, she wishes to draw out some of the same themes as Foucault in both *Society Must be Defended* and *The History of Sexuality*, even using a Foucauldian model, but in contrast to Foucault, she centers her research in an imperial frame.

As such, there is an implicit teleology to how he treats what racist discourse 'does.' It must account for a set of practices that allow a state to identify not primarily its external foes, but its enemies within...Contiguous empires figure in Foucault's genealogy of racism in his lectures, but imperial expansion outside Europe does not. In short, the genealogy of racist discourse is *sui generis* to Europe: colonial genocide is subsumed, dependant, accounted for, and explained *in absentia*.³³

In the quote above, Stoler criticizes Foucault for not acknowledging the effects of 'imperial expansion' anywhere other than Europe. She draws on the work of Edward Said and Stuart Hall to understand the formation of the Other in Europe's claims to identity, and uses this as a critique of Foucault's work. Stoler tells us that Europe cannot be self-contained, that their identity as white Europeans was not "*sui generis* to Europe" and seeks to make explicit the threads to empire that Foucault accounts for "*in absentia*."

While Foucault is careful to separate racism from epidermal hierarchies, Stoler reminds us that these hierarchies were realities both within and without Europe, constituted through the governance of imperialism; further, these same racially-determined realities had resonance throughout not only Europe, but the entire empire.

³³ Stoler, *supra* note 28, at 29.

Stoler outlines her critique, as well as the ways in which we can use Foucault's project to inform new projects in the following quote:

Because Foucault's account of racial discourse is so endemically detached from the patterned shifts in world-wide imperial labor regimes of which those discourses were a part, we are diverted from the gritty historical specificities of what racial discourse did both to confirm the efficacy of slavery and to capture new populations in the transition to wage-labor. Our task then would not be to follow his genealogy of racism with exegetical care, but rather to explore how his insights might inform our own.³⁴

Stoler also explores the ways in which European identity was consolidated, threatened and affected by these racialized and sexualized others from the colonies—both at “home” and abroad:

I use the Indies to illustrate—and really only hint at here—how a **cultivation of the European self** (and specifically a Dutch bourgeois identity) was affirmed in the proliferating discourses around pedagogy, parenting, children's sexuality, servants, and tropical hygiene: microsites where designations of racial membership were subject to gendered appraisals and where “character,” “good breeding,”...were **implicitly raced**. These discourses do more than prescribe suitable behavior; **they locate how fundamentally bourgeois identity has been tied to notions of being “European” and being “white” ...served to secure and delineate the authentic, first-class citizens of the nation-state**. Crucial to my argument, and distinct from Foucault's self-referential conception of bourgeois identity, I stress the *relational* terms in which bourgeois selves have been conceived.³⁵ [Emphasis Added]

It is interesting and significant that Stoler uses a Foucauldian model of power in order to challenge Foucault's work. Essentially, she begs the question of Foucault's ability to neatly package society into a unitary organism, despite his own efforts against that methodology. Colonialism was a huge investment for almost the whole of Europe, through both capital and human resources during this same time period that racism consolidated the vacuum of sovereignty for fledgling nation-states in Europe; why doesn't

³⁴ *Ibid.* at 91.

³⁵ *Ibid.* at 11-12.

Foucault address this shift in power/knowledge as constitutive of the racial relationships created across Europe and globally (in the metropole)?

Stoler's critique is important on two counts: firstly, because it questions Foucault's ability to self-contain Europe; and secondly, this critique challenges the fact that Foucault separates his model of racism that directly accounted for the rise of the popular discourses of racism through the expansion of imperialism. Rather than divorcing the notion of race from skin color, her efforts are to "locate how fundamentally bourgeois identity has been tied to notions of being 'European' and being 'white.'" Perhaps most significantly, through using a Foucauldian model, Stoler attempts to understand the ways in which Europe was not in a simple relationship of domination with the colonies through imperialism; rather, bourgeois European (white) identity is shaped by the differences constitutive of the relationship, implying a power relationship more sophisticated than a simple slave/master dichotomy. "It is not only about the importation of middle-class sensibilities to the colonies, but the *making* of them."³⁶

By importing an extra-European colonial perspective into Foucault's model of race and sexuality³⁷, Stoler is able to return to some of the fundamentals of power

³⁶ *Ibid.* at 99.

³⁷ Stoler concedes that Foucault does not entirely ignore colonialism altogether, and she acknowledges that it is true that Foucault mentions colonialism in the lectures, specifically linking colonialism to the genealogy of race. In contrast to Foucault, however, Stoler's work seeks to "...question whether issues of historiography and theory can be so neatly disengaged. [Stoler] pursue[s]...a critique of Foucault's chronologies, a species of the empirical...to argue that the discursive and practical field in which nineteenth-century bourgeois sexuality emerged was situated on an imperial landscape where the cultural accoutrements of bourgeois distinction were partially shaped through contrasts forged in the politics of language and race...A collective impulse of the last decade of post-colonial scholarship has been precisely to disassemble the neat divisions that could imagine European history and its unified collectivities apart from externalized Others on whom it was founded and which it produced." Stoler even defends Foucault from criticism that he "ignores the imperial context of his own theories" by affirming that "Foucault's metatheory has played no small part in [the development of a critical post-colonial perspective], animating a critique of how specific and competing forms of knowledge have carved out exclusionary principles of imperial power in the first place." Her critique of Foucault's position on imperial power is instead slightly different: "It is striking how Foucault's own framing of the European bourgeois order has been exempt

formations that Foucault uses in his own models of race, sex, and class. Specifically, Stoler doesn't discount Foucault's account of the decline of sovereignty allowing the manufacture of subjects through a new power/knowledge constellation. Rather, Foucault's understanding of power/knowledge is placed in an imperial framework that takes into account the effects of empire in the colonies allows us to both complicate and clarify how race serves as an important mechanism in this manufacture.

My goal in comparing these two theorists is not to determine which one champions over the other, particularly since they work from the same fundamental framework, and furthermore, Stoler seems to supplement and reinforce Foucault's basic paradigm. Rather, my intention is to superimpose these two perspectives on race and racism onto each other, in order to explore the role of State racism in U.S. immigration policies.

Despite their differences in approach to a paradigmatic of race, Foucault and Stoler do both agree on several key concepts, including the manufacture of the subject. In the following section, I wish further explicate this concept of manufacturing subjectivity—its genealogy, how it's implemented, why it occurs, and its significance for racism and the exercise of power.

from the very sorts of criticism that his insistence on the fused regimes of knowledge/power would seem to encourage and allow." Further, while Foucault was specifically European-focused in his historical analysis (and he admitted it as an explanation for why he rarely used non-European examples in his work), Stoler instead seeks to "look to how his insights play out in a colonial setting...suggest[ing] that a wider imperial context resituates the work of racial thinking in the making of European bourgeois identity in a number of specific ways." [All quotes taken from Stoler, *supra* note 28, at 5.]

