

**MAKING LIVE AND LETTING DIE: THEORIZING BIOPOLITICS THROUGH
THE *ANTI-TERRORISM ACT, 2015***

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Abstract

In this thesis, I theorize the programs of anti-terrorism and securitization deployed through Bill C-51, the *Anti-terrorism Act, 2015*, as biopolitical techniques of governance that operate through the right to ‘make live’ and ‘let die’. After situating Bill C-51 in relation to historical developments and contemporary trajectories of Canadian anti-terrorism policy and national security programming, I employ critical discourse analysis to examine the policy text of Bill C-51 and the governmental debates surrounding its introduction. I contend that through the mobilization of radical anti-terrorist measures and security mechanisms, Bill C-51 ostensibly functions to reinforce the security and vitality of the Canadian population, while targeting segments of the population designated as threats to national security for governmental discipline, regulation, and elimination. Consequently, I argue that Bill C-51 constitutes a state of exception within which the normative operation of law is suspended, legal protections are withdrawn, and emergency security measures are enforced.

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Introduction: “You Gotta Be Careful”

On October 22, 2014, at 9:47 a.m., Michael Zehaf-Bibeau parked an unlicensed grey 1995 Toyota Corolla near the National War Memorial in downtown Ottawa, and exited the vehicle holding a Winchester model 94 antique hunting rifle. Zehaf-Bibeau, a 32-year old resident of Ottawa holding Libyan-Canadian citizenship, was later reported to be wearing dark clothing and a keffiyeh scarf covering his mouth (RCMP, 2015). Zehaf-Bibeau approached Corporal Nathan Cirillo, an unarmed guard standing in front of the Tomb of the Unknown Soldier at the National War Memorial, and shot him in the back three times, killing him. Zehaf-Bibeau was subsequently reported to raise his gun above his head, shout “something similar to ‘Iraq’”, and run back to his vehicle carrying the weapon (RCMP, 2015, p. 4). He then drove west toward the entrance to Parliament Hill before abandoning the vehicle, while still carrying the rifle, and running past multiple bystanders through a gate in the fence surrounding the parliament buildings. Zehaf-Bibeau then approached a black limousine designated to transport Members of Parliament, and hijacked the vehicle before driving past the East Block and toward the Centre Block of parliament. Zehaf-Bibeau abandoned the vehicle outside the Peace Tower and proceeded to enter the Centre Block carrying a hunting rifle and a knife, where he was reported to “yell some kind of ‘war cry’” which “sounded something similar to Allahu Akbar” (RCMP, 2015, p. 9).

Upon entering the Centre Block of parliament, Zehaf-Bibeau encountered two unarmed House of Commons Security Services officers, who, upon observing that Zehaf-Bibeau was carrying a rifle, attempted to subdue him and gain control of the weapon. In the ensuing struggle, one of the security officers was wounded. Zehaf-Bibeau proceeded to run north along the Hall of Honour toward the Library of Parliament while exchanging

gunfire with several armed RCMP officers, and was wounded during this exchange. As he was pursued through the Hall of Honour by RCMP officers and security forces, Zehaf-Bibeau passed, on his left, a caucus room in which former Prime Minister Stephen Harper, approximately 150 Members of Parliament belonging to the Conservative Party of Canada, and several senators were meeting, and, on his right, another caucus room occupied by former Leader of the Official Opposition Thomas Mulcair and eighty Members of Parliament belonging to the New Democratic Party of Canada. Upon reaching the end of the Hall of Honour, Zehaf-Bibeau hid behind a stone pillar in an alcove near the entrance to the Library of Parliament, where he was ordered to drop his gun and surrender by RCMP officers. While he was concealed near the entrance to the Library of Parliament, Zehaf-Bibeau was approached by multiple RCMP officers, as well as former Sergeant-at-Arms of the House of Commons Kevin Vickers, who had retrieved a handgun from his office. After exchanging further gunfire, Zehaf-Bibeau was shot and killed by Vickers and multiple RCMP officers.

Soon after the attacks began, an anonymous bystander standing near the location of the shooting captured a photograph of Zehaf-Bibeau. In the photograph, the blurred figure of Zehaf-Bibeau appears in front of the National War Memorial. Zehaf-Bibeau appears to be facing directly toward the camera, and he is holding a rifle, which is pointed to his left. A police officer subsequently confiscated the bystander's camera and took a photograph of this image, which was then distributed among RCMP officers and other security forces in an attempt to identify Zehaf-Bibeau. Several hours later, this photograph of Zehaf-Bibeau appeared on a Twitter account that actively supported the activities of the Islamic State of Iraq and Syria (ISIS) and distributed propaganda produced by ISIS. The photograph was initially suspected to have originated on this Twitter account, leading to

speculations that ISIS had explicitly claimed responsibility for the attacks, and, in turn, that Zehaf-Bibeau was acting as an agent of ISIS. Although these speculations were later determined to be false, it remains unclear how the photograph was publicly circulated on social media, and, in turn, obtained by this Twitter account, which was suspended shortly after the attacks.

At the time of the attacks, Zehaf-Bibeau was living at the Ottawa Mission, a shelter for the homeless near Parliament Hill. Zehaf-Bibeau was subsequently reported to have an extensive criminal record in Quebec and British Columbia, including criminal offences of assault, illegal drug possession, and robbery, and he was suspected to suffer from addiction and mental illness. It was later revealed that Zehaf-Bibeau had recently moved to Ontario from British Columbia to apply for a Libyan passport, which he was denied. Zehaf-Bibeau had previously applied for a Canadian passport, which he was also unable to obtain for reasons that remain unclear. Prior to the attacks, Zehaf-Bibeau was reported to intend to travel to Syria, and the delays in the processing of his passport application were suspected to have motivated the attacks, leading to speculations that Zehaf-Bibeau was affiliated with terrorist organizations in general, and with ISIS in particular (Forcese & Roach, 2015).¹ In a video recorded on the morning of October 22, 2014, before the

¹ These speculations that Zehaf-Bibeau was tenuously affiliated with terrorist organizations and intended to travel to Syria to participate in the operations of ISIS were later subject to contestation. Specifically, in a letter published after the attacks, Zehaf-Bibeau's mother, Susan Bibeau, stated that Zehaf-Bibeau did not intend to travel to Syria to fight in the Syrian civil war, but rather intended to travel to Saudi Arabia to study Islamic literature. As she explained, "he had come to Ottawa to try and get his passport. He ultimately wanted to go to Saudi Arabia and study Islam, study the Coran [sic]. He thought he would be happier in an Islamic country where they would share his beliefs...I want to correct the statement of the RCMP I never said he wanted to go to Syria, I specifically said Saudi Arabia". She continued, "Most will call my son a terrorist, I don't believe he was part of an organization or acted on behalf of some grand ideology or for a

commencement of the attacks, which was later publicly released by the RCMP,² Zehaf-Bibeau, who appears inside of a vehicle parked near the National War Memorial, declares that he is acting “in retaliation for Afghanistan and because Harper wants to send his troops to Iraq”. He continues,

So we are retaliating, the Mujahedin of this world. Canada’s officially become one of our enemies by fighting and bombing us and creating a lot of terror in our countries and killing us and killing our innocents. So, just aiming to hit some soldiers just to show that you’re not even safe in your own land, and you gotta be careful. (Zehaf-Bibeau, 2015)

Zehaf-Bibeau concludes the video by stating that “we’ll not cease until you guys decide to be a peaceful country and stay to your own and...stop going to other countries and stop occupying and killing the righteous of us who are trying to bring back religious law in our countries” (Zehaf-Bibeau, 2015).

The attacks committed by Zehaf-Bibeau on the morning of October 22, 2014 followed the attacks of October 20, 2014, during which Martin Couture-Rouleau, a Canadian citizen designated by the government as an active supporter of ISIS, drove a vehicle into two Canadian Armed Forces soldiers, killing Warrant Officer Patrice Vincent and injuring another soldier, before exiting the vehicle and attempting to attack several police officers with a knife in Saint-Jean-sur-Richelieu, Quebec. Couture-Rouleau was subsequently shot and killed by multiple police officers. In June 2014, prior to the attacks, authorities seized Couture-Rouleau’s passport and the RCMP placed him under increased surveillance in order to prevent him from leaving Canada to participate in ISIS

political motive...I doubt he watched much Islamic propaganda, I doubt he wanted to go fight in Syria” (Bibeau, 2014).

² A censored version of this video was initially released by the RCMP on March 16, 2015, and the entire uncensored video was not publicly released until May 29, 2015, 7 months after the attacks. The video is approximately one minute long, and in the eighteen seconds of the video that were initially censored by the government, Zehaf-Bibeau recites a prayer in Arabic.

operations, although he was not arrested or criminally charged for engaging in terrorist activity. It was later reported that Couture-Rouleau carried out these attacks in retaliation for Canadian military operations in Iraq and Syria (Forcese & Roach, 2015). Consequently, the attack was designated as an act of terrorism, and Couture-Rouleau was labelled as an “ISIL-inspired terrorist” (Harper, 2014).

Former Prime Minister Stephen Harper and multiple other government officials condemned the attacks of October 2014 as acts of terrorism, and explicitly identified Couture-Rouleau and Zehaf-Bibeau as terrorists.³ Indeed, Harper later stated that their respective attacks were “a grim reminder that Canada is not immune to the types of terrorist attacks we have seen elsewhere around the world” (Harper, 2014). In turn, invoking the potential of future terrorist threats, and identifying the imperative for anti-terrorism efforts and securitization in order to reinforce public safety and national security against such threats, Harper responded to the attacks of October 2014 by stating that

this will lead us to strengthen our resolve and redouble our efforts and those of our national security agencies to take all necessary steps to identify and counter threats and keep Canada safe here at home, just as it will lead us to strengthen our resolve and redouble our efforts to work with our allies around the world and fight against the terrorist organizations who brutalize those in other countries with the hope of bringing their savagery to our shores. (Harper, 2014)

³ Specifically, in a statement issued immediately after the attacks of October 2014, Harper referred to Zehaf-Bibeau as “the terrorist” (Harper, 2014), and multiple government officials subsequently referred to the attacks committed by Zehaf-Bibeau and Couture-Rouleau as acts of terrorism throughout the parliamentary debates and governmental discourses following these attacks. Moreover, following an investigation into the attacks, Bob Paulson, former Commissioner of the RCMP, reported to the House of Commons Standing Committee on Public Safety and National Security that “if Zehaf-Bibeau had not been killed but rather taken into custody, we would have charged him with terrorist offences... The RCMP believes, on the evidence, that Zehaf-Bibeau was a terrorist”. Further, Paulson stated that “anyone who aided him, abetted him, counselled him, facilitated his crimes or conspired with him is also in our view a terrorist and where evidence exists, we will charge them with terrorist offences” (House of Commons Standing Committee on Public Safety and National Security, 2015 March 6, p. 1).

Here, Harper stresses the imperative for governmental intervention and securitization in the context of ostensibly proliferating terrorist threats following the attacks of October 2014 in particular, and in the global aftermath of the September 11, 2001 attacks in the United States more broadly. In turn, Harper identifies the vulnerability and susceptibility of Canadian national security relative to these threats, which he suggests are situated both within and outside of Canada's population and geopolitical territory. Consequently, Harper articulates the imperative for the deployment and expansion of governmental programs of anti-terrorism, counterterrorism, and securitization in order to reinforce the security, vitality, and productivity of the Canadian state population against these proliferating terrorist threats. Indeed, during the parliamentary proceedings on October 23, 2014, the day after the attacks committed by Zehaf-Bibeau, Harper stated that "security in Canada is the government's primary responsibility", and, in turn, insisted that "our laws and police powers need to be strengthened in the area of surveillance, detention, and arrest. They need to be much strengthened" (House of Commons, 2014 October 23, p. 8692). Toward this end, immediately following the attacks of October 2014, the Canadian government raised the national terrorism threat level from 'low' to 'medium', citing an increase in the online activity of terrorist organizations, including ISIS and Al-Qaeda, and the heightened risk of future terrorist threats. Since the attacks, the national terrorism threat level has remained at 'medium' indefinitely, indicating that "a violent act of terrorism could occur" and that additional anti-terrorist measures and security mechanisms have been implemented (Government of Canada, 2019). Thus, the escalation of the national terrorism threat level signals enduring conditions of heightened danger and insecurity in the aftermath of the attacks.

Three months later, on January 30, 2015, Harper publicly introduced Bill C-51, also known as the *Anti-terrorism Act, 2015*, in response to the attacks of October 2014 in particular, and the ostensible proliferation of global terrorist threats in the aftermath of the September 11, 2001 attacks in the United States and the subsequent declaration of the ‘war on terror’ in general. Bill C-51 represents the most substantive expansion and radical reorientation in Canadian anti-terrorism and counterterrorism efforts and national security programming since the formulation and enactment of Bill C-36, the *Anti-Terrorism Act*, in the months following the September 11, 2001 attacks in the United States. Indeed, Bill C-51 has been characterized as the “most radical Canadian national security law ever enacted” (Forcese & Roach, 2015, p. viii) since the introduction of the *Canadian Charter of Rights and Freedoms* in 1982. Broadly, Bill C-51 states that “the people of Canada are entitled to live free from threats to their lives and their security”, but that “activities that undermine the security of Canada are often carried out in a clandestine, deceptive or hostile manner, are increasingly global, complex and sophisticated, and often emerge and evolve rapidly”, and that there is therefore “no more fundamental role for a government than protecting its country and its people” from such threats (Parliament of Canada, 2015, p. 1-2). Consequently, the policy aims to “enable the Government to protect Canada and its people against activities that undermine the security of Canada” (p. 2) through the deployment of expansive governmental programs of anti-terrorism, counterterrorism, and securitization.

To this end, Bill C-51 mobilizes these programs of anti-terrorism and securitization through the introduction of several mechanisms of governance which ostensibly function to preempt and counteract terrorist threats while maintaining and reinforcing public safety and national security. Specifically, Bill C-51 deploys expansive regimes of surveillance

and establishes networks of information sharing among multiple governmental institutions. Further, Bill C-51 lowers the evidentiary thresholds for the mobilization of preemptive anti-terrorism and counterterrorism measures, including preventative detainment and the imposition of other governmental mechanisms of control and regulation, authorizing the deployment of these measures in situations in which government officials determine on “reasonable grounds” that they are necessary to preempt or counteract potential threats to national security. Bill C-51 also establishes expansive and generalized definitions of ‘terrorism’ that are unprecedented in Canadian anti-terrorism and national security policy, particularly through the employment of the phrase “activity that undermines the security of Canada”, broadly defined as any activity that “undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada” (p. 3), as well as through the exceptionally broad and imprecise references to “terrorism offences in general” throughout the policy text. To this end, the anti-terrorist measures and security mechanisms deployed by Bill C-51 function to restrict and suppress social movements, activism, and resistance, insofar as these activities can be designated as threats to national security, or “activity that undermines the security of Canada” (p. 3) more broadly, and persons engaged in these activities can subsequently be targeted for surveillance, detainment, and other mechanisms of governmental discipline and regulation enforced by the policy. Moreover, Bill C-51 deploys regimes of censorship through restricting the production and distribution of materials determined by government officials to constitute “terrorist propaganda”, broadly defined as “any writing, sign, visible representation, or audio recording that advocates or promotes the commission of terrorism offences in general...or counsels the commission of a terrorism offence” (p. 27). Finally, Bill C-51 authorizes

government agents to engage in extralegal anti-terrorism operations, including measures that violate the *Canadian Charter of Rights and Freedoms* and other national and international legal frameworks, ostensibly in order to disrupt and counteract potential threats to public safety and national security. Bill C-51 mobilizes these radical reorientations in governmental programs of anti-terrorism and securitization through the introduction of two new laws (the *Security of Canada Information Sharing Act* and the *Secure Air Travel Act*) and the substantive amendment of three preexisting laws (the *Criminal Code*, the *Canadian Security Intelligence Service Act*, and the *Immigration and Refugee Protection Act*), in addition to the amendment of several related policies.

Following its introduction in 2015, Bill C-51 was subject to forceful opposition that often recalled earlier resistance to the invasive anti-terrorist measures and national security programs implemented and enforced through Bill C-36, the *Anti-Terrorism Act*, which was introduced in Canada in the wake of the September 11, 2001 attacks in the United States (Forcese & Roach, 2015; Iacobucci & Toope, 2015). Despite sustained opposition, resistance, and contestation throughout public and governmental discourses following the introduction of the policy in the aftermath of the attacks of October 2014 in Ottawa, and subsequent terrorist attacks in Baghdad, Copenhagen, Paris, Sydney, and elsewhere in the following months, Bill C-51 was ultimately enacted on June 18, 2015.

In his public announcement of Bill C-51, Harper positioned the policy as a tactic situated within a broader strategy of governance aiming to reinforce, secure, and revitalize Canada's state population and geopolitical territory against terrorist threats, and threats to national security more broadly. Indeed, through the extension of anti-terrorist measures and security mechanisms, the policy ostensibly functions to enable the government to reinforce and strengthen the "sovereignty, security or territorial integrity of

Canada” and “the lives or the security of the people of Canada” against terrorist threats, and “activity that undermines the security of Canada” in general (Parliament of Canada, 2015, p. 3). To this end, through the introduction of Bill C-51, the government asserted that the Canadian population is situated in a position of vulnerability and insecurity relative to threats situated both within and outside of Canada’s geopolitical territory, and, in turn, articulated the imperative for preemptive governmental intervention through the mobilization of mechanisms of anti-terrorism and securitization. Thus, on the one hand, through the deployment of these anti-terrorist measures and security mechanisms, Bill C-51 aims to reinforce the security and vitality of the state population against these terrorist threats, maintaining that these measures are necessary “in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (p. 2). However, on the other hand, these anti-terrorist measures operate through targeting bodies and populations designated as potential threats to national security for surveillance, detainment, expulsion, and other mechanisms of governmental discipline and regulation enforced by the policy. In this regard, Bill C-51 operates through the deployment of governmental mechanisms of anti-terrorism and securitization that aim to promote and foster the security, vitality, and wellbeing of the state population through regimes of ‘making live’, while simultaneously targeting perceived threats to public safety and national security for governmental discipline, regulation, and elimination through regimes of ‘letting die’.