The Manufacture of Subjects

According to Foucault, sovereignty (under a monarchy) had a specific formulation of governance with necessarily different presuppositions on the nature of the subject:

...the theory of sovereignty necessarily tried to establish what I would call a cycle—as meaning an individual who is naturally endowed (or endowed by nature) with rights, capabilities, and so on—can and must become a subject, this time in the sense of an element that is subjectified in a power relationship...the theory of sovereignty [also] assumed from the outset the existence of a multiplicity of powers that are not power in the political sense of the term; they are capacities...³⁸

Most significantly in this analysis, Foucault notes that “...the theory of sovereignty presupposes the subject; its goal to establish the essential unity of power, and it is always deployed within the preexisting element of the law.”³⁹ The weight of this statement cannot be fully appreciated without comparison to the new binary society that developed the use of norms and “disciplinary power.” Whereas under sovereignty, the subject was “presupposed,” in the binary the subject is a construction—and is constructed through the intersections of power/knowledge, and ultimately, via biopower.

The construction of the subject, in Foucauldian terms, requires distinction from the argument of the “construction of race” or “construction of identity” that often finds its way into popular modern discourses. The “construction of identity” theory is pointing to the social reality that is created as a sociological phenomenon that is real because, we as social beings, construct those identities. For Foucault rather, the manufacture of subjectivity is grounded in historical specificity, i.e. it accompanies the rise of the binary society and disciplinary powers; the task, instead of constructing the reality through

³⁸ Foucault, *supra* note 1, at 43.

³⁹ *Ibid.* at 44.

social relations, is to *discover the truth* about the subject and to *classify the type* of individual they are via a normative framework.

Hence, take for example a “fat” person. In Western society, there may be many assumptions made about this person’s abilities or weaknesses that are directly related to this person’s body being labeled as “fat”. At the same time, knowledge about what constitutes “fat” is a privileged knowledge—that is, the labeling itself requires the knowledge about *what constitutes fat, normal, and skinny*; it requires the development of discourses of truth. But the establishment of this truth has other consequences: the fat person is *fat* and *not* normal. The truth therefore, in a system of normative powers, also simultaneously excludes other truths and forces these realities into categories and hierarchies that directly affect the manufacture of the subject.

I wish to reiterate that this desire to classify and other procedures related to the establishment of the truth about subjects is a major shift from the ways in which power was structured under the sovereignty of the King. This development is closely related to the rise of disciplinary power during the eighteenth century, a power that continues to be developed to this day (particularly in conjunction with biopower and regulatory powers).

Just as significantly for the establishment of the truth about the subject, is the historical development of the body/mind duality that accompanies the rise of disciplinary power. Once the truth has been established about the subject’s corporeal body, then correlating reflective assumptions are made about the person’s inner body—the soul. In this way, a fat person may be considered lazy, unhealthy, unable to control desires, weak-willed, etc. As Elizabeth Grosz has astutely observed:

The wager is that all the effects of subjectivity, all the significant facets and complexities of subjects, can be adequately explained using the subject’s

corporeality as a framework as it would be using consciousness or the unconscious. All the effects of depth or interiority can be explained in terms of the inscriptions and transformation of the subject's corporeal surface. Bodies have all the explanatory power of minds.⁴⁰

On the one hand, the mind and body are made one and the same. For example, the level of discipline (or self-regulation) that the mind has achieved is considered to be evident in the body. In this way, the body is the reflection of the 'soul' or the person's inner moral character. Yet at the same time that the evaluation of the person's corporeal and spiritual being, several other processes of power/knowledge are simultaneously employed, so that each value (body or mind) is given evaluative weight.

Should this fat person apply forms of discipline regimes to their body (such as diet or exercise), then the effectiveness of this discipline will be apparent in the subject's corporeal body. This means that should the body go through a transformation, then the soul of the subject is similarly considered to have gone through a transformation, correcting the root of the abnormality evident and manifest in their prior corpo/reality.

In a similar situation to the above example of the fat person, let us consider the "black" person. The truth of the "blackness" (or "whiteness") of a subject must be discerned, and is only determinable through privileged or expert knowledge. At the same time, the truth of the "black" body becomes the representation of the subject's inner being. In a similar way, a "black" person may be considered lazy, stupid, angry, mouthy, over-sexed, strong, rhythmic, etc. Once we reach the point of discipline, however, is where the two examples dramatically diverge. Whereas the fat person may (at least possibly hope) to change the perceptions of his or her soul that are related to the truth

⁴⁰ Elizabeth Grosz, *Volatile Bodies: Toward a Corporeal Feminism*. (Bloomington: Indiana Press, 1994), p. vii.

about being fat by say, losing weight, the black person has no option for discipline that results in changes in his skin color. The black person cannot change the appearance of his/her corporeal body in terms of his skin tone (without major medical intervention), nor achieve the same manifest discipline of the soul perceived as inherent in the physical transformation.

The example of the “not white” person is given in Stoler’s account, as part of her project to shift Foucault’s frame of race and its effects within and without the borders of Europe. She says of this, particularly in line with national discourse:

National discourse drew on and gave force to a wider politics of exclusion. This version was not concerned solely with the visual markers of difference, but with the relationship between visible characteristics and invisible properties, outer form and inner essence. Assessment of these untraceable identity markers could seal economic, political, and social fates. Imperial discourses that divided the colonizer from the colonized...⁴¹

As is evident, Stoler is rearticulating many of the locations of power/knowledge lodged in the corporeality of the subject, but in a firmly colonial frame. This example serves to demonstrate the ways in which race is not divorced from epidermal hierarchies, as Foucault seems to suggest, but that, as an extension of the subject’s body, the primacy of the skin-tone has been established through certain constellations of power/knowledge focused on that aspect of subjectivity.

But a discourse of race, as either Foucault or Stoler would argue, is not simply located in epidermal classifications or any one marker of difference, but rather:

[N]ationalist discourses were predicated on exclusionary cultural principles that did more than divide the middle class from the poor. They marked out those whose claims to property rights, citizenship, and public relief were worthy of recognition and whose were not.⁴²

⁴¹ Stoler, *supra* note 28, at 8.

⁴² *Ibid.* at 7-8.

The primacy of the body in the construction of race, and the problem of being unable to change a significant corporeal signifier, such as skin tone, brings us once again back to the relation of power/knowledge and the bodies that are subjected to it. At the same time, it strikes me as important that the body is so important to the power over racialized bodies. Consider the following quote from Hyde:

Race, insofar as the word has any distinctive meaning, is a construction of the body. For any sentence containing the word *race*, in which the word cannot be completely replaced by *ethnicity* or *group* without loss of meaning, **a body is being constructed, and a claim is being made about physically identifiable bodies as the bearers or carriers of some other trait.** A theory of race is not merely a theory of differences among people, but a theory that locates, figures, inscribes those differences, not in the mind, history, experience, or likely reactions of others, but in the body.⁴³ [Emphasis Added]

While it is tempting to suggest that power/knowledge is only ever exerted on the bodies of non-white peoples, Stoler's argument directly critiques that claim, since it assumes a power that is unilateral. Moreover, it suggests that the power/knowledge regarding race does not have equally binding effects on the construction and regulation of white bodies. After all, even should we agree to presume that young, heterosexual, white, male bodies are the norm against which all other body types are held, that does not mean that this norm does not have effects (even disciplining effects) on those same bodies. Indeed, the norm is *constituted* through abnormality.

⁴³ Alan Hyde. *Bodies of Law* (Princeton: Princeton University Press, 1997), p. 222.

CHAPTER 3: Immigration and Foucault's Racial Model

Now that I have detailed some of Foucault's interconnected concepts and frameworks with regards to race, power, and knowledge, I wish to introduce a general history of immigration policy, as well as a basic framework for the way that immigration policy runs in the U.S. As an extension of this historical account, I will also concentrate on specific legislation and facts relevant to the discussion of race and immigration in the U.S. In particular, I intend to closely examine the policies that have come to constitute grounds for removal (i.e., inadmissibility and deportation) as well as their perceived pertinence to the defense of society. Specific terminology as it is used in immigration practice (and differentiated from common uses of terms) will be defined and addressed in footnotes rather than in the body of the text in order to save space and minimize confusion. Kindly refer to these footnotes to clarify all immigration terms as they are used in the context of this thesis. Please also note that this brief outline of the history and structure for immigration policy will necessarily remain incomplete, since this body of law covers extensive volumes of legislation and is extremely intricate.

Once I have recounted a general history of immigration policy and explained some of its underlying principles in relation to this discussion of race, I will apply the Foucauldian racial model discussed at length in the previous chapter. This application more clearly explains the intersections with the Foucauldian model and the policies and procedures that define U.S. immigration. And finally, using Amit Rai and Jasbir Puar's article as a launching point, I will explore the construction of the terrorist in immigration policy—its possibilities and limitations for understanding Foucault's State Racism.

A summary of immigration policy is necessary, however, before proceeding in this thesis with a detailed discussion on U.S. immigration policy in the light of a Foucauldian model of race.

Immigration Policies: History and Structure

Virtually all administrative, judicial, and executive powers relating to the movement of foreign nationals within U.S. borders, is currently overseen by the Bureau of Citizenship and Immigration Services. The functioning immigration service prior to the aforementioned, INS, was supervised by the Attorney General and had several judicial and executive functions that were undesignated by department. Under the restructuring of INS, the CIS was produced and as a whole, it maintains much of those judicial and executive functions as INS did, in addition to other extra-judicial powers, duties and responsibilities. The CIS is now under the command and responsibility of the Department of Homeland Security rather than the Attorney General. The restructuring of CIS also separated some of the responsibilities from that agency and created a sister agency, Customs and Border Patrol, which is the enforcement agency that handles all customs and admissibility issues at ports of entry. In contrast to this sister agency, CIS handles most other judicial and administrative matters relating to foreign nationals in the U.S. (i.e., visa approvals/processing, removal hearings, etc.). In addition to the CIS and Customs and Border Patrol, the State Department (a separate government agency from all

the others previously mentioned) handles the processing of all overseas visa issuances (i.e., consular processing, etc.).¹

Regardless of the massive restructuring that occurred to the immigration service in the wake of the September 11th attacks, the primary legislation that defines the powers of the CIS and related administrative agencies remains primarily derived from the Immigration and Naturalization Act enacted in 1952 (hereafter INA). The INA has been amended numerous times to address changing needs of the U.S. in an increasingly global world. Hundreds of pages in length (including its enacting regulations 8 CFR), this extensive document outlines terminologies and policies that address a range of issues relating to the regulation of foreign nationals in the U.S. While the INA remains the single most significant legislative document regulating aliens in the U.S., other legislative documents also deal (either in part or specifically) with various relations concerning foreign nationals within U.S. borders. For the purposes of this thesis, I will also explore some of these effects of newer legislation, including The Patriot Act. Rather than focusing on the legislation itself, I will focus on the policies that determine the actions required and authorized by CIS agents and how those practical applications have been challenged and why. To begin with this discussion on immigration policies, however, I wish to detail U.S. immigration legal history before the passing of INA.

The Development of a Coherent Immigration Policy in the U.S.

Considering that the U.S. constitution was written over two hundred years ago, the passing of the INA in 1952 is a relatively recent development in U.S. history. "Until

¹ The migration of INS to CIS and from Department of Justice to the Department of Homeland Security was accomplished through numerous regulatory changes published in the Federal Register in March/April 2003.

the late 1800's United States immigration law was largely a matter for the states."² During colonial times, the fledgling nation required and encouraged colonialists to push the frontier further west, and as a consequence, the government made very little legislation with regards to any formal legal regulation of foreign nationals within U.S. national borders. Virtually the only legislation regarding immigration until the 1800's was the Alien Act of 1798, which was a part of the Alien and Sedition laws, which were not only extremely short-lived, but were grown out of the context of the American Revolution and the growing anxieties with the remaining British colonies to the north and Loyalist communities within the U.S. borders. Significantly, however, these laws gave powers to the President to expel "any alien he deemed dangerous."³ The Constitution itself makes only brief mention to structural requirements and limitations for the federal and state governments in formulating immigration policies, the Constitution does prohibit Congress from restricting immigration (specifically, the 'migration or importation of persons') until 1808. However, this provision was intended to specifically refer to Congress's ability to restrict the slave trade into the U.S., rather than "free persons."⁴

In fact, other than the prohibition against Congress restricting immigration until 1808, there is no explicit constitutional provision for the delegation of authority over immigration issues within government—either via state or federal power. "The federal government of the U.S. generally possesses only those powers that are either enumerated in the Constitution or 'necessary and proper' for executing the enumerated powers. And

² Stephen H. Legomsky. *Immigration and Refugee Law and Policy*, 2nd Ed., Ed. Shapiro, et al (Westbury: The Foundation Press, Inc., 1997), p 1.

³ *Ibid.* at 100.