To this end, the governmental programs of anti-terrorism, counterterrorism, and securitization deployed by Bill C-51 operate through a biopolitical logic of governance characterized by the right to “make live and to let die” (Foucault, 2003b, p. 241). In Foucault’s theoretical formulation, biopolitics consists of mechanisms of governance that

function to regulate, securitize, and normalize state populations through means designed to extend communications, optimize health, and reinforce security. Specifically, biopolitics takes the population, as a vital and biological entity, to be the object of governmental intervention, regulation, and normalization. In this regard, Foucault observes that biopolitics is a “technology of power over ‘the’ population as such, over men insofar as they are living beings” (p. 247). Foucault specifically maps a shift from the operation sovereign power, which he suggests is characterized by the right to “*take* life or *let* live”, to the emergence of biopower and biopolitical techniques of governance, which he suggests operate through the governmental capacity to “*foster* life or *disallow* it to the point of death” (1978, p. 138). Consequently, Foucault observes that biopolitics is characterized by the right to “make live and to let die” (2003b, p. 241). Thus, although ostensibly oriented toward the securitization of the state and the vitalization of the population, biopolitics operates through what Foucault refers to as state racisms, or governmental calculations that subdivide state populations, and, in turn, determine which segments of these populations will be subject to the governmental right to ‘make live’ and ‘let die’. In other words, biopolitics operates through fragmenting state populations, or, as Foucault explains, “establishing a biological-type caesura within a population that appears to be a biological domain” (p. 255), and subsequently differentiating between those lives to be fostered, preserved, and protected, and those to be neglected, eliminated, or gradually disqualified to the point of death through the withdrawal of governmental support. Indeed, as Foucault observes, the biopolitical right to ‘make live’ is operationalized through the corresponding right to ‘let die’, which is manifest not only in state sanctioned killing, but also in “every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political

death, expulsion, rejection, and so on” (p. 256). Consequently, the regimes of ‘making live’ through which biopolitics aims to reinforce, securitize, and revitalize state populations are necessarily predicated on the mobilization of regimes of ‘letting die’, whereby targeted segments of these populations are excluded from these state programs of vitalization and securitization, and subsequently abandoned to the conditions of death.

In this regard, although Bill C-51 is primarily oriented toward the securitization of the Canadian state population, the policy operates through the deployment of anti-terrorist measures and security mechanisms that aim to identify and target perceived threats to public safety and national security for governmental discipline, regulation, and elimination. In other words, the governmental mechanisms of anti-terrorism and securitization mobilized by Bill C-51 operate through the establishment of biopolitical caesurae within the state population. On the one hand, these biopolitical techniques of governance deployed by Bill C-51 identify segments of the state population to be sustained, revitalized, and secured against terrorist threats through regimes of ‘making live’, particularly through the implementation and enforcement of anti-terrorism and counterterrorism measures and security mechanisms. On the other hand, however, these biopolitical techniques of governance target segments of the state population determined to constitute threats to public safety and national security through tactics of ‘letting die’, including detainment and imprisonment, surveillance, deportation and expulsion, and other extralegal mechanisms of governance that withdraw and suspend legal rights and protections. To this end, the programs of anti-terrorism and securitization deployed by Bill C-51 are characterized by the right to “make live and to let die” (2003b, p. 241) which Foucault suggests is foundational to the operation of contemporary biopolitical strategies of governance.

In this thesis, I theorize the mechanisms of anti-terrorism, counterterrorism, and securitization deployed through Bill C-51, the *Anti-terrorism Act, 2015*, as biopolitical techniques of governance that operate through the right to ‘make live’ and ‘let die’. Specifically, I contend that Bill C-51 operates along the coordinates of a biopolitical logic that aims to regulate the state population through the mobilization of governmental mechanisms of ‘making live’ and ‘letting die’. Indeed, Bill C-51, which emerged in the context of ostensibly proliferating terrorist threats following the attacks of October 2014 in particular, and in the aftermath of the September 11, 2001 attacks in the United States and the subsequent intensification of the ‘war on terror’ more broadly, operates through the deployment of radical anti-terrorist measures and security mechanisms, which are authorized and legitimized under the auspices of security imperatives. However, these programs of anti-terrorism and securitization introduced through Bill C-51 facilitate the imposition of increasingly totalizing mechanisms of governmental discipline and regulation over bodies and populations. Consequently, these anti-terrorist measures and security mechanisms operate through the biopolitical right to ‘make live’ and ‘let die’, insofar as they aim to foster and promote the security, vitality, and productivity of the state population on the one hand, while targeting perceived threats to public safety and national security for governmental management, regulation, and elimination on the other hand.

To examine the particular ways in which the mechanisms of anti-terrorism, counterterrorism, and securitization deployed by Bill C-51 operate through these biopolitical logistics, this thesis is broadly organized around three lines of inquiry. First, this thesis examines how the biopolitical logic of ‘making live’ and ‘letting die’ figures in the articulation of imperatives for anti-terrorism efforts and securitization in the discourse

of Bill C-51, and considers how these anti-terrorist measures, which are ostensibly oriented toward the securitization and revitalization of the state population through regimes of ‘making live’, are underpinned by governmental tactics of ‘letting die’. Next, this thesis analyzes how Bill C-51, and the governmental discourses surrounding its formulation and enactment, function to discursively constitute a relationship between the insecurity and vulnerability of the Canadian state population, the urgency and imminent danger of terrorist threats, and the imperative for preemptive governmental intervention and securitization, and considers how this relationship is strategically deployed to justify the mobilization of the exceptional anti-terrorist measures and security mechanisms enforced by the policy. Finally, this thesis examines how Bill C-51 functions to produce biopolitical caesurae within the Canadian population through state racisms, and considers how these divisions justify governmental calculations that determine which segments of the population must be protected and secured against terrorist threats, and which segments of the population are designated as potential threats to national security and targeted for governmental discipline, regulation, and elimination.

To consider the biopolitical logic of governance that underpins the operation of Bill C-51, in this thesis I employ an approach to discourse analysis informed by Foucault’s (1972) conceptualization of discourse as both a text or communicative formation and a system of knowledge production, with empirical reference to several texts related to the development and mobilization of contemporary Canadian programs of anti-terrorism, counterterrorism, and securitization. Specifically, I analyze the policy text of Bill C-51, the *Anti-terrorism Act, 2015*, which represents the most substantive expansion and radical reconfiguration of Canadian anti-terrorism efforts and national security programming since the September 11, 2001 attacks in the United States (Parliament of Canada, 2015).

Additionally, I analyze the parliamentary debates that occurred in the House of Commons and Senate between January 30, 2015 and June 18, 2015, the period during which Bill C-51 was subject to governmental debate and contestation, as well as the subsequent discussions of Bill C-51 by the House of Commons Standing Committee on Public Safety and National Security and the Standing Senate Committee on National Security and Defence, during which multiple government officials and other witnesses appeared in Parliament to review, critique, and propose amendments to the policy. Through examining these discourses, I aim to trace the processes through which Bill C-51 was formulated, debated, contested, and ultimately enacted, and demonstrate that the policy is not a singular text, but rather the product of multiple heterogeneous, conflicting, and overlapping discourses. While I focus in particular on the parliamentary debates that occurred in the House of Commons, during which Bill C-51 was subject to explicit and sustained debate, contestation, and resistance, this discourse analysis is also broadly informed by the subsequent debates that occurred in the Senate, during which the policy was subject to further scrutiny. Moreover, I analyze the parliamentary proceedings from October 23, 2014, the day after the attacks committed by Michael Zehaf-Bibeau, during which multiple government officials articulated imperatives for the deployment of anti-terrorism efforts and security mechanisms, as well as the public statements issued by various government officials in the aftermath of the attacks of October 2014, and following the introduction of Bill C-51 several months after these attacks. Further, I situate Bill C-51 in relation to historical developments of anti-terrorism efforts and national security programs deployed by the Canadian state by examining the policy text of Bill C-36, the *Anti-Terrorism Act*, which was explicitly situated by the government as a response to the September 11, 2001 attacks in the United States, and signalled a

significant expansion and intensification of Canadian programs of anti-terrorism, counterterrorism, and securitization (Parliament of Canada, 2001). Finally, to situate Bill C-51 in relation to contemporary trajectories of Canadian anti-terrorism and national security policy, I analyze the policy text of Bill C-59, the *National Security Act, 2017*, which constitutes a series of proposed amendments designed to establish limitations on the expansive anti-terrorist measures and security mechanisms introduced by Bill C-51, and reflects continuing debates regarding imperatives for anti-terrorism efforts and securitization in Canada (Parliament of Canada, 2017).

Discourse and Power

In this thesis, I employ a methodological approach to critical discourse analysis, drawing on Foucault's (1972) conceptualization of discourse as both a series of statements or texts, and a system of knowledge production associated with these communicative forms. Specifically, I distinguish between *discourse* as language, text, and other communicative formations, and *Discourse* as a system of knowledge production that is embedded within and constitutive of power relations.⁴ In particular, Foucault conceptualizes discourse as a "set of practices that systematically form the objects of which they speak" (p. 49). In this regard, Foucault contends that discourse circumscribes the conditions of possibility through which particular systems of knowledge and regimes of truth are constituted. Thus, for Foucault, discourse is not only a practice of communication, representation, or signification, but rather constitutes a system of knowledge production. In a similar vein, Hall (1992) conceptualizes discourse as

⁴ This distinction between *Discourse* and *discourse* is taken from Gee (1990), who conceptualizes *discourse* as language and text, and *Discourse* as a system of knowledge production, and identifies a dialectical relationship between the two.

a group of statements which provide a language for talking about — i.e. a way of representing — a particular kind of knowledge about a topic. When statements about a topic are made within a particular discourse, the discourse makes it possible to construct a topic in a certain way. It also limits the other ways in which the topic can be constructed. (p. 201)

In this regard, Hall identifies the constitutive function of discourse, contending that it is a non-neutral and power-laden practice that not only reflects or represents, but actually produces objects of knowledge. As Hall (1999) explains, “what we can know and say has to be produced in and through discourse. Discursive ‘knowledge’ is the product not of the transparent representation of the ‘real’ in language but the articulation of language on real relations and conditions” (p. 95). Consequently, Hall suggests that discourse functions as a system of knowledge production that establishes the conditions of possibility through which particular texts, statements, and communicative forms are produced and rendered legitimate and intelligible. Thus, in this theoretical formulation, ‘discourse’ refers to both *Discourse* as a system of knowledge production, and *discourse* as texts and other communicative formations, and suggests a dialectical relationship between the two: namely, that language, texts, and other communicative forms are constrained by, but also function to produce, reproduce, challenge, and transform systems of knowledge and power relations. To this end, Foucault (1978) contends that discourse is inextricably connected to regimes of power and knowledge; that is, objects of knowledge are established through power relations, power relations are constituted by knowledge, and “it is in discourse that power and knowledge are joined together” (p. 100).⁵

⁵ While Foucault (1978) contends that discourse is inextricably connected to systems of knowledge production and power relations, he also suggests that discourses can function to subvert or disrupt these power relations through what he refers to as the tactical polyvalence of discourse, or “‘reverse’ discourse” (p. 101). As he explains, “discourses are not once and for all subservient to power or raised up against it...discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling-block, a

In order to operationalize this theoretical approach to discourse through an analysis of text, with empirical reference to the policy text of Bill C-51 and the governmental discourses surrounding its formulation and enactment, I draw on Fairclough's (1992) three-dimensional model of discourse analysis. Through this approach to discourse analysis, Fairclough integrates linguistic and social-theoretical orientations to discourse to examine the interrelationships between texts and the broader social, cultural, and political contexts within which they are produced, reproduced, engaged, and transformed, contending that "changes in language use are linked to wider social and cultural processes" (p. 1). Thus, Fairclough adopts a dialectical approach to discourse analysis, contending that discourses are both constrained by, but also function to reproduce or transform, the power relations within which they are embedded. To this end, Fairclough identifies the productive and constitutive effects of discourse, contending that discourses "do not just reflect or represent social entities and relations, they construct and constitute them" (p. 3). Specifically, Fairclough employs a three-dimensional model of discourse that simultaneously considers any discourse as a text with salient lexical, grammatical, organizational, and structural features; a discursive practice that is produced, distributed, consumed, and interpreted in particular social, cultural and political contexts; and a social practice that is embedded within systems of power and knowledge. Thus, through this three-dimensional model of discourse, Fairclough aims to establish connections between texts, the social, cultural, and political contexts within which they are produced, and the systems of knowledge and power relations within which they are situated. Indeed,

point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it" (p. 100-101). Thus, discourse does not only function to reproduce and sustain systems of knowledge and power relations, but also functions to challenge and transform them.

Fairclough suggests that this approach to discourse analysis aims to “trace explanatory connections between ways (normative, innovative, etc.) in which texts are put together and interpreted, how texts are produced, distributed and consumed in a wider sense, and the nature of the social practice in terms of its relation to social structures and struggles” (p. 72). To this end, through this approach to discourse analysis, I examine the policy text of Bill C-51 and the governmental discourses surrounding its formulation and enactment in order to trace connections between the policy and the broader social, cultural, and political contexts within which it was introduced. Specifically, I situate the introduction of Bill C-51 in relation to the state of emergency and insecurity that emerged following the attacks of October 2014 in particular, and in the aftermath of the September 11, 2001 attacks in the United States more broadly, within which multiple government officials articulated imperatives for the deployment of anti-terrorist measures and security mechanisms in order to reinforce public safety and national security against ostensibly proliferating terrorist threats. Through analyzing these discourses, I examine the ways in which the governmental programs of anti-terrorism, counterterrorism, and securitization deployed by Bill C-51 operate through a biopolitical logic of governance characterized by the right to ‘make live’ and ‘let die’. Throughout this discourse analysis, I focus in particular on the constitutive function of discourse in not only reflecting or representing, but actually producing subjectivity, knowledge, and social reality, and on discourse as both a stake in and mechanism of power struggles (Fairclough, 1992).

Making Live and Letting Die

Through tracing the genealogy of governmental practices in European states beginning in the sixteenth century, Foucault (1991) identifies a historical shift

characterized by the reconfiguration of sovereignty and the emergence of a new constellation of governmental practices which he refers to as governmentality. Specifically, Foucault suggests that sovereignty is characterized by the deployment of repressive and prohibitive forms of power by the sovereign, who is situated in a position of singularity and exteriority relative to the state; thus, Foucault observes that within the framework of sovereignty, “the objective of the exercise of power is to reinforce, strengthen and protect the principality” (p. 90). Conversely, Foucault suggests that within the framework of governmentality, processes of *governance* are irreducible to any singular *government*; rather, tactics and strategies of governance are coextensive with society, and operate throughout the social field through diffuse and networked institutions, discourses, and practices, which function to constitute individuals and populations as governable subjects. Indeed, Foucault observes that through governmentality, “we find at once a plurality of forms of government and their immanence to the state” (p. 91). Thus, within this framework of governmentality, Foucault contends that “it is a question not of imposing law on men, but of disposing things: that is to say, of employing tactics rather than laws, and even of using laws themselves as tactics — to arrange things in such a way that, through a certain number of means, such and such ends may be achieved” (p. 95). In this regard, Dean (1999) contends that governmentality operates through the “conduct of conduct”, where “‘to conduct’ means to lead, to direct or to guide, and perhaps implies some sort of calculation as to how this is to be done” (p. 10). Consequently, within this framework of governmentality, Dean observes that

Government is any more or less calculated and rational activity, undertaken by a multiplicity of authorities and agencies, employing a variety of techniques and forms of knowledge, that seeks to shape conduct by working through our desires,

aspirations, interests and beliefs, for definite but shifting ends and with a diverse set of relatively unpredictable consequences, effects, and outcomes.⁶ (p. 11)

To this end, Foucault (2000) conceptualizes governmentality as the “conduct of conducts”, or “a way of acting upon one or more acting subjects by virtue of their acting or being capable of action”, which “operates on the field of possibilities in which the behaviour of active subjects is able to inscribe itself” (p. 341). Thus, Foucault suggests that governmentality functions to manage, discipline, and regulate the conduct of bodies and populations through constituting them as subjects of governance.

Through tracing the genealogy of these governmental practices, with particular reference to European state management, Foucault diagnoses a fundamental reorientation in the operation of power at the end of the eighteenth century brought about by the subsumption of sovereign power under biopower. For Foucault, where sovereign power was defined by the sovereign right to “*take* life or *let* live” (1978, p. 136), biopower can conversely be characterized by the right to “*make* live and to *let* die” (2003b, p. 241). In other words, sovereignty operates through the exertion of prohibitive and repressive forms of power; thus, Foucault suggests that sovereign power is “essentially a right of seizure: of things, time, bodies, and ultimately life itself” (1978, p. 136). Conversely, biopower “exerts a positive influence on life, that endeavors to administer, optimize, and multiply it, subjecting it to precise controls and comprehensive regulations” (p. 137). In this regard, Foucault suggests that biopower is a “life-administering power”, or “a power

⁶ In this regard, Dean (1999) suggests that governmentality does not only operate through the imposition of repressive or disciplinary governmental mechanisms, but rather articulates with the decisions, behaviours, desires, and beliefs of governed subjects, who retain the capacity for agency. As Dean explains, “government works through practices of freedom *and* states of domination, forms of subjection *and* forms of subjectification. It sometimes takes the form of coercion and, at other times, seeks consent, without either coercion or consent being its essential form” (p. 34). For a discussion of the operation of governmentality through the conduct of conduct, see Dean (1999) and Rose (1998).

bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them” (p. 136). Thus, through tracing the historical subsumption of sovereign power and the emergence of biopower, Foucault observes that

Beneath that great absolute power, beneath the dramatic and somber absolute power that was the power of sovereignty, and which consisted in the power to take life, we now have the emergence, with this technology of biopower, of this technology of power over ‘the’ population as such, over men insofar as they are living beings. It is continuous, scientific, and it is the power to make live. Sovereignty took life and let live. And now we have the emergence of a power that I would call the power of regularization, and it, in contrast, consists in making live and letting die. (2003b, p. 247)

To this end, as Foucault (1978) explains, the “ancient right to *take* life or *let* live” which characterized sovereignty was supplanted by the operation of biopower, the “power to *foster* life or *disallow* it to the point of death” (p. 138). Consequently, in contrast to the sovereign right to kill, Foucault (2007) characterizes biopower as a modern form of power that takes life as an object of governmental management, regulation, and normalization, and employs a “set of mechanisms through which the basic biological features of the human species became the object of a political strategy, of a general strategy of power” (p. 1). Thus, through tracing the emergence of biopower and the entry of life into the domain of politics, Foucault (1978) observes that “for millennia, man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics places his existence as a living being in question” (p. 143). In this regard, biopower operates through what Rose (2007) characterizes as a politics of life itself, which aims to expand, foster, and promote the vital capacities of human life, particularly through governmental regulations, technological interventions, and biomedical advancements. Indeed, Rabinow and Rose

(2006) contend that “central to the configuration of contemporary biopower are all those endeavours that have life, not death, as their telos — projects for ‘making live’” (p. 203).