⁴ *Ibid.* at 10.

nowhere does the Constitution expressly authorize the federal government to regulate immigration."⁵

Regardless of this Constitutional omission, states have only limited regulatory power over immigration issues, with the federal government formulating and administering the vast majority of immigration policies and procedures today. The logic for this allocation of control, despite the lack of Constitutional authority, stems from the sovereign right of all nations to control their borders and regulate subjects within those same borders. The U.S. government, as a consequence, feels limited in this sovereign right to regulation only by those rules as outlined in the Constitution: "The powers to declare war, make treaties, suppress insurrection, repel invasion, regulate foreign commerce, secure republican governments to the States, and admit subjects of other nations to citizenship, are all sovereign powers, restricted in their exercise only by the Constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations."⁶

Although all aliens have no "right of entry" into the U.S., the government is still bound by procedural due processes as outlined in the Constitution. This right stems from the Fourteenth Amendment and is reiterated in numerous cases:

The Fourteenth Amendment is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty or the property without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regards to any differences of race, of color, or of nationality; and the equal protection of our laws is a pledge of the protection of equal laws.⁷

⁵ *Ibid.* at 8.

⁶ *Ibid.* at 13.

⁷ *Ibid.* at 34.

What this means is that the Fourteenth Amendment has been interpreted to mean that even if, for example, an alien enters the country illegally, the individual in question has a right to due process of the law, without discrimination and with rights generally enjoyed by all citizens of the nation (i.e., a public hearing determining a course of action, even if that action is deportation or includes detainment). “Congress has ample power to determine whom we will admit to our shores and by what means it will effectuate its exclusion policy. The only limitation is that it may not do so by authorizing United States officers to take without due process of law the life, the liberty or the property of an alien who has come into our jurisdiction; and that he must meet a fair hearing with fair notice of the charges.”⁸ I will touch again on the significance of this affirmation, but first I wish to explore certain cases of historical import on the intersections between race and immigration law.

Removal and Deportation

The right of the U.S. federal government to exclude aliens is well-established, and so is the alien’s absence of the right to entry into the U.S. The government, therefore, defends its right to design laws that reflect the desirability of certain types of citizens, but also may exclude those aliens it considers as either undesirable or dangerous (biologically, morally, politically, socio-economically or otherwise). This right of nations to determine and control their borders is not a right I wish to challenge in the parameters of this thesis. Rather, I wish to understand more clearly how it is that the U.S. determines the admissibility or inadmissibility of each subject at different stages of the

⁸ *Ibid.* at 52-54.

immigration process, and to uncover some of the rationales that define such determinations.

For example, if a border enforcement agent at a port of entry encounters an alien that he or she suspects or determines to have a highly contagious disease (such as SARS, for example), then it seems reasonable to deem this alien inadmissible and conclude that the policy that excludes the alien is operating on a rationale from a model of containment of the communicable disease in a way that is not based on racial models or other types of discrimination. At the same time, many different types of knowledges come to focus on the body of the alien to determine this illness. Furthermore, which diseases are considered particularly virulent and beliefs about where diseases originate also tend to demonstrate geographically, if not racially biased paradigms about other places and othered peoples. Finally, we can understand this right as derived from Foucault's idea of the state's affirmation to "make live and let die"—regulating the social health of society as a whole and excluding negative agents that may reverse the health of the whole.

In the case of SARS, for example, travel to and from Hong Kong was seriously curtailed and the American press repeatedly accused the Chinese government of "incompetence."⁹ Similarly, it is commonly understood that AIDS originated in Africa (whether it actually did or not), and was spread across our nation by sexually deviant (particularly homosexual and bisexual) men. While the 'true' origin of diseases may be unknown, epidemics are more frequently than not believed to have originated in second-

⁹ "In the meantime, [the Chinese government's] incompetence in dealing with the outbreak in Guangdong has allowed SARS to jet around the world." From the article "China: SARS and the Politics of Silence" by Chris Taylor May 4, 2003 from the July 2003 issue of the *World Press Review* (VOL. 50 No. 7)

and third-world places where the people of that nation are racially and economically othered. I am certainly not suggesting that because of these othering processes that indicate racialization of different people that the U.S. should not attempt to contain contagious diseases. Rather, I wish to point to the complex and conflicting ways that race, culture and nationalism can be constructed and imbricated into knowledges that are seemingly unrelated.

What is truly important to remember, particularly when considering admissibility and in light of Foucault's model of race in the context of the defense of society, is that U.S. immigration policies reflect a belief that the use of regulations from immigration policies can both affect the future and defend the integrity of American society. As stated previously, immigration policies reflect the belief that American society can be protected on several different levels, including politics, biology, morality, etc. The government's attempt to protect Americans demands that several types of knowledges are focused on the alien, so as to produce the truth of the alien subject to determine his or her eligibility and docility before being able to intermingle amongst Americans in the U.S. or be included in political processes of the nation.

While some determinations for admissibility seem to not discriminate in terms of epidermal significance of race, but rather out of some other determination, such as a medical concern in the example above, there have been historical incidences where race has been the motivating factor for grounds of removal and inadmissibility. The Chinese Exclusion Act is just such an example, and I will explore its history and implications for the course of immigration policy in the U.S.

The Chinese Exclusion Act and Grounds for Removal

The Chinese Exclusion Act (hereafter CEA) was passed in 1882 and froze all future immigration of Chinese laborers into the U.S. The background to this legislation was the deflation of the railroad and goldrush booms in California several years previous to the passing of the Act, when many Chinese were brought to work on the railroads for cheap labor. The statute did provide provisions for the Chinese that were already within the country, but the significance of the Act lies in its blanket exclusion of a single racial and national class of people as immigrants into the country. Although the CEA did not exclude other Asian peoples, China represented the single largest national immigration source for the country at that time. The only other nation that could have even dreamed of large-scale immigration was Japan, but Japanese immigration was forbidden not by U.S. legislation (as was the case under the CEA), but rather through a treaty known as a “gentlemen’s agreement” between the U.S. and Japanese governments.¹⁰ Only once this agreement began to falter, and Japanese immigrants began arriving in large numbers during the years of 1900-1924, Congress responded with legislative action: a bar against these Asian nationals from immigrating to the U.S. in addition to the restrictive exclusions imposed on Chinese nationals. Although the INA relaxed the CEA’s exclusions of Chinese nationals, relatively severe anti-Asian immigration policies remained in effect until as late as 1964.¹¹

The CEA had far-reaching effects beyond the simple exclusion of Chinese nationals as labor-based immigrants during the period it was enacted. For instance, Chinese nationals were excluded from naturalization (and therefore could not vote), they

¹⁰ Legomsky, *supra* note 2, at 12-15

¹¹ *Ibid.* at 110-111.

were ineligible to testify against a white person in court, they were subject to heavy taxes, and excluded from public schools. Further, and interestingly enough, in the era of post-Civil War America:

...the Negro problem and the Chinese question were linked when it came to voting in congress on anti-Chinese measures: "Without exception, these measures were passed by the vote of representatives from the Pacific Coast and the Deep South." The South, it has been said, "was quite willing to join with the Pacific Coast in fitting the Chinese into a caste system which, in many respects, closely resembled that which prevailed throughout the former slave belt."¹²

Despite the speculations as to the extra-social functions of the CEA to "fit the Chinese" into a racial caste system, similar to that of former slaves in the American South, the legislation does openly purport to defend American society against a perceived malaise transgressed against society via the continued immigration of Chinese nationals.