Under this general rubric of biopower, Foucault identifies the operation of two corresponding techniques of governance. On the one hand, Foucault identifies the exertion of disciplinary techniques of governance, which “centers on the body, produces individualizing effects, and manipulates the body as a source of forces that have to be rendered both useful and docile” (2003b, p. 249). On the other hand, Foucault traces the operation of biopolitics, or regulatory mechanisms that are centralized within the state, which take the population, as a vital and biological entity, to be the object of governmental intervention, management, administration, and normalization. Thus, within the general framework of biopower, Foucault suggests, “we have two series: the body-organism-discipline-institutions series, and the population-biological processes-regulatory mechanisms State” (p. 250). In this regard, Foucault contends that the operation of biopower is characterized by the deployment of both disciplinary and biopolitical techniques of governance, which he suggests “are not mutually exclusive and can be articulated with each other” (p. 250). Indeed, he explains that biopolitics “does not exclude disciplinary technology, but it does dovetail into it, integrate it, modify it to some extent, and above all, use it by sort of infiltrating it, embedding itself in existing disciplinary techniques” (p. 242). To this end, Foucault suggests that discipline and biopolitics constitute “two poles of development linked together by a whole intermediary cluster of relations” (1978, p. 139) within the framework of biopower. Thus, biopower is constituted by the articulation of disciplinary and biopolitical techniques of governance,

which function as two interconnected axes on the spectrum of biopower.⁷

However, in an important exegesis of Foucault's theoretical approach to biopolitics, Agamben (1998) contends that biopolitics did not emerge through the historical subsumption of sovereignty, but is rather foundational to the operation of sovereign power. Indeed, while Foucault suggests that biopolitics emerged through a historical rupture or break from sovereignty, Agamben contends that no such fundamental discontinuity or "threshold of biological modernity" (p. 3) occurred; rather, Agamben insists that biopolitics is historically coextensive with and immanent to the operation of sovereignty. As Lemke (2011) explains, "whereas the advent of biopolitical mechanisms in the 17th and 18th centuries signalled for Foucault a historical caesura, Agamben insists on a logical connection between sovereign power and biopolitics. That is, biopolitics forms the core of the sovereign practice of power" (p. 53). Consequently, Agamben (1998) asserts that

⁷ Importantly, Foucault (1995) observes that the reconfiguration of modern surveillance practices is foundational to the operation of these disciplinary and regulatory techniques of governance. Specifically, drawing on Bentham's architectural typology of the prison, Foucault traces the emergence of panopticism, which operates through the deployment of surveillance mechanisms that are diffuse, networked, and coextensive with the social field, and functions to constitute "a state of conscious and permanent visibility that assures the automatic functioning of power" through which surveillance is simultaneously rendered "visible and unverifiable" (p. 201). As Foucault writes, panopticism is "the instrument of permanent, exhaustive, omnipresent surveillance, capable of making all visible, as long as it could itself remain invisible. It had to be like a faceless gaze that transformed the whole social body into a field of perception: thousands of eyes posted everywhere, mobile attentions ever on the alert" (p. 214). Moreover, Foucault suggests that these panoptic surveillance mechanisms are not strictly disciplinary, repressive, or punitive, but are actually productive and constitutive of surveilled subjects: as he explains, panopticism "has a role of amplification... its aim is to strengthen the social forces — to increase production, to develop the economy, spread education, raise the level of public morality; to increase and multiply" (p. 207-208). Thus, the deployment of these panoptic modes of surveillance is central to the disciplinary and biopolitical techniques of governance that characterize the operation of biopower.

The Foucauldian thesis will then have to be corrected or, at least, completed, in the sense that what characterizes modern politics is not so much the inclusion of *zoē* in the *polis* — which is, in itself, absolutely ancient — nor simply the fact that life as such becomes a principal object of the projections and calculations of State power. Instead the decisive fact is that, together with the process by which the exception everywhere becomes the rule, the realm of bare life — which is originally situated at the margins of the political order — gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zoē*, right and fact, enter into a zone of irreducible indistinction. At once excluding bare life from and capturing it within the political order, the state of exception actually constituted, in its very separateness, the hidden foundation on which the entire political system rested. (p. 9)

To this end, Agamben contends that sovereignty operates through the production of a biopolitical body, through which *zoē*, or bare life, is expelled from the domain of *bios*, or politically legitimized life, and is consequently subject to the sovereign right of death in this state of abandonment by law. In other words, as Agamben writes, “the fundamental activity of sovereign power is the production of bare life” (p. 182). Thus, Agamben observes that bare life, or biological life stripped of its capacity for political existence and expelled from the domain of political legitimacy, is manifest in the figure of *homo sacer*, which can be killed with impunity, or, as Agamben writes, “*may be killed and yet not sacrificed*” (p. 8). Insofar as the exclusion of bare life, or *homo sacer*, from the domain of politics is foundational to the operation of biopolitics, Agamben insists that “we are all virtually *homines sacri*” (p. 115).⁸ However, Agamben contends that the domain of politically legitimized life, or *bios*, is constituted through the exclusion of bare life, or *zoē*. Consequently, as Agamben explains, “bare life remains included in politics in the form of the exception, that is, as something that is included solely through an exclusion”

⁸ However, while Agamben contends that all political subjects can potentially be constituted as bare life, he fails to consider the ways in which various axes of social difference, including ‘race’, ethnicity, gender, sexuality, class, religion, and ability circumscribe the constitution of bare life within contemporary biopolitics. For a critique of Agamben’s theoretical formulation of biopolitics, and a discussion of the racialization of bare life, see Weheliye (2014) and Weheliye (2016).

(p. 11). To this end, Agamben argues that the incorporation of life into the domain of politics is the “original — if concealed — nucleus of sovereign power”, and, consequently, “*the production of a biopolitical body is the original activity of sovereign power*” (p. 6). Indeed, as Agamben observes, “placing biological life at the center of its calculations, the modern State therefore does nothing other than bring to light the secret tie uniting power and bare life” (p. 6). Thus, in contrast to Foucault’s contention that biopolitics emerged through a historical shift or rupture from sovereignty in the eighteenth century, Agamben identifies a historical continuity between sovereign power and biopolitics, insisting that sovereignty is central to the operation of contemporary biopolitical regimes of governance.

Although ostensibly oriented toward the securitization of the state and the vitalization of the population, biopolitics functions through what Foucault refers to as state racisms, or governmental calculations that establish biological caesurae within state populations, and, in turn, determine which segments of these populations will be subject to the governmental right to ‘make live’, and which will be abandoned to the right to ‘let die’. State racism, Foucault writes, 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” (2003b, p. 254).⁹ That is, state racism fragments the population as a biological

⁹ Although Foucault observes that state racism emerged through colonialism, writing that “racism first develops with colonization, or in other words, with colonizing genocide” (2003b, p. 251), he does not examine the operation of biopolitics and state racism in colonial contexts, instead tracing their deployment through the governmental practices of European states beginning in the eighteenth century. However, scholars have contended that biopolitics and state racism are foundational to the operation of settler colonialism. Specifically, Wolfe (2006) identifies the operation of biopolitics and state racism in contemporary settler colonial contexts through what he refers to as the “logic of elimination” (p. 387) that characterizes settler colonialism, which is predicated upon the dispossession, displacement, and elimination of Indigenous populations and the

continuum, and, in turn, “makes it possible to establish a relationship between my life and the death of the other that is not a military or warlike relationship of confrontation, but a biological-type relationship” (p. 255) whereby programs of killing or ‘letting die’ are targeted at “threats, either external or internal, to the population and for the population” (p. 256) in order to reinforce and secure state populations through programs of ‘making live’. Thus, Stoler (1995) observes that for Foucault, “state racism is not an *effect* but a *tactic* in the internal fission of society into binary oppositions, a means of creating ‘biologized’ internal enemies, against whom society must defend itself” (p. 59). To this end, through state racism, Foucault contends that “killing or the imperative to kill is acceptable only if it results not in a victory over political adversaries, but in the elimination of the biological threat to and the improvement of the species or race” (2003b, p. 256). In other words, Foucault writes that “racism is the precondition that makes killing acceptable. . .racism alone can justify the murderous function of the State” (p. 256). In this regard, Mbembe (2003) suggests that state racism is characterized by the production of a relation of enmity, which operates through “the perception of the existence of the Other as an attempt on my life, as a mortal threat or absolute danger whose biophysical elimination would strengthen my potential to life and security” (p. 18). To this end, the strategic deployment of racialized difference, the fragmentation of the population as a biological entity, and the production of the ‘other’ through state racisms is

reproduction and revitalization of settler populations and states. While an analysis of the reconfiguration of biopolitics and state racism in relation to contemporary settler colonial regimes of violence, dispossession, and assimilation is beyond the scope of this thesis, see Mbembe (2003), Morgensen (2011), and Weheliye (2014) for a discussion of the articulation of biopolitics, state racism, and settler colonialism, and Stoler (1995) for a genealogy of the articulation of colonialism, state racism, and sexuality in Foucault’s theoretical formulation of biopolitics. For an analysis of the operation of settler colonialism in Canada, see Coulthard (2007) and Coulthard (2014).

central to the operation of biopolitical strategies of ‘making live’ and ‘letting die’ (Said, 1979).

Although racialized difference is a central vector through which state populations are fragmented and biopolitical programs of ‘making live’ and ‘letting die’ are deployed, Foucault contends that state racism is irreducible to what he refers to as “ethnic racism” (2003b, p. 261). Indeed, Foucault explains that state racism is “not a truly ethnic racism, but racism of the evolutionist kind, biological racism” (p. 261). In this regard, Foucault writes that state racism is

racism against the abnormal, against individuals who, as carriers of a condition, a stigmata, or any defect whatsoever, may more or less randomly transmit to their heirs the unpredictable consequences of the evil, or rather of the non-normal, that they carry within them. It is a racism, therefore, whose function is not so much the prejudice or defense of one group against another as the detection of all those within a group who may be the carriers of a danger to it. It is an internal racism that permits the screening of every individual within a given society. (2003a, p. 316-317)

To this end, Foucault contends that state racism does not only operate through fragmenting the state population on the basis of ostensibly natural or biological racialized difference, but rather functions through identifying segments of the state population as threats to the overall security, vitality, and normativity of that population, and, in turn, targeting these segments of the population through governmental programs of ‘letting die’. Thus, Foucault observes that state racism is “a racism that society will direct against itself, against its own elements and its own products. This is an internal racism of permanent purification, and it will become one of the basic dimensions of social normalization” (2003b, p. 62). Consequently, Mills (2018) suggests that for Foucault, “racism operates as a *general principle* of exclusion and division within a population that targets not race per se, but the abnormal” (p. 170). In this regard, state racism is

irreducible to ‘race’ as a mechanism of producing biopolitical caesurae within state populations and mobilizing regimes of ‘making live’ and ‘letting die’. Rather, biopolitics operates through the deployment of a multiplicity of state racisms that function to subdivide state populations through the vectors of gender, sexuality, ‘race’, ethnicity, ability, class, nation, and other axes of social difference.

Through a series of critical interventions into the theoretical frameworks of biopolitics and state racism developed by Foucault (1978, 2003b) and Agamben (1998), several scholars drawing on queer theory, critical race theory, and postcolonial and anti-colonial theory and practice have similarly traced the mechanisms through which ‘race’, ethnicity, gender, sexuality, class, and other axes of social difference circumscribe the constitution of biopolitical subjects. Chen (2012), for instance, diagnoses a “lingering Eurocentrism within what is thought of as biopolitics — its implicit restriction to national bodies, for instance, as well as its species-centric bias that privileges discussions about human citizens” (p. 6-7). In turn, Chen deploys the concept of animacy as an “often racialized and sexualized means of conceptual and affective mediation between human and inhuman, animate and inanimate” (p. 10) in order to disrupt the ontological stability of ‘life’ and ‘death’, and the associated regimes of ‘making live’ and ‘letting die’ within contemporary biopolitics. Indeed, Chen insists that ‘life’ and ‘death’ are “already racialized, sexualized, and...animated in specific biopolitical formations” (p. 6). Thus, Chen observes that “animacy activates new theoretical formations that trouble and undo stubborn binary systems of difference, including dynamism/stasis, life/death, subject/object, speech/nonspeech, human/animal, natural body/cyborg” (p. 3). Consequently, Chen contends that biopolitics operates not only through regimes of ‘making live’ and ‘letting die’, but also the production and regulation of animacy

hierarchies, which function to normatively evaluate and hierarchically organize various forms of human and nonhuman life, and, in turn, determine “what or who counts as human, and what or who does not” (p. 30). To this end, Chen insists that “when biopolitics builds itself upon ‘life’ or ‘death’ ...it risks missing the cosubstantiating contingencies in which not only the dead have died for life, but the inanimate and animate are both subject to the biopolitical hand” (p. 193).

In a similar vein, Weheliye (2014) contends that “the concepts of bare life and biopolitics...are in dire need of recalibration if we want to understand the workings of and abolish our extremely uneven global power structures defined by the intersections of neoliberal capitalism, racism, settler colonialism, immigration, and imperialism”, which he suggests are “predicated upon hierarchies of racialized, gendered, sexualized, economized, and nationalized social existence” (p. 1). To this end, with particular reference to the theoretical approaches of Foucault and Agamben, Weheliye asserts that “bare life and biopolitics discourse largely occludes race as a critical category of analysis” (p. 8), suggesting that neither of these approaches “sufficiently addresses how deeply anchored racialization is to the somatic field of the human” (p. 4). Yet, Weheliye contends that processes of racialization are foundational to the operation of contemporary biopolitics. Specifically, Weheliye traces the deployment of “racializing assemblages”, which he conceptualizes as “a set of sociopolitical processes that discipline humanity into full humans, not-quite-humans, and nonhumans” (p. 4), and, in turn, justify the mobilization of regimes of ‘making live’ and ‘letting die’ within biopolitical frames of governance. Similarly, Puar (2007) foregrounds the articulation of gender, sexuality, ‘race’, ethnicity, class, and nation in the operation of state racisms and the formation of biopolitical subjects, particularly in relation to the reconfiguration of contemporary forces

of counterterrorism, securitization, and nationalism in the context of the ‘war on terror’. These theoretical interventions thus highlight the various ways in which state racisms function to subdivide state populations through the vectors of ‘race’, ethnicity, gender, sexuality, class, and other forms of social difference, and, in turn, justify the deployment of regimes of ‘making live’ and ‘letting die’ within contemporary biopolitical programs of governance.

Importantly, through tracing the genealogy of biopolitics, Foucault notes that the transition from sovereign power to biopower is a historical *subsumption*, rather than an explicit *rupture* in the operation of power, insofar as the sovereign right to kill continues to operate in conjunction with biopower. Thus, Foucault suggests that the right to ‘make live and let die’ that characterizes biopower was not straightforwardly substituted for the sovereign right to ‘make die and let live’. Rather, Foucault explains that

one of the greatest transformations political right underwent in the nineteenth century was precisely that, I wouldn’t say exactly that sovereignty’s old right — to take life or let live — was replaced, but rather came to be complemented by a new right which does not erase the old right but which does penetrate it, permeate it. This is the right, or rather precisely the opposite right. It is the power to ‘make’ live and ‘let’ die. The right of sovereignty was the right to take life or let live. And then this new right is established: the right to make live and to let die. (2003b, p. 241)

To this end, Foucault contends that the operation of biopower is haunted by “overlappings, interactions, and echoes” (1978, p. 149) of the sovereign right to take life or let live.¹⁰ Foucault thus identifies the articulation of sovereign power with biopower,

¹⁰ Through tracing the articulation of sovereignty and biopower, Foucault (1991) observes, “sovereignty is far from being eliminated by the emergence of a new art of government...on the contrary, the problem of sovereignty is made more acute than ever” (p. 101). Accordingly, Foucault contends that “we need to see things not in terms of the replacement of a society of sovereignty by a disciplinary society and the subsequent replacement of a disciplinary society by a society of government; in reality one has a triangle, sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism the apparatuses of security” (p. 102).

suggesting that the sovereign right to kill continues to operate within biopolitical regimes of governance through what he refers to as the “death-function in the economy of biopower” (2003b, p. 258). For Foucault, death is therefore positioned as a necessary precondition for the mobilization of biopolitical regimes of ‘making live’: as he explains, biopower operates according to “the principle that the death of others makes one biologically stronger insofar as one is a member of a race or a population, insofar as one is an element in a unitary living plurality” (p. 258). To this end, as Puar (2007) observes, the biopolitical right to ‘make live’ and ‘let die’ functions to conceal the continued operation of the sovereign capacity to kill through foregrounding the biopolitical imperative to promote and vitalize life. In other words, biopolitics positions death and violence as collateral damage, or necessary byproducts of governmental strategies that ostensibly aim to promote the vitality, security, and productivity of state populations. As Puar explains, within contemporary biopolitics, “death is never a primary focus; it is a negative translation of the imperative to live, occurring only through the transit of fostering life. Death becomes a form of collateral damage in the pursuit of life” (p. 32). However, echoing Foucault’s observation that power operates through its own erasure, Puar writes that this biopolitical erasure of death is a “fallacy of modernity, a hallucination that allows for the unimpeded working of biopolitics” (p. 32). Consequently, Puar contends that biopolitics operates through the continuous erasure or concealment of death and violence, ostensibly in order to promote and foster life.

Similarly, through reworking Foucault’s theoretical framework of biopolitics, Mbembe (2003) suggests that death and mortality figure centrally, rather than peripherally, in contemporary biopolitical regimes of governance. Indeed, Mbembe asks, “is the notion of biopower conceptually sufficient to account for the contemporary ways

in which the political, under the guise of war, resistance, or the fight against terror, makes the murder of its enemy its primary and absolute objective?" (p. 12). Hence, Mbembe contends that Foucault's theoretical formulation of biopower and biopolitics is conceptually unable to account for the operation of necropolitics, or "contemporary forms of subjugation of life to the power of death" (p. 39-40), which is irreducible to the biopolitical right to 'make live' and 'let die'. Specifically, necropolitics functions to interpellate subjects as "*living dead*", and, in turn, constitute "*death-worlds*" (p. 40) in which programmatic killing constitutes its primary objective. Thus, Mbembe observes that necropolitics operates through the "*generalized instrumentalization of human existence and the material destruction of human bodies and populations*" (p. 14). In particular, Mbembe traces the deployment of these necropolitical techniques of governance in spaces of colonization, zones of enduring settler colonial occupation and dispossession, and conditions of asymmetrical warfare, slavery, and racialized violence, contending that through necropolitics, "the function of racism is to regulate the distribution of death and make possible the murderous function of the state" (p. 17). Consequently, Mbembe insists that "the politics of race is ultimately linked to the politics of death" (p. 17) within contemporary necropolitics. To this end, Mbembe traces the instrumentalization of death and associated regimes of 'making die' as necropolitical techniques of governance, which he contends operate alongside biopolitical regimes of 'making live' and 'letting die' that ostensibly aim to reinforce and promote the security and vitality of state populations.