One other important feature of the CEA was that, since it was the first statute of its type, it provided volumes of case law that solidified the federal government's right to regulate immigration issues. For the first time, the government cited the sovereign right of all governments to protect their international borders and exclude any foreign national *for any reason* within the confines of the Constitution (which conveniently excludes virtually any direction whatsoever for the regulation of aliens).

Today such openly racially discriminatory statutes would not likely be enacted without a fight from various watchdog organizations. But what I wish to emphasize in this thesis is that immigration policies today are not racist in the sense that they openly discriminate against people of color; although this certainly has been a historical reality in the U.S., and may continue to happen, albeit only in very limited instances (i.e., when immigration agents are allowed discretion). Instead, I am pointing to the very

¹² *Ibid.* at 20.

formulation of a series of policies and procedures under immigration that are directly in line with a Foucauldian model of State racism that utilizes biopower in order to assert its sovereignty.

I wish at this time to explore some of the previous and current grounds for removal (exclusion and inadmissibility) that have been asserted by the INA. The history of policies of exclusion are important to review because they isolate and flag the crystallization points of fears in the American government and public eye. During the Clinton era, for example, the biggest immigration issue was the regulation of foreign workers, particularly those from Mexico and Central America. This fear reflects a need to protect U.S. labor, but also a fear about contestations over language rights and social benefits for migratory workers.¹³ For some Americans it also reflects a fear of racial degeneracy, since many of these same workers are Mestizos or otherwise considered non-White and cultural outsiders to the American mainstream. In specific regions, such as Texas and California, these people embody historical threats to the government and national English-speaking culture. To “Remember the Alamo” in Texas, for example, means also remembering that Mexico once signified a threat to the integrity of the U.S.-Mexican border, as well as to the independence and well-being of citizens of the U.S.

As should be evident from the above example, there are many reasons besides common popular racism for immigration laws to target specific nations or peoples. Sometimes many factors come into play, and that may also include racism, just as it does with Mexican and Central American workers during the Clinton presidency. As we shall see from the history of determining factors of inadmissibility below, however, is that

¹³ Peter Duignan and L.H. Gann. *The Debate in the U.S. Over Immigration*. Ed. by Peter Duignan and L. H. Gann. (Washington: Hoover Inst. Press, 1997), pps. 17 and 32.

inadmissibility factors range from political to the moral and that these, too, change over time. Whatever the factor that is considered a reason for inadmissibility, this same factor should also be considered a manifestation of fear from the American populace.

Sometimes the inadmissibility factor is highly contested, such as it is in the case of many post-September 11th immigration policies and these same policies are revoked or altered greatly in a short period of time. And sometimes the factor is so widely considered threatening to the American public that its rationale seems virtually intuitive to most Americans—such as the inadmissibility requirement developed during the Cold War that banned Communist party members. In this sense, removal is a crucial point of articulation for the fears of who is included in the national culture.

Grounds for inadmissibility¹⁴ may be political, such as the exclusion of Communists,¹⁵ Anarchists¹⁶, and Nazi War criminals, which continues to this day. Other grounds for inadmissibility may be moral, such as the inadmissibility of polygamists, homosexuals¹⁷ and prostitutes. In addition to these grounds for inadmissibility, there were provisions for excluding those with mental and physical illnesses. While much of the concern over whether an alien is admissible depends on whether he or she is anticipated to become a public charge, there is also a eugenic concern in the development of these policies.

The reasons for excluding a physically defective alien are the likelihood of his becoming a public charge and inability by his own exertions to care for himself

¹⁴ INA § 212, taken from *Immigration and Nationality Laws of the United States: Selected Statutes, Regulations and Forms*. Selected by Thomas A. Aleinikoff, et al. (St. Paul: West Group, 1998) at 91-125.

¹⁵ CIS has a rule of exception in cases where the alien was from a Communist country such that he or she could not practically function without membership in the Party.

¹⁶ This ban was the first of the politically-derived grounds for inadmissibility. The provision was passed in 1903, following the assassination of President William McKinley in 1901, as per Legomsky, *supra* note 53, at 294.

¹⁷ The ban against homosexuals was not explicit, but the terminology of the legislation was interpreted as such until it was specifically repealed in 1990, as per Legomsky, *supra* note 2, at 108.

and those dependant on him, while the real object of excluding the mentally defective is to prevent the introduction into the country of strains of mental defect that may continue and multiply through succeeding generations, irrespective of the immediate effect thereof on earning capacity.¹⁸

Clearly, more is at stake than practical concerns regarding the health of the individual alien and the immediate effects of a disability. Through the development of immigration policies, then, the U.S. government seeks to defend the future integrity of society as a whole.

Another important moment in the development of rules for inadmissibility is the implementation of a very controversial “literacy test” between 1911-1917. The literacy test excluded “all aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish.”¹⁹ On the surface, the literacy requirement is innocent and unbiased in terms of national origin or racial considerations, yet we know from the debate that raged over this exclusionary device that it was actually designed to both limit the overall number of immigrants, while simultaneously admitting the greatest number of Northern Europeans:

We took the nations from which this immigration comes so largely, the eastern and southern nations of Europe, and ascertained what the literacy percentage was among people of those nations. We saw at once that if we adopted the educational test, it would substantially decrease the volume of that stream 30 percent, which was just about what we wanted to accomplish. On the other hand, the educational test would in no way affect England or Scotland or Ireland or the Scandinavian countries or Germany or France. The degree of illiteracy in those countries is negligible...²⁰

In light of the above quote, then, I believe it is no accident that 56% of all immigration to the U.S. for all time has been from either Northern Europe or Canada. While there are many categories for exclusion that go beyond the considerations of skin tone, certainly

¹⁸ Legomsky, *supra* note 2, at 298, quoting from the Senate Committee on Immigration.

¹⁹ *Ibid.* at 296.

²⁰ *Ibid.* at 297, quoting Senator Dillingham.

U.S. immigration policies have traditionally favored people from these nations on the presumption of their cultural and racial belonging.

While this is a slightly different concern than Foucault's lectures (i.e., he was concerned with society's war against itself), I argue that immigration policies reflect anxieties within the larger American society. Further, the process of immigrating into the national culture of the U.S. is a process by which an alien seeking entry is included and excluded is constantly being contested. These same contestable areas within immigration policy that induce great ambivalence, are prime sites for critical examination. Finally, just as Stoler argues that Europe is not so neatly packaged and contained in an imperial frame, I argue that the U.S. in a global socio-economic context similarly has threads across the world that cannot be ignored to as to draw the lines of internal warfare neatly along the U.S.'s national borders.

Immigration policies assist in the application of State racism in two related ways. First, through the collection of documentation and expert knowledge, these policies establish the truth about the subject in question. And secondly, this process fragments the subject by establishing many truths, and then actually reconstructs a new subject through the establishment of these multiplicity of truths and determinations on that subjects corporeality and personality-producing (in the case of naturalization) an *American* subject that is docile, normalized, and fully versed in the discourses of American patriotism.

The Role of Truth and Sovereignty in Immigration Policies

One of the most confusing aspects of U.S. immigration policies is the division between immigrant and non-immigrant visa applications. Immigrant visa applications are those applications to CIS in which the alien declares officially to the government a

desire, intent, or wish to stay in the U.S. indefinitely, as a permanent resident. Immigrant visa applications are primarily applications for permanent residence and are often divided into several sub-processes that need not be discussed at length here. But it is important to understand that permanent residence is not synonymous with citizenship. Citizenship is conferred on a lawful permanent resident alien by the means of naturalization. Aliens granted permanent residence, most notably, are not allowed to vote in elections and must maintain a passport from the country of origin, whereas naturalized citizens can participate fully in American government, conferred with nearly all benefits, rights, and responsibilities of those who are citizens at birth.²¹ Non-immigrant visas, on the other hand, are temporary, wherein the alien is in the U.S. for a fixed time and for a fixed purpose. Often immigrant applicants must maintain lawful non-immigrant status during the entire application process. But to make matters even more confusing, expressing an intent to immigrate on most non-immigrant applications is grounds for inadmissibility.

In any given visa application (both immigrant and non-immigrant) to CIS, a number of documents are required. For example, in a F-1 (student, non-immigrant) visa application, the applicant must provide documented proof of acceptance to the school, evidence of financial ability (financial documentation), and an intent to return to home country²² (which may include affidavits from the alien or their family members, or proof of ownership of property in their home country, or in extreme cases, the alien may be

²¹ Note that only citizens born on “U.S. soil” are allowed to run for President, essentially excluding naturalized citizens and even some citizens at birth from running for office (as per Constitutional requirements). Further, naturalized citizens may be stripped of their citizenship and be deported, although it is very difficult to do so (as per Legomsky *supra* note 2, at 6)

²² Code of Federal Regulations, Title 8: Aliens and Nationality. Published by Office of the Federal Register, National Archives and Records Administration (U.S. Government Printing Office, Washington, D.C. 2002), 8 C.F.R. §214.2(f) pp. 283-290

required to post a bond²³). Despite the relative frequency and simplicity of this type of visa application, several forms of expert knowledge are applied to the alien applicant.

Typically, the longer the duration of the alien's proposed stay in the U.S., as well as the level of responsibility conferred on him or her, affects the amount of expert knowledge that is exerted on the alien applicant. For example, consider the above documentation for a student visa in comparison to an application for adjustment of status (permanent residence), wherein the alien (and the alien's family members), are required to submit the following documentation to CIS for review and approval:

- Proof of approval from CIS to file for adjustment of status (immigrant petition approval notice), as well as evidence of continued lawful residence in the U.S. since the time of entry²⁴;
- Application for adjustment of status, which includes: name, address, nationality, place of birth, date of birth, residential history for the previous 10 years, employment history for the previous 5-10 years, etc.;
- Birth Certificates, Marriage Certificates, and Divorce decrees (when applicable);
- Sealed results of the medical examination, conducted by a CIS-approved physician to determine whether the alien applicant has a medical condition that would deem him or her as inadmissible (such as HIV/AIDS, etc.);
- Evidence of financial ability, which includes: pay stubs, verification of employment by an employer, tax returns, bank statements, affidavits of support (when applicable), etc.
- Fingerprinting (to run a criminal check within the U.S.), or foreign police reports from every country the alien applicant has lived in for the previous 10 years; and
- Biometrics²⁵

Note that the list above refers to all kinds of evaluative/disciplinary powers that are exerted on the alien subject²⁶. While certainly many U.S. citizens are already fully integrated to this same form of disciplinary power (i.e., compiling these sorts of

²³ *Ibid.* 8 C.F.R. §213.1 at 259-260

²⁴ The CIS is concerned with aliens who, for any period of time, fall out of lawful immigrant or non-immigrant status at any point during their stay in the U.S.

²⁵ Biometrics refers to a certain type of photographic identification that uses the ear and front-side profile of the subject as an individual marker of identity, much in the same way as a fingerprint does.

²⁶ *Supra* note 22, 8 C.F.R. § 245, at 524-574. See also permanent resident requirements, as per 22 CFR §42.65-67 (State Department's separate requirements for immigrant visa processing).

documents may seem inevitable in any government application like for example to register a child for public school, etc.), this is part of the exercise of achieving U.S. citizenship and being integrated within this same system. The alien must submit or subject himself or herself to the multiplicity of regulatory and disciplinary devices of the U.S. government. This is part of the alien's path to becoming a docile and useful patriot—a process of becoming more and more American through submitting to regulatory and disciplinary powers, *and* through being evaluated and consequently determined as normal within these same structures.

These requirements in both disciplinary and regulatory realms signal, at the same time, a statement on the character of American citizens. Just as under colonialism, Stoler explains how the colonizers could be differentiated from the colonized:

These discourses on self-mastery were productive of racial distinctions, of clarified notions of 'whiteness' and what it meant to be truly European. These discourses provided the working categories in which an imperial division of labor was clarified, legitimated, and—when under threat—restored.²⁷

By using this colonial example in conjunction with U.S. policies, I do not intend to suggest that immigration today is the same as colonial policies towards colonials. Rather, I wish to point to the effect of having certain disciplinary and regulatory requirements that creates a statement on the discipline and regulatory devices that are constantly exerted on American subjects.