Insofar as programs of state violence and killing are foundational to the operation of contemporary biopolitics through the articulation of the sovereign right to 'make die and let live' and the right of biopower to 'make live and let die', Puar (2015) observes that

“one mapping we must continually be alert to is what forms of the sovereign right to take life or let live are machinating” (p. 7) within biopolitical regimes of governance. Indeed, while biopolitics operates through the deployment of mechanisms of governance that ostensibly aim to reinforce, secure, and revitalize state populations, these regimes of ‘making live’ are predicated upon the mobilization of biopolitical regimes of ‘letting die’, as well as the sovereign right to take life or let live. Moreover, Puar (2015, 2017) identifies the permutation of the biopolitical right to ‘let die’ through the deployment of the ‘right to maim’ within contemporary biopolitics. As Puar (2015) observes, the right to maim operates through “slow but simultaneously intensive death-making” and “accelerated assault on both bodily and infrastructural fronts” (p. 7), and thus entails “targeting for death but not killing” (p. 8), resulting in structural violence, collateral damage, and the debilitation and incapacitation of bodies and populations. Berlant (2007) similarly traces the rearticulation of the biopolitical capacity to ‘let die’ through the mobilization of “slow death”, or “the physical wearing out of a population and the deterioration of people in that population” through “mass physical attenuation under global/national regimes of capitalist structural subordination and governmentality” (p. 754). In a similar vein, Mbembe (2003) identifies the deployment of the biopolitical right to ‘let die’ in contemporary warfare through what he refers to as “*infrastructural warfare*”, or the “orchestrated and systematic sabotage of the enemy’s societal and urban infrastructure network” and the “appropriation of land, water, and airspace resources” (p. 29) which “results in shutting down the enemy’s life-support system” (p. 31), a tactic which he contends is foundational to the operation of necropolitical regimes of governance. To this end, the imperative of biopower to promote, foster, and regulate life cannot be disarticulated from the sovereign capacity to kill or inflict violence in

contemporary biopolitics. Consequently, given this articulation of sovereignty and biopower within biopolitical regimes of governance, Puar (2007) suggests that biopolitics can be effectively theorized through an approach that “conceptually acknowledges biopower’s direct activity in death, while remaining bound to the optimization of life, and necropolitics’ nonchalance toward death even as it seeks out killing as its primary aim” (p. 35). Thus, while biopolitical programs of governance ostensibly function to reinforce the security and vitality of state populations, the interventions of Mbembe (2003) and Puar (2007) demonstrate that these biopolitical regimes of ‘making live’ are predicated upon the deployment of various forms of state violence through regimes of ‘letting die’, which, as Foucault (2003b) has observed, operate not only through the sovereign right to kill, but also “every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on” (p. 256).

Toward this end, this formulation of biopolitics offers a productive theoretical framework through which to examine the programs of anti-terrorism, counterterrorism, and securitization deployed by Bill C-51. Indeed, the anti-terrorist measures and security mechanisms mobilized by the policy are ostensibly designed to reinforce the security, vitality, and productivity of the state population, or, as the policy text states, “the sovereignty, security or territorial integrity of Canada” and “the lives or the security of the people of Canada” against terrorist threats, and “activity that undermines the security of Canada” more broadly (Parliament of Canada, 2015, p. 3). Yet, these anti-terrorist measures operate through targeting bodies and populations designated as threats to public safety and national security for surveillance, detainment, imprisonment, deportation, expulsion, repression, and other governmental mechanisms of discipline, regulation, and

control enforced by the policy. In this regard, the mechanisms of anti-terrorism and securitization deployed by Bill C-51 simultaneously aim to promote and foster the security and vitality of the state population through regimes of ‘making live’, while targeting segments of the population designated as threats to national security for governmental control, regulation, and elimination through regimes of ‘letting die’, thus operating through the right to “make live and to let die” (2003b, p. 241), which, as Foucault has observed, is foundational to contemporary biopolitical regimes of governance. To this end, throughout this thesis, I theorize the ways in which the programs of anti-terrorism, counterterrorism, and securitization implemented through Bill C-51 function as biopolitical techniques of ‘making live’ and ‘letting die’ that aim to “*foster* life or *disallow* it to the point of death” (Foucault, 1978, p. 138).

Outline of Chapters

In the first chapter, I situate the emergence of Bill C-51 in relation to historical developments of anti-terrorism and counterterrorism efforts deployed by the Canadian state, as well as contemporary reorientations in Canadian anti-terrorism and national security policy. I begin by examining Bill C-36, the *Anti-Terrorism Act*, which was introduced in Canada in the immediate aftermath of the September 11, 2001 attacks in the United States, and functioned to significantly expand Canadian programs of anti-terrorism, counterterrorism, and securitization in an effort to strengthen national security and preempt, counteract, and combat terrorist threats. Next, I trace the development of these anti-terrorism efforts through the introduction of Bill C-51, the *Anti-terrorism Act, 2015*, following the attacks of October 2014, which signalled the most significant expansion and radical reorientation in Canadian anti-terrorism and national security

policy since the introduction of Bill C-36. Specifically, I examine the mechanisms of anti-terrorism and securitization deployed by Bill C-51, including expansive regimes of information sharing and surveillance, tactics of preventative detainment, programs of deportation and expulsion, governmental censorship practices, and other anti-terrorist measures which ostensibly function to reinforce public safety and national security against proliferating terrorist threats. Further, I contend that Bill C-51 significantly lowers the evidentiary thresholds for the deployment of these anti-terrorism and counterterrorism measures, and employs expansive definitions of ‘terrorism’ that are unprecedented in Canadian anti-terrorism policy, particularly through the establishment of a broad framework of “activity that undermines the security of Canada”. Additionally, I examine the provisions established by Bill C-51 through which government agents are authorized to engage in extralegal anti-terrorism operations, including measures that violate the *Canadian Charter of Rights and Freedoms* and other laws, in order to counteract potential threats to national security. Finally, I situate Bill C-51 in relation to the introduction of Bill C-59, the *National Security Act, 2017*, which constitutes a series of proposed amendments ostensibly designed to establish limitations on the expansive anti-terrorist measures and security mechanisms deployed by Bill C-51, and reflects contemporary security preoccupations and ongoing imperatives for anti-terrorism efforts and securitization in Canada. Throughout this chapter, I contend that the programs of anti-terrorism and securitization deployed by these policies are organized through a biopolitical logic of governance characterized by the governmental capacity to ‘make live’ and ‘let die’, insofar as they ostensibly function to reinforce and strengthen the security and vitality of the Canadian state population, yet operate through targeting segments of the population designated as threats to national security for surveillance,

detainment, expulsion, repression, and other governmental mechanisms of discipline, control, and regulation.

In the second chapter, I theorize the mechanisms of anti-terrorism, counterterrorism, and securitization deployed by Bill C-51 as biopolitical techniques of governance that operate through the right to “make live and to let die” (Foucault, 2003b, p. 341), and contend that through the mobilization of these exceptional anti-terrorist measures and security mechanisms, Bill C-51 functions to constitute a state of exception. Toward this end, I begin by tracing the discursive construction of the figure of the terrorist threat through the policy text of Bill C-51, as well as the governmental discourses surrounding its formulation and enactment. Throughout these discourses, terrorist threats are represented as urgent, proximate, and imminently dangerous yet indeterminate threats to public safety and national security, particularly through the expansive framework of “activity that undermines the security of Canada” established by Bill C-51, as well as the generalized references to the undefined threat of “terrorism” during the parliamentary debates and governmental discourses preceding the enactment of the policy. Thus, I suggest that these discourses are constitutive of what Massumi (2011) refers to as the generalized crisis environment, which is characterized by an enduring state of emergency and insecurity in the context of urgent and imminently dangerous yet indeterminate and unknowable threat. Indeed, Massumi observes that the generalized crisis environment is characterized by the “suddenly irrupting, locally self-organizing, systematically self-amplifying threat of large scale disruption” (p. 20), a form of threat which he contends is both indiscriminate and indiscriminable. Additionally, I trace the production of this generalized crisis environment through the government’s deployment of the national terrorism threat level spectrum, which was indefinitely raised from ‘low’ to ‘medium’

immediately following the attacks of October 2014, indicating an increased risk of terrorist threats, and thus signalling enduring conditions of heightened danger and insecurity in the aftermath of the attacks. To this end, through discursively constructing the contemporary figure of the terrorist threat as both indiscriminate and indiscriminable, I contend that Bill C-51 and the governmental discourses surrounding its introduction function to constitute an environment of generalized threat and insecurity, and, in turn, legitimize the deployment of the exceptional anti-terrorist measures and security mechanisms implemented through the policy.

Moreover, in this chapter I contend that Bill C-51 is both constituted by and constitutive of a state of exception, insofar as it deploys exceptional and extralegal anti-terrorist measures and security mechanisms which operate under the auspices of security imperatives within the state of emergency following the attacks of October 2014. Agamben (2005) observes that the state of exception emerges in enduring states of emergency, within which the normative operation of law is indefinitely suspended and exceptional techniques of governance and emergency security measures are enforced. Thus, Agamben suggests that the state of exception operates through the “transformation of provisional and exceptional measures into a technique of government”, observing that “the state of exception tends increasingly to appear as the dominant paradigm of government in contemporary politics” (p. 2). Specifically, I contend that Bill C-51 mobilizes exceptional and extralegal techniques of governance, including measures that are inconsistent with the *Canadian Charter of Rights and Freedoms* in particular, and Canadian and international laws more broadly, thus effectively suspending the normative operation of law and withdrawing legal rights and protections. Further, I suggest that Bill C-51 establishes exceptionally low evidentiary thresholds for the deployment of these

anti-terrorist measures and security mechanisms, while expanding the discretionary capacity of government officials to enforce these measures in situations in which they determine on “reasonable grounds” that they are necessary to preempt or counteract threats to public safety or national security. Moreover, I contend that Bill C-51 explicitly authorizes government agents to engage in extralegal anti-terrorism operations, including measures that violate the *Canadian Charter of Rights and Freedoms* and other national and international legal frameworks, ostensibly in order to disrupt and counteract potential threats to national security. To this end, through tracing the deployment of these exceptional anti-terrorist measures and security mechanisms, which function to disrupt the rule of law while operating under the auspices of security imperatives within the state of emergency following the attacks of October 2014, I contend that Bill C-51 functions to constitute a state of exception, following Agamben’s observation that “the state of exception has now become the rule” (p. 9).

In the conclusion, I briefly reiterate the arguments advanced in this thesis, suggesting that the governmental mechanisms of anti-terrorism, counterterrorism, and securitization deployed through Bill C-51 function as biopolitical techniques of governance that operate through the right to ‘make live’ and ‘let die’, insofar as they ostensibly aim to reinforce the security, vitality, and productivity of the state population through regimes of ‘making live’, yet operate through targeting segments of the population designated as threats to public safety and national security for governmental discipline, regulation, and elimination through regimes of ‘letting die’. In turn, I highlight several critical forms of resistance that emerged in response to the radical and invasive anti-terrorist measures and security mechanisms enforced through Bill C-51. Finally, I identify several areas for future research in order to further examine the implications of

the biopolitical programs of anti-terrorism, counterterrorism, and securitization introduced through Bill C-51.

Chapter 1: Trajectories of Anti-Terrorism: Situating the *Anti-terrorism Act, 2015*

Immediately following the attacks of October 2014, during which Michael Zehaf-Bibeau shot and killed an unarmed guard with an antique hunting rifle near the National War Memorial in Ottawa before infiltrating the parliament buildings, where he was subsequently killed by security forces, multiple government officials declared imperatives for the deployment of anti-terrorism and counterterrorism measures and security mechanisms in order to reinforce public safety and national security against reportedly urgent and proximate terrorist threats. Indeed, responding to the attacks of October 2014 in particular, and the global intensification of terrorist threats in the aftermath of the September 11, 2001 attacks in the United States and the subsequent declaration of the ‘war on terror’ more broadly, former Prime Minister Stephen Harper stated that “recent terrorist attacks here and around the world have shown us that as the terrorists refine and adapt their methods, our police and national security agencies need additional tools and greater coordination”, and that “to fully protect Canadians from terrorism in response to evolving threats, we must take further action” (Harper, 2015). In response to these imperatives for anti-terrorism efforts and securitization, the government quickly introduced Bill C-51, also known as the *Anti-terrorism Act, 2015*, ostensibly aiming to preempt and counteract these indeterminate terrorist threats while reinforcing the security, vitality, and wellbeing of the state population through the deployment of anti-terrorist measures and security mechanisms. Indeed, the policy states that “the people of Canada are entitled to live free from threats to their lives and their security”, but that “activities that undermine the security of Canada are often carried out in a clandestine, deceptive or hostile manner, are increasingly global, complex and sophisticated, and often emerge and evolve rapidly”, and that, consequently, “there is no more fundamental role for a

government than protecting its country and its people” (Parliament of Canada, 2015, p. 1-2) against these terrorist threats.

Yet, the introduction of Bill C-51 was met with widespread opposition and resistance, and it has been characterized as the most radical and invasive anti-terrorism policy enacted in contemporary Canadian legal frameworks, insofar as it functions to mobilize unprecedented and exceptional regimes of anti-terrorism, counterterrorism, and securitization (Forcese & Roach, 2015). Broadly, Bill C-51 deploys these programs of anti-terrorism and securitization through the introduction of several mechanisms of governance, including extensive regimes of information sharing and surveillance, governmental censorship practices, tactics of preventative detainment, and other extralegal anti-terrorist measures that violate the rights and protections established by the *Canadian Charter of Rights and Freedoms*. Further, Bill C-51 establishes expansive and generalized definitions of ‘terrorism’ that are unprecedented in Canadian anti-terrorism policy, and lowers the evidentiary thresholds for government agents to engage in preemptive anti-terrorism and counterterrorism operations. To this end, Bill C-51 authorizes the deployment of invasive and exceptional anti-terrorism and counterterrorism measures, which operate under the auspices of security imperatives in the context of ostensibly proliferating terrorist threats following the attacks of October 2014 in particular, and in the aftermath of the September 11, 2001 attacks in the United States in general. In this regard, Bill C-51 both emerged within and functioned to constitute a state of emergency and insecurity, through which terrorist threats are represented as urgent, proximate, and imminently dangerous throughout governmental and popular cultural discourses, and, in turn, emergency security procedures are deployed and normalized as a means to counteract these indeterminate threats. Through the

introduction of these mechanisms of governance, Bill C-51 represents the most radical reorientation in Canadian anti-terrorism and counterterrorism policy since the enactment of Bill C-36, the *Anti-Terrorism Act*, in the immediate aftermath of 9/11.

This chapter situates the emergence of Bill C-51 in relation to historical developments and contemporary trajectories of anti-terrorism and counterterrorism efforts deployed by the Canadian state. It begins by considering the formulation and enactment of Bill C-36, the *Anti-Terrorism Act*, following the September 11, 2001 attacks in the United States. Situated by the government as a response to reportedly urgent, proximate, and proliferating terrorist threats, the introduction of the *Anti-Terrorism Act* signalled a significant expansion of Canadian programs of anti-terrorism, counterterrorism, and securitization. Specifically, the policy established expansive and generalized definitions of ‘terrorism’, and deployed multiple anti-terrorist measures and security mechanisms designed to expand governmental capacities to preempt and counteract these indeterminate terrorist threats. To this end, through the introduction of the *Anti-Terrorism Act*, the government insisted that these expansive programs of anti-terrorism and securitization were necessary to maintain and reinforce public safety and national security against ostensibly proliferating and imminently dangerous terrorist threats within the state of perceived emergency that characterized the immediate aftermath of the September 11, 2001 attacks.

Next, this chapter traces the developments of these anti-terrorism and counterterrorism efforts as they are situated in relation to the introduction of Bill C-51, the *Anti-terrorism Act, 2015*, which represents the most substantive reorientation in Canadian anti-terrorism policy since the enactment of Bill C-36. Bill C-51 was formulated and introduced by the government in response to the attacks of October 2014,

and, despite sustained opposition and resistance throughout public and governmental discourses in general, and significant contestation throughout the parliamentary debate process in particular, the policy was enacted in 2015. Broadly, Bill C-51 deploys several mechanisms of anti-terrorism and securitization, including extensive information sharing and surveillance practices, tactics of preventative detainment, programs of deportation and expulsion, implicit and explicit forms of censorship, measures that function to suppress protest and resistance, and other preemptive counterterrorism measures, ostensibly aiming to reinforce public safety and national security against proliferating terrorist threats. Moreover, Bill C-51 establishes exceptionally low evidentiary thresholds for the mobilization of these preemptive anti-terrorism and counterterrorism measures, and introduces expansive and generalized definitions of ‘terrorism’ that are unprecedented in governmental discourse and anti-terrorism policy. Further, Bill C-51 authorizes government agents to engage in extralegal anti-terrorism operations, including acts that violate the *Canadian Charter of Rights and Freedoms* and other national and international laws under the auspices of security imperatives, thus functioning to disrupt the normative operation of law. To this end, Bill C-51 maintains that these exceptional anti-terrorist measures and security mechanisms are necessary “in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (Parliament of Canada, 2015, p. 2), particularly in the context of heightened public fears regarding ostensibly urgent and proximate terrorist threats in the aftermath of the attacks of October 2014.

Finally, this chapter situates the emergence of Bill C-51 in relation to contemporary developments in Canadian anti-terrorism and counterterrorism policy by considering the formulation and introduction of Bill C-59, also known as the *National Security Act, 2017*.

Situated by the government as an explicit response to continuing resistance to Bill C-51 throughout public and governmental discourses, Bill C-59 introduces several amendments ostensibly aiming to restrict and withdraw the invasive mechanisms of anti-terrorism and securitization deployed by the policy. Despite these interventions, however, Bill C-59 fails to establish effective limitations on the anti-terrorist measures and security mechanisms implemented through Bill C-51. Rather, Bill C-59 reiterates the imperatives for securitization first articulated by Bill C-51, maintaining that these anti-terrorist measures are necessary to reinforce public safety and national security against proliferating terrorist threats. To this end, notwithstanding the amendments introduced by Bill C-59, several of the invasive and exceptional anti-terrorism and counterterrorism measures deployed by Bill C-51, including expansive regimes of surveillance, tactics of indefinite detainment, governmental censorship practices, and other extralegal anti-terrorist measures, remain in operation. In this regard, the emergence of Bill C-59 reflects contemporary security preoccupations and enduring concerns related to anti-terrorism efforts and securitization throughout public and governmental imaginaries.