The list of documents required for permanent residence also coincides with biopower, in addition to regulatory or disciplinary mechanisms. Note the requirement of medical records (wherein the truth is established regarding the alien's health and whether he or she has any known communicable diseases, etc.). In this way, the State is quite

²⁷ Laura Ann Stoler, Laura Ann Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*. (Durham: Duke University Press, 1995), at 8.

literally enforcing the “defense of society” on a purely biological level. Further, the compilation of birth and data records reflect the quasi-medical mechanisms that Foucault discusses in conjunction with the rise of regulatory mechanisms and biopower in an attempt to understand the newly created concept (in the eighteenth century) of “populations.”

Each of the above documents, for the application for permanent residence, allows a specialized knowledge to be exerted on the subject. This allows each disciplinary mechanism or institution (the school, the workplace, the police station, etc.) to make a determination on the normality or abnormality of the alien, causing a fragmenting of the alien’s subjectivity. What this means in the most fundamental terms, is that each document or piece of information that is requested about the alien asserts a truth about his or her subjectivity. Each truth, in turn, is used as a segment in the determination of the eligibility of the alien as a whole or complete subject.

Once all these documents are placed together, and a determination is made by CIS, the alien’s subjectivity and the truth about him or her, as subjects, is re-established within a new discourse—an American discourse of nationality. This means that aliens, in order to be successfully processed through the immigration process, must be re-made as subjects. In light of Foucault’s argument that nation-states manufacture subjectivity in order to assert their own sovereignty, this makes particularly good sense. The U.S. must fragment and re-build an alien’s subjectivity, in order to dismantle the alien’s prior subjectivity to another nation-state and to further establish its own sovereignty over the foreign subject. Although CIS creates the policies, however, it is the alien that must willingly subject himself or herself to the powers of the immigration authorities—rather

than the CIS forcing compliance through other means—which is itself proof of the alien’s docility.

Biopower is utilized via medical records, psychological exams (when necessary), and biometrics. The use of biopower reaffirms the connection between body and soul for both the alien and the CIS by scrutinizing both aspects as mirrors of the alien’s subjectivity. In this way, this further supports Grosz’s assertion about the innate connection in the West between the body and soul. But this requirement is also reflected in Stoler’s colonial racism, inasmuch as “being European was supposed to be self-evident but was also a quality that only the qualified were equipped to define.”²⁸ Thus, the knowledge located in all these separate categories is only ultimately defined through expert knowledge that is American, and what it means to be an American.

While I am pointing to these processes as participatory in a Foucauldian model of race, this does not mean that I am necessarily criticizing this type of scrutiny by the U.S. government. To the contrary, these processes are not necessarily good or bad, but point to the ways in which Foucault’s model of defense and security enlisted through medical and biological tactics is appropriate when analyzing immigration policies. They demonstrate the ways in which Western society produces knowledge and exercises power, particularly in the name of the defense of society. Additionally, immigration policies serve as an example of how boundaries of nationality and sovereignty are drawn and re-drawn. One of Foucault’s central concerns in the lectures was the ability of nation-states to exert violence and even death on its own members. Through analyzing those procedures through which foreigners (clearly not under the absolute sovereignty of this society) become willing subjects to new nation-state and subject themselves to its

²⁸ *Ibid.* at 105.

sovereignty (even if that means they will die by this same nation-states hand, for the good of the whole), we can see some of the most significant points of contestation for the nation-state in this process.

As such, I wish to continue this exploration into immigration policies, by discussing in the following section the ways in which there is an increase in security in order to defend society against terrorism and the terrorist.

On the Production of Docile Patriots

Amit S. Rai and Jasbir K. Puar, in their article “Monster/Terrorist/Fag: The War on Terrorism and the Production of Docile Patriots,” also investigate post-September 11 constructions of Americanism using a Foucauldian model. Whereas I have clearly outlined Foucault’s racial model, Rai and Puar utilize Foucault’s discourse of the monster and focus on intersections between sexual deviancy and popular representations of the terrorist. They argue that the terrorist is the reappearance of eighteenth century monster. “The forms of power now being deployed in the war on terrorism in fact draw on processes of quarantining a racialized and sexualized other, even as Western norms of the civilized subject provide the framework through which these very same others become subjects to be corrected.”²⁹

Similar to Foucault and Stoler, Rai and Puar emphasize the significance of sexuality in their analysis of the terrorist; they also make explicit links between race and sexuality that are difficult to separate:

We use Foucault’s concept of monstrosity to elaborate what we consider to be central to the present war on terrorism: monstrosity as a regulatory construct of modernity that imbricates not only sexuality, but also questions of culture and

²⁹ Jasbir K. Puar and Amit S. Rai, “Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots” *Social Text* 72, Vol. 20, No. 3, Fall 2002 Duke University Press. 117-148, at p. 117

race...The monster is not merely an other; it is one category through which multiform power operates. As such, discourses that would mobilize monstrosity as a screen for otherness are always also involved in circuits of normalizing power as well: the monster and person to be corrected are close cousins...[I]f the monster is part of the West's family of abnormals, questions of race and sexuality will have always haunted its figuration. The category of monstrosity is also an implicit index of civilizational development and cultural adaptability.³⁰

Rai and Puar use popular media discourses as their analytical frame to which they apply a variety of Foucauldian models. In this way, they diverge from my own project, by focusing on television shows and public speeches as their primary site of application of theoretical knowledge. But their analysis of the terrorist and its relationship with a production of docile patriots still holds resonance in my own investigation.

First, for Rai and Puar, these discourses of this contemporary monstrosity in the form of terrorism is fraught with fissures and disjunctures, yet it is clearly developed from the same genealogy. "The monsters that haunt the prose of contemporary counterterrorism emerge out of figures in the eighteenth and nineteenth centuries that have always been racialized, classed, and sexualized. The undesirable, the vagrant, the Gypsy, the savage, the Hottentot Venus, or the sexual depravity of the Oriental torrid zone shares a basic kinship with the terrorist-monster."³¹ Just as mainstream media discourses reflect these genealogies of otherness, so do the legislation created to protect the American people from certain monstrous aliens. This same process can create docile patriots and separate the good citizens-to-be from those aliens that are or have the potential to be monstrous.

The second way in which Puar and Rai's project intersects with my own is how we understand the production of knowledge about the subject as critical in the analysis of

³⁰ *Ibid.* at 119

³¹ *Ibid.* at 124.

both terrorism and counterterrorism: "...in the discourse on counterterrorism the shared modernity of the monster and the delinquent comes together in the knowledge of cultures, nations, and races."³² Puar and Rai affirm that expert knowledge does not mean that this knowledge is divorced from cultural discourses that shape it—and this means that racist and imperialist discourses can often be re-inscribed and articulated in official policies created by experts. Knowledge is created through discourse, and the experts that engage in that discourse are also necessarily related to those objects of study about whom they generate knowledge.

The Terrorist

The question of security from terrorists and terrorism is only recently such a major concern for CIS today. In pursuit of this security, CIS has adopted a more criminological approach to aliens than before. The theory of criminology aspires to appropriately categorize and assess the criminal mind, in order to establish patterns of behavior or predict future behaviors. Frequently, medical discourses are integrated with the theory of criminology. The rise of criminology is also explicitly linked to the development of racism, according to Foucault: "Once the mechanism of the biocriminal was called upon to make it possible to execute or banish criminals, criminality was conceptualized in racial terms."³³

Similarly, the compilation of the above documents presumes to establish a pattern that will continue, such as the history of the alien as a docile and useful subject. This criminological approach increases its claim to science and application in immigration

³² *Ibid.* at 121

³³ Michel Foucault, *Society Must Be Defended: Lectures at the College de France 1975-76*. Ed. by Mauro Bertani and Alessandro Fontana. Trans. by David Macey. (New York: Picador, 2003), at 258.

matters. It is my contention that CIS now attempts to establish the truth about the alien subject to such an extent that they can assemble a risk-assessment of the alien. In essence, CIS seeks to determine, through quasi-medical, risk assessment, and evaluative techniques, *which* aliens are going to commit terrorist acts before they commit them and which ones will be docile patriots.

While there are certainly ways to assess the levels of risk on a given subject who has the potential for committing terrorist acts through the employment of many of these techniques (i.e., the following questions seem directly applicable to an evaluation: does the subject belong to a terrorist organization? Does the subject own materials for the deployment of terrorist activities, such as difficult-to-acquire chemical products?), this risk assessment is not foolhardy.

What concerns me here, is the idea that if CIS gathers enough data on individuals and establishes enough truths about subjects, and compares and applies these statistical variables, that they will be able to intercept and prevent terrorist attacks. First of all, this seems like an impossible to predict set of variables, which presumes that people are predictable, given the proper set of criteria upon which to evaluate. Instead of this, however, I argue that this very compilation of data and production of knowledge actually constitutes that subjectivity of the terrorist.

I am not suggesting that the U.S. actually produces terrorists through immigration policies. Rather, through the production of knowledges about who terrorists are and what terrorists do, immigration policies are constitutive of identities, both normal/docile *and* abnormal/monstrous. In the same way that Stoler argues that the Empire is constitutive

of the knowledges about the colonies, so are American patriots constitutive of terrorist monsters—one cannot exist without the other.

If we accept that the above is true, we must also seriously question the ways in which the U.S. government defends society from the abnormals and the monsters, both from within and without. We must be concerned with the ways in which the U.S. defends its own sovereignty through a discourse that runs on the defense of society and civilization (and the species as a whole) through the manufacture of subjects (even the monstrous subjects), and stakes its claim the ability to kill (“let die”) these subjects in the name of this same defense.

In fact, it is exactly this right to defend American society and the sovereignty of the U.S. State that qualifies according to a Foucauldian model certain immigration policies in the U.S. as racist. The very fact that CIS is now under the authority of the Department of Homeland Security should only be our first clue. More than this, however, the terrorist has become the perfect example of the ‘degenerate’ and ‘abnormal’ that the U.S. feels it must uproot in the defense of society and its right to “make live” the population under its sovereignty.

Further, immigration policies reflect not simply an extension of Foucault’s State racism, but also a more concrete hierarchy based in skin-tone. In the same way that Stoler notes that under colonialism “[d]istinctions of color joined those of *religion and culture*, to distinguish the rulers from the ruled, invoked varied measures in the governing strategies of colonial states”³⁴, so do immigration policies mirror this same mentality of governance in order to operate “inside the biological continuum of human beings by

³⁴ Stoler, *supra* note 27, at 27. Emphasis Added.

defining a hierarchy of race, [and implement] a set of divisions in which certain races are classified as ‘good,’ fit, and superior”³⁵

The terrorist is not only a threat to the good, fit, docile and useful patriots, they are also abnormal and degenerate. Their destruction is required for the maintenance of the purity of the species. But furthermore, the terrorist must be categorized as abnormal and degenerate in order for the State rationale for the right to kill the terrorist may be used. Thus, there is a vested interest for immigration policies to construct the terrorist in order to identify and eliminate this threat.

³⁵ Ibid. at 84.

Conclusion

Through a Foucauldian model of race, supplemented by Stoler's critique, I have attempted to illustrate the ways in which current U.S. immigration policies function, using racial models. Although these models may have specificity in colonialism and racism as understood in popular discourses, the U.S. government is racist because it utilizes techniques and strategies of governance that reflect the State's need to defend U.S. society, in biological terms, as well as affirm its own sovereignty through the exercise of these devices. The terrorist, in particular, embodies the degenerate in U.S. immigration policies, requiring increased quasi-bio-historical surveillance on all alien subjects who wish to reside in or visit the U.S.

Because of time and space requirements, as well as the scope of my project, I could not address a critical point of contention for Foucault, Stoler, Puar and Rai, in the development of race: sexuality. For Foucault and Stoler "sexuality exists at the point where body and population meet"¹ and sexuality is a more primary cite for power than race because "[n]ationalist discourse staked out those sexual practices that were nation-building and race-affirming, marking 'unproductive eroticism...not only [as] immoral, [but as] unpatriotic.'"²

In understanding that sexuality serves such an important role in the development of race and State racism, and exists in such a contested realm for the exercise of power for these scholars (even more primary than race), I recommend that further research be conducted in this area, specifically in the field of U.S. immigration policies. This

¹ Michel Foucault, *Society Must Be Defended: Lectures at the College de France 1975-76*. Ed. by Mauro Bertani and Alessandro Fontana. Trans. by David Macey. (New York: Picador, 2003), at 252

² Laura Ann Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*. (Durham: Duke University Press, 1995), at 135.

research could be particularly promising in light of the current debate over ‘gay marriage’ and its impact on immigration issues within the U.S. and how this decision may impact family/marriage-based immigration petitions.

Despite the aforementioned omission regarding fully addressing a Foucauldian model of race, what I hope has emerged from this analysis is a new way of considering both immigration policies, as well as race and racism, particularly within conjunction with one another. This thesis does not call out for an immediate change in any U.S. policy, but simply attempts to fully address the processes and mechanisms that give immigration policies their shape and potency. I encourage critique in my own work and hope that this thesis opens an avenue of discussion that has until now, remained relatively unexplored from a Foucauldian perspective.

In the end, we are judged, condemned, classified, determined in our undertakings, destined to a certain mode of living or dying, as a function of the true discourses which are the bearers of the specific effects of power.³

³ Foucault, *supra* note 1, at 94.

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