Through examining these governmental programs of anti-terrorism and securitization, this chapter contends that the anti-terrorist measures and security mechanisms implemented through Bill C-51 function as biopolitical techniques of governance characterized by the right to “make live and to let die” (Foucault, 2003b, p. 241). Indeed, through the deployment of these measures, Bill C-51 ostensibly aims to extend communications, optimize health, and reinforce the security of the state population against proliferating terrorist threats, stating that these measures are necessary “in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (Parliament of Canada, 2015, p. 2). Specifically, Bill C-51

stresses the imperative to reinforce “the sovereignty, security or territorial integrity of Canada” and “the lives or the security of the people of Canada” against terrorist threats, or “activity that undermines the security of Canada” (p. 3) more broadly. However, these anti-terrorist measures operate through targeting bodies and populations designated as potential threats to public safety and national security for surveillance, imprisonment, detainment, and other forms of governmental discipline and regulation implemented through Bill C-51. To this end, these anti-terrorist measures and security mechanisms simultaneously aim to foster and promote the security, vitality, and productivity of the state population through regimes of ‘making live’, while targeting perceived threats to national security for governmental discipline, regulation, and elimination through regimes of ‘letting die’, thus functioning as biopolitical techniques of governance. As Foucault (1978) observes, the emergence of these biopolitical forms of governmentality, which function to “*foster* life or *disallow* it to the point of death” (p. 138) through the deployment of disciplinary and regulatory techniques of governance, is reflective of a contemporary reconfiguration of the operation of power characterized by the subsumption of sovereign power and the emergence of biopower.

The *Anti-Terrorism Act* and the Emergence of the Terrorist Threat

Bill C-36, also known as the *Anti-Terrorism Act*, was introduced in 2001 in the global aftermath of the September 11, 2001 attacks in the United States, and was subject to sustained critique during its formulation and enactment (Daniels et al., 2001; Roach, 2003, 2011). Following pressures from the government of the United States and the United Nations Security Council, the *Anti-Terrorism Act* was introduced in Parliament on October 15, 2001 as an urgent governmental response to ostensibly proliferating and

imminently dangerous terrorist threats, and, following a brief period of debate and contestation, the policy was enacted on December 18, 2001. The policy states that “Canadians and people everywhere are entitled to live their lives in peace, freedom and security”, but that “acts of terrorism threaten Canada’s political institutions, the stability of the economy and the general welfare of the nation”, and that, in turn, the government, “recognizing that terrorism is a matter of national concern that affects the security of the nation, is committed to taking comprehensive measures to protect Canadians against terrorist activity” (Parliament of Canada, 2001, p. 1). Consequently, the policy states that “the challenge of eradicating terrorism, with its sophisticated and trans-border nature, requires enhanced international cooperation and a strengthening of Canada’s capacity to suppress, investigate and incapacitate terrorist activity” (p. 1) through the deployment of governmental mechanisms of anti-terrorism, counterterrorism, and securitization.

To this end, the *Anti-Terrorism Act* introduced ‘terrorist activity’ as an object of governmental intervention and regulation for the first time in Canadian law: prior to the enactment of the policy, ‘terrorism’ was not deployed as a legal category in Canadian governmental frameworks, and, as Force and Roach (2015) explain, “terrorism was more a colloquial expression than a legal concept before that time” (p. 23). Indeed, while several activities, including murder, assault, hijacking, the use of explosives, sabotage, and espionage, were previously criminalized, they were not explicitly identified as ‘terrorist activities’ in Canadian law prior to the enactment of the *Anti-Terrorism Act* in 2001. Specifically, the *Anti-Terrorism Act* established an expansive definition of “terrorist activity” as any act that is committed, within or outside of Canada, “for a political, religious or ideological purpose, objective or cause” and “with the intention of intimidating the public, or a segment of the public, with regard to its security, including

its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act” (Parliament of Canada, 2001, p. 14). Further, an act is classified as “terrorist activity” if it “causes death or serious bodily harm” or “endangers a person’s life” through the infliction of violence, if it causes “serious risk to the health or safety of the public or any segment of the public”, or if it “causes substantial property damage, whether to public or private property” or “causes serious interference with or serious disruption of an essential service, facility or system, whether public or private” (p. 14). Finally, the definition of “terrorist activity” outlined in the *Anti-Terrorism Act* includes “a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission” (p. 14). However, the policy notes that activities constituting “advocacy, protest, dissent or stoppage of work” (p. 14) are excluded from this definition of “terrorist activity” if they are not explicitly intended to inflict violence. This remains the operative definition of ‘terrorist activity’ in contemporary Canadian law.

Importantly, the *Anti-Terrorism Act* also established a series of criminal offences of terrorism related to this expansive definition of ‘terrorist activity’, including the participation in or facilitation of terrorist activity, or the facilitation of the conduct of a designated terrorist organization. As Roach (2011) observes, the *Anti-Terrorism Act* “criminalized a broad array of activities in advance of the actual commission of a terrorist act, including providing finances, property, and other forms of assistance to terrorist groups; participating in the activities of a terrorist group; and instructing the carrying out of activities for a terrorist group” (p. 379-380). To this end, the regimes of anti-terrorism and securitization deployed by the policy operate through a preemptive logic of governance, insofar as they are designed to forestall or counteract anticipated or feared

terrorist threats.

Through the introduction of a legal definition of ‘terrorist activity’, the establishment of several related terrorism offences, and the mobilization of expanded programs of counterterrorism and securitization, the *Anti-Terrorism Act* was ostensibly designed to respond to the limitations of Canadian anti-terrorism policy prior to the September 11, 2001 attacks in the United States. Indeed, the introduction of the *Anti-Terrorism Act* was largely predicated on the assumption that ordinary criminal and national security laws were incapable of managing and regulating indeterminate terrorist threats that were ostensibly proliferating and imminently dangerous in the aftermath of the September 11, 2001 attacks. To this end, as Forcese and Roach (2015) suggest, with the *Anti-Terrorism Act* “the government stressed that new offences were necessary to stop terrorism before it happened — they were, in other words, consciously preemptive to a degree unusual in Canadian criminal law” (p. 55-56).

Toward this end, in addition to establishing a functional definition of ‘terrorist activity’ in Canadian legal frameworks and legislating a series of new terrorism offences related to this definition, the *Anti-Terrorism Act* also mobilized several mechanisms of governance designed to extend governmental capacities to preempt and counteract terrorist threats. Specifically, the *Anti-Terrorism Act* mobilized expansive regimes of surveillance, and established regulations concerning the financing, facilitation, and support of terrorist activity, both nationally and globally. Moreover, the policy authorized the executive designation and listing of terrorist organizations in situations in which government agents suspect on reasonable grounds that an organization “has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity” (Parliament of Canada, 2001, p. 17), and imposed regulations on the participation in, and

facilitation and support of, the conduct of these designated organizations. The *Anti-Terrorism Act* also authorized the employment of investigative hearings in which persons determined to constitute potential threats to national security could be compelled to provide information related to suspected terrorist threats when a government agent has “reasonable grounds to believe that a terrorism offence will be committed” or that “a terrorism offence has been committed” (p. 33) and that these persons possess intelligence related to these threats. Critically, the *Anti-Terrorism Act* also authorized the preventative detention of suspected persons for up to three days when a government agent “believes on reasonable grounds that a terrorist activity will be carried out” and “suspects on reasonable grounds that the detention of the person in custody is necessary in order to prevent a terrorist activity” (p. 36). Further, the policy authorized the government to impose peace bonds, or sets of conditions regulating the conduct of suspected persons, when a government agent “suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is necessary to prevent the carrying out of the terrorist activity” (p. 36). To this end, the introduction of these mechanisms of governance through the *Anti-Terrorism Act* signals a significant expansion of the programs of anti-terrorism, counterterrorism, and securitization deployed by the Canadian state (Daniels et al., 2001; Roach, 2003, 2011).¹¹

¹¹ Although a detailed consideration of the social, cultural, and legal implications of the *Anti-Terrorism Act* is beyond the scope of this thesis, see Roach (2003) and Roach (2011) for a thorough analysis of the policy. Daniels et al. (2001) offer a series of critiques of the policy developed during its formulation and enactment in the aftermath of the September 11, 2001 attacks, and Forcese and Roach (2015) provide an extended analysis of the *Anti-Terrorism Act* as it is situated in relation to historical developments and contemporary trajectories in Canadian anti-terrorism law in general, and the introduction and enactment of Bill C-51 in particular.

Following the introduction of the *Anti-Terrorism Act*, the government also deployed immigration law as a racialized tactic of anti-terrorism and securitization targeted at non-citizens, which functioned to mobilize a range of preemptive governmental powers subject to low evidentiary thresholds, the informal and subjective discretion and determination of administrative officials, and the use of secret evidence in legal and adjudicative proceedings that foreclosed the possibility of fair trial procedures and the normative operation of law.¹² Specifically, the *Anti-Terrorism Act* expanded the governmental powers established through the *Immigration and Refugee Protection Act*, enacted in 2001, which permitted the state to deploy security certificates authorizing the indefinite administrative detention and deportation of non-citizens suspected on reasonable grounds to constitute terrorist threats or otherwise determined to be inadmissible to Canada on the grounds of national security concerns.

To this end, the *Anti-Terrorism Act* and subsequent anti-terrorism and counterterrorism policies deployed by the Canadian state have been subject to sustained critique, insofar as they function to mobilize exceptional and extralegal mechanisms of anti-terrorism and securitization, including expansive regimes of surveillance, tactics of preventative detainment, programs of deportation and expulsion, measures that disrupt the normative operation of law, including standard trial procedures and adjudicative processes, and other extralegal anti-terrorist measures that are inconsistent with the rights and protections afforded by the *Canadian Charter of Rights and Freedoms* (Daniels et al., 2001; Roach, 2003, 2011). These techniques of governance, which have primarily been

¹² For a discussion of the deployment of immigration law as a racialized mechanism of anti-terrorism and counterterrorism by the Canadian state, particularly as it relates to biopolitical techniques of governance and the state of exception, as well as an examination of the racialized implications of anti-terrorism in Canada more broadly, see Razack (2008) and Razack (2010).

deployed within states of perceived emergency and insecurity characterized by proliferating and imminently dangerous yet indeterminate terrorist threats in the global aftermath of the September 11, 2001 attacks, are oriented toward circumventing and counteracting these anticipated terrorist threats through a preemptive logic of governance and securitization. In this regard, through the deployment of these mechanisms of anti-terrorism and securitization, the *Anti-Terrorism Act* ostensibly aims to reinforce public safety and national security against indeterminate terrorist threats. Indeed, the policy text of the *Anti-Terrorism Act* states that “acts of terrorism threaten Canada’s political institutions, the stability of the economy and the general welfare of the nation”, and that the government, “recognizing that terrorism is a matter of national concern that affects the security of the nation, is committed to taking comprehensive measures to protect Canadians against terrorist activity” (Parliament of Canada, 2001, p. 1) through the mobilization of these anti-terrorist measures and security mechanisms. However, these anti-terrorist measures function through targeting subjects designated as potential threats to national security for surveillance, imprisonment, indefinite detention, deportation, and other tactics of governmental discipline and regulation enforced by the policy. To this end, these mechanisms of anti-terrorism and securitization deployed by the Canadian state function as biopolitical techniques of governance characterized by the governmental capacity to “make live and to let die” (Foucault, 2003b, p. 241) and the operation of state racisms, simultaneously aiming to reinforce the security, vitality, and wellbeing of the state population through regimes of ‘making live’, while targeting perceived threats to national security for governmental management, regulation, and elimination through regimes of ‘letting die’ (Bell, 2006, 2011; French, 2007).

The *Anti-terrorism Act, 2015* and the Imperative for Securitization

More than a decade after the enactment of the *Anti-Terrorism Act* in 2001, the government of Canada introduced Bill C-51, the *Anti-terrorism Act, 2015*, in response to the attacks of October 2014 committed by Michael Zehaf-Bibeau and Martin Couture-Rouleau in particular, and the ostensible proliferation of global terrorist threats in the aftermath of the September 11, 2001 attacks and the subsequent global reverberations of the ‘war on terror’ in general. Bill C-51 represents the most substantive and consequential expansion of Canadian state programs of anti-terrorism, counterterrorism, and securitization since the introduction and enactment of the *Anti-Terrorism Act*. Specifically, the programs of anti-terrorism introduced by Bill C-51 are mobilized through the introduction of two new laws (the *Security of Canada Information Sharing Act* and the *Secure Air Travel Act*) and the substantive amendment of three preexisting laws (the *Criminal Code*, the *Canadian Security Intelligence Service Act*, and the *Immigration and Refugee Protection Act*), and the amendment of multiple related laws. Bill C-51 was initially introduced in Parliament on January 30, 2015 in the aftermath of the attacks of October 2014, and, despite significant opposition and resistance, the policy was enacted on June 18, 2015 (Forcese & Roach, 2015; Iacobucci & Toope, 2015). Broadly, the policy suggests that “the people of Canada are entitled to live free from threats to their lives and their security”, but that “activities that undermine the security of Canada are often carried out in a clandestine, deceptive or hostile manner, are increasingly global, complex and sophisticated, and often emerge and evolve rapidly”, and that there is therefore “no more fundamental role for a government that protecting its country and its people” from these threats (Parliament of Canada, 2015, p. 1-2). The policy consequently aims to “enable the Government to protect Canada and its people

against activities that undermine the security of Canada” (p. 2) through the deployment of expanded state programs of anti-terrorism, counterterrorism, and securitization.

Throughout the formulation, debate, and enactment of Bill C-51, the policy was subject to widespread resistance and contestation in governmental, academic, and public discourses. However, the government consistently rejected and disregarded the concerns articulated by various opponents of the policy, particularly with regard to its implications in the mobilization of exceptionally invasive governmental programs of anti-terrorism and securitization. Importantly, during the formulation of Bill C-51, the government largely rejected the recommendations of the Air India Commission of Inquiry, which was established in 2006 to investigate governmental responses to the bombing of Air India Flight 182 in 1985 that resulted in 331 deaths, and was determined to constitute the deadliest act of terrorism in Canadian history. Specifically, the Air India Commission of Inquiry identified the imperative for effective governmental control, coordination, and oversight of state programs of surveillance and information sharing among national security agencies in the context of anti-terrorism and counterterrorism efforts (Forcese & Roach, 2015). The government similarly disregarded the recommendations of the Commission of Inquiry appointed in 2004 to investigate the conduct of the government in relation to the extralegal rendition, detainment, and torture of Maher Arar, which stressed the need for effective review, oversight, and control of the legality of state programs of anti-terrorism and counterterrorism (Forcese & Roach, 2015). Further, the government rejected the concerns of the Canadian Civil Liberties Association, which challenged the legality of Bill C-51, contending that the policy is inconsistent with, and in violation of, the legal rights and protections afforded by the *Canadian Charter of Rights and Freedoms*, and Canadian and international laws more broadly. Bill C-51 was also subject

to significant resistance from Indigenous populations, who expressed critical concerns regarding the techniques of governance introduced by the policy. Specifically, throughout the parliamentary debates preceding the enactment of Bill C-51, several Indigenous leaders, activists, and other representatives of Indigenous populations contended that the mechanisms of anti-terrorism and securitization mobilized through the policy were implicated in the operation of settler colonial programs of violence, occupation, and dispossession deployed by the Canadian state. However, these concerns were explicitly rejected by the government during the development of the policy.

Moreover, the government dismissed the concerns of the Privacy Commissioner of Canada, who stressed that Bill C-51 would provide government agents with “almost limitless powers to monitor and profile ordinary Canadians, with a view to identifying security threats among them”, and that “it should not be left for national security and other government agencies to determine the limits of their own powers”, instead asserting the imperative for effective oversight and review of the programs of anti-terrorism and securitization deployed by the policy (Therrien, 2015). Critically, the government also rejected the intervention of several political leaders, including former prime ministers Jean Chrétien, Joe Clark, Paul Martin, and John Turner, as well as multiple experts on national security and anti-terrorism law, who collectively argued that “the lack of a robust and integrated accountability regime for Canada’s national security agencies makes it difficult to meaningfully assess the efficacy and legality of Canada’s national security activities”, a limitation which they contended “poses serious problems for public safety and for human rights” (Chrétien et al., 2015). Consequently, they concluded that “Canada needs independent oversight and effective review mechanisms more than ever, as national security agencies continue to become increasingly integrated, international information

sharing remains commonplace and as the powers of law enforcement and intelligence agencies continue to expand with new legislation” (Chrétien et al., 2015). Despite this significant intervention, the government failed to address the critical concerns expressed in both governmental and public discourses during the formulation of Bill C-51.

Similarly, throughout the parliamentary debates surrounding the formulation and enactment of Bill C-51, the government consistently dismissed or rejected the concerns of multiple expert witnesses on national security and anti-terrorism law and other opponents of the policy who appeared in parliamentary hearings to critically evaluate, problematize, and propose amendments to the policy. Indeed, despite the interventions and directives of these witnesses, the House of Commons Standing Committee on Public Safety and National Security tasked with examining Bill C-51 recommended the enactment of the policy with minor amendments, while the Standing Senate Committee on National Security and Defence recommended the enactment of the policy without amendments. Importantly, these debates and hearings surrounding the formulation and enactment of Bill C-51 occurred in the immediate aftermath of the October 2014 attacks, in the context of heightened security concerns and fears regarding imminent terrorist threats. Indeed, following the attacks of October 2014, the government raised its national terrorism threat level from ‘low’ to ‘medium’, signalling a heightened risk of imminent terrorist threats and the deployment of additional security measures. Within this state of perceived emergency that characterized the parliamentary debate process, broad claims of insecurity and gestures toward ostensibly imminent and indeterminate terrorist threats often effaced sustained and detailed considerations of the programs of anti-terrorism and securitization mobilized by Bill C-51. As Forcese and Roach (2015) explain, throughout these debates, “the actual contents of Bill C-51 sometimes took a second seat to more generic claims

about security” (p. 45). Consequently, the legality of the policy in general, and its inconsistencies with the *Canadian Charter of Rights and Freedoms* in particular, largely remained unexamined throughout these debates. At the conclusion of the parliamentary debate process, which was expedited by the government, Bill C-51 was ultimately enacted with five minor amendments, which Forcese and Roach suggest are best characterized as “incidental, absurd, or confusing” (p. 45), and which largely failed to address the concerns articulated by multiple expert witnesses with regard to the invasive regimes of anti-terrorism, counterterrorism, and securitization mobilized by the policy. To this end, Forcese and Roach contend that “one of the flaws of the Bill C-51 debate was the extent to which it arrived in Parliament as a done deal, without any advance consultation and no real prospect of amendment” (p. 507).

Within the environment of generalized threat and insecurity that characterized the formulation and enactment of Bill C-51, government officials declared the imperative for the deployment of programs of surveillance as preemptive mechanisms of governance designed to counteract and circumvent anticipated terrorist threats. Consequently, Bill C-51 functions to mobilize expansive regimes of surveillance and information sharing, particularly through the governmental measures introduced in the *Security of Canada Information Sharing Act*. Broadly, the policy aims to “encourage and facilitate information sharing between Government of Canada institutions”, stating that “information needs to be shared — and disparate information needs to be collated — in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (Parliament of Canada, 2015, p. 1-2). Specifically, the policy authorizes information sharing among 17 governmental institutions with respect to “activity that undermines the security of Canada”, an exceptionally broad and imprecisely

defined clause generally referring to any activity that “undermines the sovereignty, security, or territorial integrity of Canada or the lives or the security of the people of Canada” (p. 3). These governmental institutions include the Canadian Security Intelligence Service (CSIS), the Royal Canadian Mounted Police (RCMP), the Communications Security Establishment (CSE), and the Canadian Border Services Agency (CBSA), as well as multiple other governmental institutions with mandates broadly related to national security, including institutions concerned with governing public health, immigration and border controls, financial regulation, and military activity.¹³ Additionally, the policy authorizes these governmental institutions to receive information gathered through the surveillance practices of multiple other government agencies situated both within and outside of Canada, thus establishing an expansive regime of information sharing with transnational and global implications. Critically, the policy permits the disclosure of this information if “the information is relevant to the recipient institution’s jurisdiction or responsibilities...in respect of activities that undermine the security of Canada, including in respect of their detection, identification, analysis, prevention, investigation or disruption” (p. 5). Here, the determination of information as relevant to a governmental institution’s “jurisdiction or responsibilities” is subject to the informal discretion and subjective judgement of administrative officials,

¹³ Specifically, the governmental institutions involved in the information sharing and surveillance regimes established by Bill C-51 include the Canada Border Services Agency, the Canada Revenue Agency, the Canadian Armed Forces, the Canadian Food Inspection Agency, the Canadian Nuclear Safety Commission, the Canadian Security Intelligence Service, the Communications Security Establishment, the Department of Citizenship and Immigration, the Department of Finance, the Department of Foreign Affairs, Trade and Development, the Department of Health, the Department of National Defence, the Department of Public Safety and Emergency Preparedness, the Department of Transport, the Financial Transactions and Reports Analysis Centre of Canada, the Public Health Agency of Canada, and the Royal Canadian Mounted Police (Parliament of Canada, 2015, p. 62-63).

and the disclosure of this information is permitted if it is related to expansively and imprecisely defined “activities that undermine the security of Canada” (p. 5). Moreover, the policy authorizes information sharing as a tactic of anti-terrorism designed to prevent or disrupt suspected or anticipated terrorist threats, thus operating through a preemptive logic of governance. Consequently, as Austin (2015) explains, through Bill C-51, “a potentially vast amount of information held by all government institutions is quite easily available to the seventeen national security recipient institutions, and these are quite free to share this with foreign partners”, while “none of this sharing requires that a government institution actually suspect any particular terrorist activity, even broadly constructed” (p. 186).

While Bill C-51 deploys expansive and accelerated regimes of surveillance and information sharing among multiple governmental institutions, it fails to introduce effective programs of review, oversight, and control in order to regulate and monitor the efficacy and legality of these governmental information sharing practices. Specifically, while Bill C-51 authorizes information sharing practices among 17 governmental institutions, only three of these institutions — CSIS, the RCMP, and the CSE — are subject to independent governmental oversight and review processes. As Forcese and Roach (2015) suggest, “despite these acute limitations, the government went ahead in Bill C-51 and enhanced information sharing across Canadian agencies, most of which are subject to no independent national security review” (p. 72). Consequently, throughout the governmental debates surrounding the formulation of Bill C-51, multiple expert witnesses identified imperatives for effective oversight and review of the legality of the surveillance and information sharing practices mobilized by the policy. These criticisms often echoed the critical recommendations outlined by the commissions of inquiry into the conduct of

the government in relation to the Air India bombings and the extralegal rendition and detainment of Maher Arar. As Forcese and Roach explain, “these recommendations recognized the need for whole-of-government review to match whole-of-government security responses” (p. 442) that characterize the surveillance and information sharing practices deployed through Bill C-51. However, the government consistently dismissed the implementation of these review structures as “needless red tape” (p. 399), and the policy was ultimately enacted without the introduction of effective mechanisms of governmental oversight and review. Yet, as Forcese and Roach contend, effective review, oversight, and control function to “militate against the gradual normalization of anti-terrorism laws and powers” (p. 418). To this end, they conclude that “anti-terrorism provisions — especially those in Bill C-51 — are radical enough that they should not be left unscrutinized” (p. 418).

Bill C-51 also introduces the *Secure Air Travel Act*, which broadly functions to expand governmental powers to preempt and counteract suspected terrorist threats related to air transportation. Specifically, the policy imposes regulations on the conduct of persons whom a government agent has “reasonable grounds to suspect” will “engage or attempt to engage in an act that would threaten transportation security” or another terrorist offence (Parliament of Canada, 2015, p. 13). Importantly, Forcese and Roach (2015) note that “reasonable grounds to suspect” constitutes “the lowest standard known to law” (p. 186), and establishes a low evidentiary threshold that is subject to the informal discretion and subjective determination of administrative officials. In particular, the policy authorizes government agents to “direct an air carrier to take a specific, reasonable, and necessary action” (Parliament of Canada, 2015, p. 14), including surveilling, detaining, or denying transport to suspected persons in order to prevent those persons

from engaging in acts of terrorism. The policy also authorizes surveillance and information sharing practices among various governmental institutions situated both within and outside of Canada with regard to these suspected terrorist threats related to air transportation.

Bill C-51 also functions to introduce expansive and generalized definitions of ‘terrorism’ within Canadian legal frameworks, thus signalling a departure from previously legislated definitions of terrorist activity in legal and governmental discourse and anti-terrorism policy. Specifically, the *Security of Canada Information Sharing Act* authorizes surveillance and information sharing practices as tactics of anti-terrorism designed to preempt, forestall, and counteract broadly conceptualized “activity that undermines the security of Canada” (p. 3). The policy states that “activity that undermines the security of Canada” includes any activity that “undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada” (p. 3). This constitutes an exceptionally broad and unprecedented definition of terrorist activity in anti-terrorism law. Indeed, as Forcese and Roach (2015) write, it “constitutes a definition broader than any other definition of national security ever codified in Canadian law” (p. 29).

Importantly, the policy lists several actions designated to constitute “activity that undermines the security of Canada” (Parliament of Canada, 2015, p. 3) within this generalized legal framework of terrorist activity. Specifically, the policy states that “interference with critical infrastructure” and “interference with the global information infrastructure”, as well as general “interference with the capability of the Government of Canada in relation to intelligence, defence, border operations, public safety, the administration of justice, diplomatic or consular relations, or the economic or financial

stability of Canada” (p. 3) constitute activities that undermine or threaten national security within this framework. Further, the policy includes any activity that constitutes “changing or unduly influencing a government in Canada by force or unlawful means” or any act that “undermines the security of another state” (p. 3) within this definition of terrorist activity. Critically, the policy also lists “terrorism” (p. 3) as an activity that undermines the security of Canada; however, the word “terrorism” remains undefined and unqualified within the policy text of Bill C-51, and, consequently, the policy does not explicitly identify what constitutes “terrorism” within this broad framework of activities determined to threaten or undermine national security. Within this exceptionally broad framework of terrorist activity established by the policy, then, a virtually limitless range of activities can be determined by government agents to constitute threats to national security. To this end, Forcese and Roach (2015) contend that the definition of “activity that undermines the security of Canada” employed within the policy is “not tied to terrorism alone but to the broadest definition of national security in Canadian legal history” (p. 168). Indeed, they suggest that it “risks sweeping virtually everything under the security label” (p. 154). Consequently, any action determined to threaten or undermine national security within this exceptionally broad framework is subject to the governmental mechanisms deployed by the policy, including invasive surveillance and information sharing practices, which operate under the auspices of anti-terrorist measures.¹⁴

¹⁴ Specifically, the definition of “activity that undermines the security of Canada” as it is rendered in the policy text of Bill C-51 is as follows:

“‘activity that undermines the security of Canada’ means any activity, including any of the following activities, if it undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada:

To this end, insofar as this definition of “activity that undermines the security of Canada” encompasses an exceptionally broad range of practices determined to constitute terrorist activity, it threatens to impose limitations and restrictions on the expression of protest and dissent, particularly through the mobilization of social movements, activism, and resistance. Importantly, while the framework of “activity that undermines the security of Canada” established through Bill C-51 encompasses a broad range of discourses and practices, it also includes a significant exemption, stating that this definition “for greater certainty...does not include advocacy, protest, dissent and artistic expression” (Parliament of Canada, 2015, p. 3). Through this exemption, the policy ostensibly excludes any activities determined by government agents to constitute legitimate advocacy, protest, dissent, or artistic expression from the sweeping definition of “activity that undermines the security of Canada” employed throughout Bill C-51, and, in turn, safeguards these activities from the invasive mechanisms of anti-terrorism deployed by the policy. However, despite this exemption, activities constituting advocacy, protest, or

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- (a) interference with the capability of the Government of Canada in relation to intelligence, defence, border operations, public safety, the administration of justice, diplomatic or consular relations, or the economic or financial stability of Canada;
 - (b) changing or unduly influencing a government in Canada by force or unlawful means;
 - (c) espionage, sabotage or covert foreign-influenced activities;
 - (d) terrorism;
 - (e) proliferation of nuclear, chemical, radiological or biological weapons;
 - (f) interference with critical infrastructure;
 - (g) interference with the global information infrastructure, as defined in section 273.61 of the *National Defence Act*;
 - (h) an activity that causes serious harm to a person or their property because of that person’s association with Canada; and
 - (i) an activity that takes place in Canada and undermines the security of another state.

For greater certainty, it does not include advocacy, protest, dissent and artistic expression” (Parliament of Canada, 2015, p. 3)

dissent may still be determined by government agents to fall within the parameters of the exceptionally broad definitions of terrorist activity established by Bill C-51, including the broadly defined framework of “activity that undermines the security of Canada” introduced in the *Security of Canada Information Sharing Act*, as well as the expansive and imprecisely defined phrase “terrorism offences in general” employed in the amendments made to the *Criminal Code* by Bill C-51. Indeed, as Forcese and Roach (2015) observe with respect to the broad conceptualization of terrorist activity employed throughout Bill C-51, “some of these broad concepts require no actual connection to violence, and can reach even lawful protest if carried out in conjunction with any of the investigated activities” (p. 11). Consequently, this exemption of resistance, protest, and dissent is largely rendered ineffective, insofar as these activities can be determined by government agents to constitute “activity that undermines the security of Canada”, and, in turn, be targeted by the invasive mechanisms of anti-terrorism deployed by the policy. This has important implications for Indigenous, anti-racist, anti-colonial, queer, and environmental social movements, activism, and resistance, which could be determined by government agents in various capacities to constitute “activity that undermines the security of Canada” within the exceptionally broad framework of terrorist activity established through Bill C-51. In turn, these forms of activism and resistance are subject to the invasive techniques of governance deployed through the policy, including surveillance, information sharing, censorship, and other forms of state repression, while persons involved in these activities can be targeted for preemptive detainment, imprisonment, or other forms of governmental discipline and regulation enforced by Bill C-51.

Moreover, Bill C-51 amends the *Criminal Code* to establish a legislative framework of terrorist activity that is unprecedented in Canadian anti-terrorism law, particularly by expanding previously legislated terrorism offences, including those first outlined in the *Anti-Terrorism Act*. Specifically, Bill C-51 designates as a terrorist activity the actions of any person who “knowingly advocates or promotes the commission of terrorism offences in general” (Parliament of Canada, 2015, p. 25). Through the employment of the phrase “terrorism offences in general”, the policy constitutes an exceptionally broad and ambiguously defined legislative framework of terrorist activity. Indeed, while previously legislated terrorism offences established through the *Anti-Terrorism Act* regulated a broad range of practices, including the participation in or facilitation of terrorist activity, the invocation of advocating or promoting “terrorism offences in general” in Bill C-51 is unprecedented in anti-terrorism law, and functions to restrict an exceptionally broad range of discourses and practices unrelated to the explicit commission of a terrorist offence. Importantly, within this framework, a suspected person must not necessarily be determined by government agents to explicitly intend to engage in terrorist activity; rather, a government agent must simply determine that a suspected person engaged in conduct determined to constitute advocating or promoting “terrorism offences in general” while “knowing” or “being reckless” as to whether any terrorist activities “may be committed” as a result of this conduct (p. 25-26). In this regard, Forcese and Roach (2015) observe that “the outer parameters of the phrase ‘terrorism offences in general’ remain uncertain, but the phrase would include, at minimum, crimes that are not closely tied to immediate violence or threats of violence” (p. 344). Consequently, the policy establishes limitations and restrictions on any practices determined to constitute advocating or promoting “terrorism offences in general”, while the designation of these

broadly defined practices is subject to the discretion of government agents. To this end, this restriction of “terrorism offences in general” operates through a preemptive logic of governance, insofar as it is designed to forestall or counteract anticipated or feared terrorist threats that government agents suspect may emerge as a result of any of these broadly defined practices determined to constitute the advocacy or promotion of “terrorism offences in general” (Parliament of Canada, 2015, p. 25).

Bill C-51 further amends the *Criminal Code* to designate the production and distribution of “terrorist propaganda” as a terrorist activity. Within the policy, “terrorist propaganda” is defined as “any writing, sign, visible representation or audio recording that advocates or promotes the commission of terrorism offences in general...or counsels the commission of a terrorism offence” (p. 27). Materials determined by government agents on “reasonable grounds” (p. 27) to constitute “terrorist propaganda” are subject to censorship, seizure, destruction, or deletion by the government. Insofar as this definition incorporates the exceptionally broad and unqualified category of “terrorism offences in general” employed throughout Bill C-51, a virtually limitless range of materials could potentially be determined by government agents to constitute “terrorist propaganda” within this generalized framework. Moreover, the designation of materials as “terrorist propaganda”, and the subsequent seizure or destruction of these materials, is subject to the informal judgement and discretion of various administrative officials, who must simply determine on “reasonable grounds” that these materials constitute “terrorist propaganda” (p. 27) within the parameters of the exceptionally broad framework established by the policy. Importantly, insofar as this broad definition of “terrorist propaganda” established through Bill C-51 encompasses an expansive range of discourses and practices, the policy potentially functions to restrict and suppress the expression of

protest, resistance, and dissent. Indeed, any communicative form that cites, quotes, reiterates, represents, or otherwise reproduces materials determined by government agents to constitute “terrorist propaganda” within the framework established through Bill C-51 is subject to censorship, seizure, or deletion. Consequently, Bill C-51 imposes significant restrictions and limitations on a broad range of academic, governmental, and popular cultural discourses and practices, including those expressing criticism, protest, dissent, or resistance, which could be determined by government agents to constitute “terrorist propaganda” or “terrorism offences in general” more broadly (p. 27).¹⁵

In addition to the establishment of expansive and generalized legal definitions of terrorist activity, Bill C-51 also amends the *Criminal Code* to expand governmental powers to preempt and counteract anticipated or feared terrorist threats, particularly through preventative detainment and the imposition of governmental regulations on the conduct of persons determined to constitute potential threats to national security. Specifically, Bill C-51 authorizes the preventative detainment of a person when a government agent “suspects on reasonable grounds that the detention of the person in custody is likely to prevent a terrorist activity” (p. 30). Moreover, Bill C-51 extends the maximum duration of preventative detention first outlined in the *Anti-Terrorism Act* from

¹⁵ This raises critical concerns regarding the restriction and censorship of academic discourses, which could be determined by government officials to constitute “terrorist propaganda” within the framework established through Bill C-51. This thesis, for instance, could be designated as terrorist propaganda, insofar as it reproduces, quotes, and cites material that “advocates or promotes the commission of terrorism offences in general” (Parliament of Canada, 2015, p. 27), specifically through discussing the statement issued by Michael Zehaf-Bibeau prior to the attacks of October 22, 2014. In turn, this thesis could potentially be subject to governmental censorship, seizure, or deletion. Within this generalized framework of “terrorist propaganda” established through Bill C-51, a wide range of academic discourses that cite or quote materials broadly determined to advocate or promote “terrorism offences in general” could be designated by government officials as terrorist propaganda, and, in turn, targeted for censorship, seizure, destruction, or deletion.

three to seven days, including “an initial possible twenty-four hours of detention in exigent circumstances, an initial judicially authorized period of forty-eight hours, and then two possible additional judicially authorized forty-eight hour renewals” (Forcese & Roach, 2015, p. 60). Here, the policy authorizes the judicial extension of this period of detention if a government agent determines that “the investigation in relation to which the person is detained is being conducted diligently and expeditiously” (Parliament of Canada, 2015, p. 30). Critically, Bill C-51 fails to establish regulations on the conditions of preventative detention and the conduct of government agents in relation to detained persons. To this end, Forcese and Roach (2015) observe that Bill C-51 “contains no legislated safeguards on what can be done to people while they are preventatively detained” (p. 31).

Moreover, Bill C-51 expands the capacity of government agents to impose regulations on the conduct of persons suspected to constitute terrorist threats. Specifically, the policy authorizes the imposition of restrictions on conduct when a government agent “believes on reasonable grounds that a terrorist activity may be carried out” and “suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is likely to prevent the carrying out of the terrorist activity” (Parliament of Canada, 2015, p. 29). Further, the policy authorizes the imposition of regulations when a government official “fears on reasonable grounds that another person may commit a terrorism offence” (p. 35). Bill C-51 also mobilizes a broad range of invasive governmental regulations that can be imposed on persons determined to constitute terrorist threats, including surveillance, the restriction of communications, the seizure of passports, and the limitation of geographical mobility. Importantly, these provisions introduced through Bill C-51 establish exceptionally low evidentiary

thresholds for the deployment of preemptive tactics of anti-terrorism targeting persons determined to constitute terrorist threats. Indeed, a government agent must simply suspect or fear on “reasonable grounds” that a terrorist activity “may” be carried out, and determine that the deployment of preventative detainment or the imposition of regulations on the conduct of suspected persons is “likely” to prevent or circumvent this suspected or feared terrorist threat. Indeed, within this framework, Forcese and Roach (2015) suggest that “authorities must simply prove that they have reasonable grounds to fear that the target may commit a broad range of terrorism offences, one of the lowest standards of proof in Canadian law” (p. 219). Consequently, within the legal framework established through Bill C-51, the administration of preventative detainment and the imposition of regulations on the conduct of suspected persons is subject to the informal deliberation and discretionary judgement of various government agents.

Through a series of amendments to the *Canadian Security Intelligence Service Act*, Bill C-51 mobilizes unprecedented programs of anti-terrorism, counterterrorism, and securitization by authorizing government agents to engage in extralegal activity under the auspices of anti-terrorist measures. Specifically, Bill C-51 authorizes CSIS agents to engage in preemptive anti-terrorism operations aimed at disrupting broadly defined threats to national security. The policy states that “if there are reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada”, then CSIS “may take measures, within or outside Canada, to reduce that threat” (Parliament of Canada, 2015, p. 49). Importantly, prior to the enactment of Bill C-51, CSIS exclusively functioned to surveil and gather intelligence on suspected terrorist threats, and was not permitted to engage in disruptive anti-terrorist measures. However, through the amendments introduced by Bill C-51, CSIS agents are authorized to engage in anti-

terrorism operations in order to disrupt or counteract perceived threats to national security. Critically, Bill C-51 permits the government to issue warrants authorizing CSIS to engage in extralegal actions that violate any Canadian law, including the *Canadian Charter of Rights and Freedoms*, or any other foreign or international law, in order to disrupt perceived threats to national security. Through the introduction of this exceptional and unprecedented program of anti-terrorism, Bill C-51 effectively suspends the normative operation of law by permitting CSIS agents to systematically violate any law, within or outside of Canada, under the auspices of engaging in disruptive anti-terrorism measures. In other words, CSIS agents are authorized to engage in a virtually limitless range of actions, ostensibly in order to disrupt broadly conceptualized terrorist threats. While Bill C-51 does not explicitly specify the extralegal activities that CSIS agents are permitted to engage in, these activities could potentially include indefinite detention, surveillance, deportation or expulsion, the denial of the right to legal counsel, and the withdrawal of other legal rights and protections. Indeed, the only restriction established by Bill C-51 is that these actions “must not intentionally or by criminal negligence cause death or bodily harm, violate sexual integrity, or willfully obstruct justice” (Forcese & Roach, 2015, p. 247). When issuing a warrant, a judge must simply determine “on reasonable grounds” that such a warrant is necessary to enable CSIS to “take measures to reduce a threat to the security of Canada” (Parliament of Canada, 2015, p. 50), while these threats are subject to the exceptionally broad definitions within the policy. Further, when executing a warrant, the actions of CSIS agents are not subject to governmental review or oversight. To this end, insofar as it functions to mobilize exceptional and extralegal techniques of governance which operate under the auspices of anti-terrorist measures while suspending the normative operation of the law, Bill C-51 operates

through what Forcese and Roach (2015) characterize as “institutionalized illegality in the name of security” (p. 8).

Finally, Bill C-51 amends the *Immigration and Refugee Protection Act* to expand governmental capacities to deploy immigration law as a tactic of anti-terrorism and securitization. Broadly, Bill C-51 expands governmental powers to deploy security certificates, which authorize the administrative detention and deportation of non-citizens suspected to constitute terrorist threats or otherwise determined to be inadmissible to Canada on the grounds of national security concerns. In particular, Bill C-51 states that, during the adjudication of security certificate proceedings, a government agent may prevent the disclosure of any information or evidence related to a person determined to constitute a potential threat to national security if the disclosure of that information “would be injurious to national security or endanger the safety of any person” (Parliament of Canada, 2015, p. 56). Through permitting the state to employ secret evidence, and preventing the disclosure of this information to persons designated by government agents to constitute threats to national security, Bill C-51 effectively forecloses the possibility of fair trial procedures and suspends the normative operation of law during the adjudication of security certificate proceedings.

Through the implementation of these invasive governmental programs of anti-terrorism, counterterrorism, and securitization, Bill C-51 ostensibly aims to reinforce the security and vitality of the Canadian population against indeterminate terrorist threats. Indeed, the policy states that these mechanisms of anti-terrorism and securitization are necessary “in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (Parliament of Canada, 2015, p. 2), particularly in the context of heightened public fears regarding ostensibly imminent

terrorist threats following the attacks of October 2014, and in the global aftermath of the September 11, 2001 attacks in the United States more broadly. Specifically, the policy identifies the imperative to reinforce “the sovereignty, security or territorial integrity of Canada” and “the lives or the security of the people of Canada” against terrorist threats, or “activity that undermines the security of Canada” in general (p. 3). To this end, the policy authorizes the deployment of multiple invasive and exceptional governmental tactics of anti-terrorism, including expansive regimes of surveillance and information sharing, preventative detainment, deportation and expulsion, the suppression of resistance and dissent, implicit and explicit forms of censorship, the withdrawal of legal rights and protections, and other extralegal governmental operations, ostensibly as a means to preempt, counteract, and disrupt these undefined terrorist threats. In this regard, Bill C-51 simultaneously aims to promote and foster the security, vitality, and wellbeing of the state population, while targeting perceived threats to public safety and national security for governmental control, regulation, and elimination through these mechanisms of anti-terrorism.

However, insofar as it authorizes the deployment of these exceptional and extralegal tactics of anti-terrorism, counterterrorism, and securitization, Bill C-51 has been subject to sustained critique and resistance throughout public and governmental discourses since its enactment in 2015. Specifically, critiques of Bill C-51 have focused on the expansive regimes of surveillance and information sharing mobilized by the policy, which authorize the disclosure of information broadly related to “activity that undermines the security of Canada” (p. 3) among multiple governmental institutions. Further, the expansive and generalized definitions of ‘terrorism’ introduced by the policy, particularly through the employment of the phrase “activity that undermines the security of Canada”, broadly

constructed as any activity that “undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada” (p. 3), as well as the references to “terrorism offences in general” throughout the policy text, have been met with resistance. Indeed, opponents of Bill C-51 have contended that the mechanisms of anti-terrorism deployed by the policy threaten to restrict and suppress social movements, activism, and resistance, insofar as these activities can be designated as terrorist threats, or “activity that undermines the security of Canada” (p. 3), and persons engaged in these activities can subsequently be targeted for surveillance, detainment, imprisonment, and other forms of governmental discipline and regulation. Further, the tactics of preemptive detainment mobilized by Bill C-51, whereby government agents are authorized to preventatively detain or impose governmental controls and regulations on persons determined on “reasonable grounds” to constitute potential threats to national security, have been subject to contestation and resistance. Moreover, Bill C-51 authorizes government agents to engage in extralegal anti-terrorist measures, including acts that violate the *Canadian Charter of Rights and Freedoms* and other national and international laws, ostensibly in order to preempt or counteract potential threats to public safety and national security; consequently, opponents of Bill C-51 have raised critical concerns regarding the legality of the mechanisms of anti-terrorism and counterterrorism introduced by the policy. Indeed, these techniques of governance enforced through Bill C-51 function to disrupt the normative operation of law, insofar as they violate the rights and protections established by the *Canadian Charter of Rights and Freedoms* in particular, and are inconsistent with international human rights frameworks more broadly (Alford, 2016; Forcese & Roach, 2015). As a result, the invasive and extralegal programs of anti-terrorism and securitization implemented by Bill C-51 have been subject to

continuing public and governmental critique, resistance, and contestation.

The *National Security Act, 2017* and Contemporary Trajectories of Anti-Terrorism

In response to this sustained resistance to Bill C-51 throughout public, governmental, and academic discourses, on June 20, 2017, the government introduced Bill C-59, also known as the *National Security Act, 2017*, which aims to amend Bill C-51 by establishing limitations on the invasive mechanisms of anti-terrorism, counterterrorism, and securitization introduced by the policy. To this end, the emergence of Bill C-59 reflects contemporary security preoccupations and ongoing imperatives for anti-terrorism efforts and securitization in Canada. Specifically, Bill C-59 modifies the programs of anti-terrorism implemented by Bill C-51 through introducing a series of amendments to multiple laws, including the *Criminal Code* and the *Canadian Security Intelligence Service Act*, as well as the *Security of Canada Information Sharing Act* and the *Secure Air Travel Act* first introduced by Bill C-51, in addition to establishing several new policies related to national security and anti-terrorism. In this regard, Bill C-59 represents a substantive revision to the framework of anti-terrorism and securitization implemented through Bill C-51. However, while Bill C-59 is ostensibly designed to restrict and withdraw the mechanisms of anti-terrorism mobilized by Bill C-51, it largely fails to establish effective limitations on these invasive techniques of governance. Rather, Bill C-59 maintains that these anti-terrorist measures are necessary in order to reinforce public safety and national security against proliferating terrorist threats, stating that “a fundamental responsibility of the Government of Canada is to protect Canada’s national security and the safety of Canadians” against these threats (Parliament of Canada, 2017, p. 1). Presently, Bill C-59 has successfully passed through the House of Commons, in

which it was endorsed by the Standing Committee on Public Safety and National Security with minor amendments, and the policy is currently undergoing review, debate and contestation in the Senate; as of January 2019, Bill C-59 has yet to be enacted as law.

However, prior to the formulation and introduction of Bill C-59, in response to continuing public critiques of Bill C-51, in 2016 the government published the *National Security Green Paper*, which was designed to “prompt discussion and debate about Canada’s national security framework” and “inform policy changes”, thus facilitating public engagement and informing the development of anti-terrorism and national security programming by the state (Government of Canada, 2016). Following the publication of the *National Security Green Paper*, the government engaged in a flawed and largely ineffective process of public consultation, lasting from September to December 2016, through which it aimed to gather public feedback on the programs of anti-terrorism, counterterrorism, and national security deployed by the Canadian state in general, and the mechanisms of governance implemented through Bill C-51 in particular. Specifically, this consultation process consisted of several public forums and other events organized by political figures, as well as several private events organized by the government, in addition to online surveys and other public engagements through social media. Through this process, the government ostensibly aimed to respond to the resistance and critique directed toward Bill C-51 by gathering public feedback and, in turn, introducing a series of amendments in order to limit the invasive anti-terrorist measures and security mechanisms enforced by the policy. However, throughout this process, the government primarily consulted with various organizations that expressed support for Bill C-51, including policing and national security institutions, and consistently dismissed or rejected the critiques articulated by various opponents of the policy, particularly with

regard to its implications in the deployment of exceptional and extralegal programs of anti-terrorism and securitization. Critically, the resistance to Bill C-51 expressed by Indigenous peoples and other racialized populations, who have been discriminately targeted by the mechanisms of anti-terrorism enforced by the policy, was largely dismissed by the government, and these populations were therefore not effectively represented throughout this period of public consultation. Thus, this consultation process was ineffective, insofar as the government rejected or failed to address the critical concerns articulated by various opponents of Bill C-51, instead maintaining that the expanded programs of anti-terrorism and securitization mobilized by the policy continued to be necessary to reinforce the security and vitality of the state population against proliferating terrorist threats.

Following this period of public consultation, the government formally introduced Bill C-59 in Parliament on June 20, 2017, ostensibly aiming to amend Bill C-51 and impose limitations on the expansive governmental programs of anti-terrorism and securitization introduced by the policy. Broadly, Bill C-59, which was explicitly situated by the government as a response to the limitations of Bill C-51, states that “many Canadians expressed concerns about provisions of the *Anti-terrorism Act, 2015*”, and that, consequently, “the Government of Canada engaged in comprehensive public consultations to obtain the views of Canadians on how to enhance Canada’s national security framework and committed to introducing legislation to reflect the views and concerns expressed by Canadians” (Parliament of Canada, 2017, p. 1), resulting in the formulation of the policy. Further, Bill C-59 states that “a fundamental responsibility of the Government of Canada is to protect Canada’s national security and the safety of Canadians” through the deployment of anti-terrorist measures and security mechanisms,

but maintains that these measures “must be carried out in accordance with the rule of law and in a manner that safeguards the rights and freedoms of Canadians and that respects the *Canadian Charter of Rights and Freedoms*” (p. 1). To this end, Bill C-59 is ostensibly designed to establish restrictions on the invasive anti-terrorist measures and expansive governmental powers deployed through Bill C-51 by introducing a series of amendments to the policy. In particular, Bill C-59 establishes expanded structures of oversight and review in order to regulate the programs of anti-terrorism and securitization mobilized by Bill C-51, specifically through the formation of the National Security and Intelligence Review Agency and the position of the Intelligence Commissioner, both of which function to regulate, coordinate, and review the conduct of multiple governmental institutions, including CSIS, the RCMP, and the CSE. Despite these interventions, however, Bill C-59 fails to effectively limit the mechanisms of anti-terrorism introduced through Bill C-51. Rather, the policy reiterates the imperatives for anti-terrorism efforts and securitization first articulated by Bill C-51, stating that governmental bodies “must have powers that will enable them to keep pace with evolving threats” (p. 1) in order to reinforce public safety and national security against these threats. Thus, despite the amendments introduced by Bill C-59, several of the invasive mechanisms of anti-terrorism deployed by Bill C-51, including expansive regimes of surveillance, censorship practices, tactics of preemptive detainment, and other extralegal governmental operations, remain in effect. To this end, Bill C-59 does not fundamentally alter the structure of Bill C-51; rather, it introduces a series of minor amendments which fail to effectively limit the governmental mechanisms of anti-terrorism and securitization enforced by the policy.

Broadly, Bill C-59 introduces several amendments designed to specify the exceptionally broad and imprecise definitions of ‘terrorism’ deployed by Bill C-51, particularly through the expansive framework of “activity that undermines the security of Canada” established by the policy, as well as the employment of the phrase “terrorism offences in general” throughout the policy text. Specifically, while Bill C-51 designates any discourses or practices determined by government agents to constitute the advocacy or promotion of “terrorism offences in general” as terrorist activity, Bill C-59 amends the policy by eliminating this broad framework of “terrorism offences in general” (Parliament of Canada, 2015, p. 25). Rather, Bill C-59 designates as terrorist activity the acts of any individual who “counsels another person to commit a terrorism offence” (Parliament of Canada, 2017, p. 139), thus establishing a more narrowly defined framework of terrorist activity. Further, Bill C-59 modifies the broad definition of “terrorist propaganda” established by Bill C-51, stating that terrorist propaganda constitutes “any writing, sign, visible representation or audio recording that counsels the commission of a terrorism offence” (p. 139). To this end, through eliminating these references to “terrorism offences in general” within the policy, Bill C-59 establishes restrictions on the expansive framework of terrorist activity introduced by Bill C-51, through which an exceptionally broad range of discourses and practices could be designated as terrorist threats. Despite these amendments to the policy, however, Bill C-59 maintains the governmental censorship practices deployed by Bill C-51, insofar as it authorizes the seizure, censorship, destruction, or deletion of materials determined by government agents to constitute terrorist propaganda. Further, despite withdrawing the definition of “terrorism offences in general” established by Bill C-51, Bill C-59 expands the discretionary capacity of government agents to designate any discourse or practice that “counsels the

commission of a terrorism offence” (p. 139) as terrorist activity and, in turn, target persons engaged in these activities through the invasive mechanisms of governance deployed by the policy.

While Bill C-59 introduces a series of amendments designed to restrict the expansive definition of “activity that undermines the security of Canada” deployed by Bill C-51, it fails to establish effective limitations on this exceptionally broad framework of terrorist activity. Specifically, Bill C-59 reproduces the definition of “activity that undermines the security of Canada” first implemented by Bill C-51, stating that “activity that undermines the security of Canada” includes “any activity that undermines the sovereignty, security or territorial integrity of Canada or threatens the lives or the security of people in Canada or of any individual who has a connection to Canada” (p. 123). Further, the policy specifies several activities that can be designated by government agents as “activity that undermines the security of Canada” within this framework, including “interference with the capability of the Government of Canada in relation to intelligence, defence, border operations or public safety”, as well as “significant or widespread interference with critical infrastructure” or “significant or widespread interference with the global information infrastructure”, in addition to “conduct that takes place in Canada and that undermines the security of another state” (p. 123). Thus, despite the amendments introduced by Bill C-59, within this extensive framework of “activity that undermines the security of Canada”, an exceptionally broad range of activities can be determined by government agents to constitute potential threats to public safety and national security, and, in turn, be targeted through the anti-terrorist measures and security mechanisms deployed by the policy.

Furthermore, in an attempt to amend the flawed exemption of resistance, protest, and dissent from this broad framework of “activity that undermines the security of Canada” established by Bill C-51, Bill C-59 states that “for the purposes of this Act, advocacy, protest, dissent or artistic expression is not an activity that undermines the security of Canada unless carried on in conjunction with an activity that undermines the security of Canada” (p. 124) listed in the policy. Thus, despite this amendment to the policy text of Bill C-51, forms of resistance and dissent can still be designated as “activity that undermines the security of Canada” if they are implicated in any of the activities listed as threats to national security within the policy. Consequently, this exemption of protest, resistance, and dissent is ineffective, insofar as these activities can be determined by government agents to constitute “activity that undermines the security of Canada”, and persons engaged in these activities can subsequently be targeted for surveillance, detainment, and other forms of governmental discipline and regulation enforced by the policy. To this end, despite these interventions, Bill C-59 fails to effectively restrict and withdraw the exceptionally broad definitions of ‘terrorism’ deployed by Bill C-51.

Despite introducing a series of amendments to the *Security of Canada Information Sharing Act*, Bill C-59 fails to establish limitations on the regimes of surveillance and information sharing mobilized by Bill C-51. Rather, the policy maintains that these surveillance practices are necessary in order to reinforce public safety and national security against indeterminate terrorist threats, stating that “information needs to be disclosed — and disparate information needs to be collated — in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (p. 122). Consequently, the policy states that the *Security of Canada Information Sharing Act* aims to “encourage and facilitate the disclosure of information

between Government of Canada institutions in order to protect Canada against activities that undermine the security of Canada” (p. 124), but holds that the disclosure of this information must be “effective and responsible”, and conducted “in a manner that respects the *Canadian Charter of Rights and Freedoms*” (p. 122-123). Specifically, the policy maintains the information sharing regimes established by Bill C-51, through which multiple governmental institutions situated both within and outside of Canada are permitted to disclose information related to “activity that undermines the security of Canada”, broadly defined as “any activity that undermines the sovereignty, security or territorial integrity of Canada or threatens the lives or the security of people in Canada or of any individual who has a connection to Canada” (p. 123). The policy specifies that government agents are permitted to disclose information if it is determined that “the disclosure will contribute to the exercise of the recipient institution’s jurisdiction, or the carrying out of its responsibilities...in respect of activities that undermine the security of Canada” (p. 125). In other words, the decision to disclose this information is subject to the discretionary judgement of various government officials, who must simply determine that the information is relevant to the “jurisdiction” or “responsibilities” of a governmental institution with respect to broadly defined “activities that undermine the security of Canada” (p. 125). Thus, although Bill C-59 establishes additional structures of oversight and review designed to regulate these extensive information sharing and surveillance practices, the policy maintains that these measures are necessary to identify, preempt, and counteract terrorist threats, or “activity that undermines the security of Canada” more broadly.

Bill C-59 also introduces a series of amendments designed to restrict the preemptive anti-terrorist measures mobilized by Bill C-51, through which government agents are

authorized to preventatively detain or impose governmental regulations on the conduct of persons determined to constitute potential threats to public safety and national security. Specifically, Bill C-51 authorizes the enforcement of governmental regulations on the conduct of suspected persons when a government agent “believes on reasonable grounds that a terrorist activity may be carried out” and “suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is likely to prevent the carrying out of the terrorist activity” (Parliament of Canada, 2015, p. 36). However, Bill C-59 amends the policy text of Bill C-51, authorizing the imposition of these governmental regulations when a government agent “suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is necessary to prevent the carrying out of the terrorist activity” (Parliament of Canada, 2017, p. 140). Moreover, while Bill C-51 authorizes the preventative detainment of persons designated as potential threats to national security when a government agent “suspects on reasonable grounds that the detention of the person in custody is likely to prevent a terrorist activity” (Parliament of Canada, 2015, p. 30), Bill C-59 amends the policy, authorizing preventative detainment when a government agent “suspects on reasonable grounds that the detention of the person in custody is necessary to prevent a terrorist activity” (Parliament of Canada, 2017, p. 140). To this end, through the substitution of the word “necessary” for “likely”, Bill C-59 raises the evidentiary thresholds for the deployment of these preemptive anti-terrorist measures. Despite these amendments, however, the decision to preventatively detain or impose governmental regulations on the conduct of suspected persons is subject to the discretion of government agents, who must simply suspect on “reasonable grounds” that these measures are necessary to preempt or forestall potential terrorist threats.

Moreover, while Bill C-51 authorizes the enforcement of governmental regulations on the conduct of suspected persons when a government agent “fears on reasonable grounds that another person may commit a terrorism offence” (Parliament of Canada, 2015, p. 35), Bill C-59 fails to amend this exceptionally low evidentiary threshold for the mobilization of these preemptive anti-terrorist measures established by the policy. Further, while Bill C-51 extends the possible duration of preventative detention for persons determined to constitute threats to national security from three to seven days, Bill C-59 does not establish limitations on this period of detention. Similarly, Bill C-59, like Bill C-51, fails to establish regulations on the conditions under which persons designated as threats to national security can be detained, thus withdrawing legal protections from these detained persons. Critically, during the formulation of Bill C-59, an amendment to the policy explicitly specifying that persons targeted for preventative detainment would retain the right to habeas corpus and legal counsel was rejected. Consequently, despite the amendments introduced by Bill C-59, persons subject to detainment are denied legal rights and protections, including the right to habeas corpus and fair trial procedures. To this end, Bill C-59 fails to establish effective limitations on the preemptive anti-terrorist measures and security mechanisms deployed by Bill C-51.

Additionally, Bill C-59 introduces several amendments to the *Canadian Security Intelligence Service Act*, which was revised by Bill C-51 to authorize CSIS agents to engage in preemptive anti-terrorism and counterterrorism operations, including extralegal acts that violate the *Canadian Charter of Rights and Freedoms* and other national and international laws, ostensibly in order to disrupt or counteract potential threats to national security. Specifically, Bill C-59 maintains that these anti-terrorism and counterterrorism measures implemented by Bill C-51 are necessary for “the protection of Canada’s

national security and of the security of Canadians”, but stresses that these measures must be consistent with the legal safeguards established by the *Canadian Charter of Rights and Freedoms*, stating that, when engaging in these operations, CSIS must “perform its duties and functions in accordance with the rule of law and in a manner that respects the *Canadian Charter of Rights and Freedoms*” (Parliament of Canada, 2017, p. 92).

Consequently, the policy states that these anti-terrorist measures deployed by CSIS agents must be “reasonable and proportional in the circumstances, having regard to the nature of the threat, the nature of the measures, the reasonable availability of other means to reduce the threat and the reasonably foreseeable effects on third parties” (p. 108). To this end, Bill C-59 establishes several critical restrictions on the conduct of CSIS agents when engaging in these preemptive anti-terrorism and counterterrorism measures. In particular, the policy states that, when engaging in these operations, CSIS agents are not permitted to “subject an individual to torture or cruel, inhuman or degrading treatment or punishment”, to “detain an individual”, or to “cause the loss of, or any serious damage to, any property if doing so would endanger the safety of an individual” (p. 109). Further, the policy reiterates that, when engaging in these anti-terrorist measures, CSIS agents are not permitted to engage in acts that involve “causing, intentionally or by criminal negligence, death or bodily harm to an individual”, “wilfully attempting in any manner to obstruct, pervert or defeat the course of justice”, or “violating the sexual integrity of an individual” (p. 114). Despite these amendments, however, Bill C-59, like Bill C-51, permits the government to issue warrants authorizing CSIS agents to engage in extralegal activity, including acts that violate the *Canadian Charter of Rights and Freedoms* or any other law within or outside of Canada, in order to disrupt potential threats to national security. In particular, Bill C-59 states that, when engaging in these anti-terrorism operations, CSIS

agents are authorized to engage in multiple extralegal activities, including “interfering with the movement of any person” and “altering, removing, replacing, destroying, disrupting or degrading a communication or means of communication” (p. 118). Further, the policy states that CSIS agents are permitted to engage in activity that involves “fabricating or disseminating any information, record or document” or “interrupting or redirecting, directly or indirectly, any financial transaction” (p. 118). To this end, despite these interventions, Bill C-59 fails to establish effective restrictions on the mechanisms of anti-terrorism and counterterrorism deployed by Bill C-51, insofar as it authorizes CSIS agents to engage in extralegal anti-terrorism operations that violate the *Canadian Charter of Rights and Freedoms*, thus functioning to disrupt the normative operation of law.

Furthermore, Bill C-59 fails to impose limitations on the provisions established by the *Secure Air Travel Act* introduced by Bill C-51, through which government agents are authorized to engage in preemptive anti-terrorism and counterterrorism operations, including surveilling, detaining, and denying transportation to persons determined to constitute potential threats to air transportation security in order to prevent these suspected persons from engaging in terrorist activity. Moreover, while Bill C-51 amends the *Immigration and Refugee Protection Act* by expanding the capacity of the government to deploy security certificates, which authorize the surveillance, administrative detainment, deportation, and expulsion of non-citizens designated as potential threats to public safety and national security, Bill C-59 fails to establish restrictions on these invasive mechanisms of anti-terrorism and securitization deployed by the policy.

To this end, the emergence of Bill C-59 represents a significant intervention into the programs of anti-terrorism, counterterrorism, and securitization introduced through Bill C-51. Despite the amendments introduced by the policy, however, Bill C-59 fails to

establish effective restrictions on the invasive and exceptional anti-terrorist measures and security mechanisms deployed by Bill C-51. Bill C-59 establishes several limitations and constraints on the mechanisms of anti-terrorism implemented by Bill C-51, and introduces additional structures of oversight and review designed to regulate the governmental programs of anti-terrorism and securitization deployed by the policy. Notwithstanding these interventions, however, several of the invasive anti-terrorist measures and security mechanisms implemented by Bill C-51, including expansive regimes of surveillance, implicit and explicit forms of censorship, tactics of preventative detainment, and other extralegal counterterrorism measures, remain in effect. On the one hand, Bill C-59 maintains that these anti-terrorist measures are necessary to reinforce public safety and national security against urgent, proximate, and proliferating terrorist threats, stating that “a fundamental responsibility of the Government of Canada is to protect Canada’s national security and the safety of Canadians” (p. 1) against such threats. On the other hand, however, these anti-terrorist measures target bodies and populations designated as potential threats to national security for surveillance, imprisonment, detainment, deportation, expulsion, and other forms of governmental discipline and regulation enforced by the policy. To this end, the mechanisms of anti-terrorism and securitization deployed by both Bill C-51 and Bill C-59 function as biopolitical techniques of governance characterized by the right to “make live and to let die” (Foucault, 2003b, p. 241), simultaneously aiming to promote and foster the security, vitality, and productivity of the state population through regimes of ‘making live’, while targeting bodies and populations determined to constitute threats to national security for governmental discipline, regulation, and elimination through regimes of ‘letting die’. As Foucault (1978) observes, the emergence of such biopolitical techniques of governance,

which function to “*foster* life or *disallow* it to the point of death” (p. 138) through the deployment of disciplinary and regulatory governmental mechanisms, is characteristic of a fundamental reorientation in the operation of power at the end of the eighteenth century brought about by the subsumption of sovereign power and the emergence of biopower.

Chapter 2: Making Live, Letting Die: Anti-Terrorism, State Racism, and the Biopolitical Logic of Exception

Responding to the events of October 2014, during which Martin Couture-Rouleau killed one police officer with a vehicle before attacking several other police officers with a knife in Saint-Jean-sur-Richelieu, and Michael Zehaf-Bibeau subsequently shot and killed an unarmed guard near the National War Memorial in Ottawa before infiltrating the parliament buildings where he was killed by security forces, former Prime Minister Stephen Harper stated that “Canada will never be intimidated” by such attacks, which he explicitly condemned as acts of terrorism (Harper, 2014). However, in the period following these attacks, which was characterized by heightened conditions of danger and insecurity and the escalation of Canada’s national terrorism threat level, multiple government officials articulated imperatives for the deployment of anti-terrorist measures and security mechanisms in order to strengthen public safety and national security against future terrorist threats. Indeed, Harper later stated that the attacks were “a grim reminder that Canada is not immune to the types of terrorist attacks we have seen elsewhere around the world” (Harper, 2014). In turn, responding to the attacks of October 2014 in particular, and the ostensible proliferation of global terrorist threats in general, Harper stated that

this will lead us to strengthen our resolve and redouble our efforts and those of our national security agencies to take all necessary steps to identify and counter threats and keep Canada safe here at home, just as it will lead us to strengthen our resolve and redouble our efforts to work with our allies around the world and fight against the terrorist organizations who brutalize those in other countries with the hope of bringing their savagery to our shores. (Harper, 2014)

Following these attacks, Harper publicly introduced Bill C-51, the *Anti-terrorism Act, 2015*, by contending that the governmental programs of anti-terrorism and

securitization deployed by the policy were necessary measures in order to maintain and reinforce the security of the state population against terrorist threats, and threats to national security more broadly. Bill C-51 was therefore situated as a response to the enduring state of emergency and insecurity following the attacks of October 2014, within which multiple government officials warned of the urgency and immediate danger of emergent terrorist threats. Indeed, within this state of emergency, Harper stated that the threat of terrorism “is not a future possibility, it is a present reality”, and, in turn, insisted that “to fully protect Canadians from terrorism in response to evolving threats, we must take further action” (Harper, 2015). Thus, while Harper identified the imperative for the deployment of anti-terrorist measures and security mechanisms through the introduction of Bill C-51, he maintained that these measures would not disrupt the rule of law, and that they would remain consistent with the legal rights and protections established by the *Canadian Charter of Rights and Freedoms*. Indeed, Harper stated that “these new measures have been carefully chosen to be both strong and practical, to enhance our security in a way that strengthens our rights”, suggesting that “what Canadians understand is that their freedom and their security more often than not go hand in hand” (Harper, 2015). Yet, despite these claims, Bill C-51 introduces exceptional and extralegal mechanisms of anti-terrorism and securitization, including measures that violate the *Canadian Charter of Rights and Freedoms* and withdraw legal rights and protections, thus disrupting the normative operation of law. Thus, these exceptional techniques of governance mobilized by the policy operate under the auspices of security imperatives, insofar as they ostensibly function to reinforce public safety and national security against proliferating terrorist threats within the continuing state of emergency and insecurity that characterized the aftermath of the attacks of October 2014. To this end, the anti-terrorist

measures and security mechanisms deployed by Bill C-51 operate as biopolitical techniques of governance characterized by the right to “make live and to let die” (Foucault, 2003b, p. 241). Indeed, on the one hand, these measures are ostensibly oriented toward the revitalization and securitization of the Canadian state population through regimes of ‘making live’, while, on the other hand, they operate through targeting bodies and populations designated as threats to national security for surveillance, detainment, expulsion, and other forms of governmental discipline and regulation that constitute regimes of ‘letting die’.

This chapter begins by tracing the figure of the terrorist threat as it is discursively produced through the policy text of Bill C-51, as well as the governmental discourses surrounding its formulation and enactment. While this figure of the terrorist threat is occasionally explicitly articulated — as in Harper’s statement that “jihadist terrorism is not a future possibility, it is a present reality” (Harper, 2015) after the attacks of October 2014 — it is often elided or remains unarticulated throughout anti-terrorism discourses and security imperatives, as in the imprecise and generalized references to “activity that undermines the security of Canada” within the policy text of Bill C-51, or the broad gestures toward the undefined threat of “terrorism” throughout the parliamentary debates and governmental discourses preceding the enactment of the policy. To this end, these discourses of threat are constitutive of what Massumi (2011) refers to as the generalized crisis environment, which is characterized by enduring conditions of heightened danger and insecurity in the context of urgent and immediately dangerous yet indeterminate and unknowable threat. Indeed, Massumi observes that the generalized crisis environment is defined by the “suddenly irrupting, locally self-organizing, systematically self-amplifying threat of large-scale disruption” (p. 20), a form of threat which he suggests is

simultaneously indiscriminate and indiscriminable. Specifically, within the policy text of Bill C-51 and the governmental discourses surrounding its introduction, terrorist threats, and “activity that undermines the security of Canada” in general, are represented as urgent and imminently dangerous yet indeterminate threats to public safety and national security; thus, these discourses function to constitute an indefinite state of insecurity, which Massumi suggests is symptomatic of the generalized crisis environment. Moreover, this chapter will trace the production of a generalized crisis environment through the government’s deployment of the national terrorism threat level spectrum, which purports to “identify risks and vulnerabilities from threats, and in turn determine what responses may be needed to prevent or mitigate a violent act of terrorism” (Government of Canada, 2019). Specifically, the national terrorism threat level was raised from ‘low’ to ‘medium’ immediately following the attacks of October 2014, indicating that “a violent act of terrorism could occur”, and thus signalling heightened conditions of vulnerability and insecurity in the context of reportedly proliferating terrorist threats following the attacks (Government of Canada, 2019). To this end, through discursively producing the indiscriminate and indiscriminable figure of the terrorist threat, Bill C-51 and the national security discourses surrounding its formulation and enactment function to constitute an environment of generalized threat and insecurity, and, in turn, legitimize the deployment of the preemptive anti-terrorist measures and security mechanisms introduced by the policy.

Moreover, this chapter contends that Bill C-51 is both constituted by and constitutive of a state of exception, insofar as it mobilizes exceptional and extralegal techniques of governance which operate under the auspices of security imperatives within the state of emergency following the attacks of October 2014. As Agamben (2005)

observes, the state of exception emerges within indefinite states of emergency and crisis, through which the mobilization of exceptional techniques of governance and emergency security procedures, which ostensibly aim to maintain national security and preserve the juridical order, leads to the gradual suspension of the normative operation of law and the dissolution of legal safeguards. Consequently, Agamben suggests that the emergence of the state of exception signals “the transformation of provisional and exceptional measures into a technique of government”, observing that “the state of exception tends increasingly to appear as the dominant paradigm of government in contemporary politics” (p. 2). Specifically, the introduction of Bill C-51 was situated as a response to the heightened conditions of danger and insecurity following the attacks of October 2014, within which multiple government officials declared imperatives for anti-terrorism efforts and securitization. Yet, within this state of emergency, Bill C-51 mobilizes exceptional and extralegal techniques of governance, including measures that are inconsistent with the legal rights and protections established by the *Canadian Charter of Rights and Freedoms* in particular, and Canadian and international laws more broadly, thus effectively suspending the normative operation of law. In particular, Bill C-51 introduces several exceptional mechanisms of anti-terrorism and securitization, including regimes of mass surveillance, tactics of preventative detainment, programs of deportation and expulsion, censorship practices, including measures that function to suppress resistance and dissent, and other extralegal governmental operations. Further, Bill C-51 establishes exceptionally low evidentiary thresholds for the mobilization of these anti-terrorist measures, while expanding the discretionary capacity of government officials to deploy these measures in circumstances in which they determine on “reasonable grounds” that they are necessary to preempt or counteract potential threats to public safety and national security.

Consequently, these anti-terrorist measures and security mechanisms deployed by the policy are “determined by discretionary judgments that function within a manufactured law or that manufacture law as they are performed” (Butler, 2004, p. 58), insofar as they are subject to the informal conjecture and subjective determination of government officials who are authorized to disrupt or suspend normative legal procedures. Moreover, Bill C-51 explicitly authorizes government agents to engage in extralegal anti-terrorism and counterterrorism operations, including measures that violate the *Canadian Charter of Rights and Freedoms* in particular, and international legal frameworks in general, in order to disrupt and counteract potential threats to national security. To this end, through tracing these exceptional and extralegal techniques of governance, which function to subvert the rule of law and withdraw legal rights and protections while operating under the auspices of security imperatives, this chapter contends that the introduction of Bill C-51 within the state of emergency and crisis following the attacks of October 2014 signals the production of a state of exception.

States of Insecurity and the Discursive Construction of Threat

Following the attacks of October 2014, during which Martin Couture-Rouleau killed one police officer and injured another with a vehicle before attacking several police officers with a knife, and Michael Zehaf-Bibeau subsequently shot and killed an unarmed guard outside of the parliament buildings in Ottawa before being killed by security forces, the Government of Canada immediately raised its national terrorism threat level from ‘low’ to ‘medium’, citing an increased risk of imminent yet indeterminate and unspecified terrorist threats to the safety of the population and national security more broadly. The national terrorism threat level remained at ‘medium’ indefinitely following the attacks,

signalling enduring concerns and fears related to these threats within governmental and public imaginaries. Several months later, former Prime Minister Stephen Harper publicly introduced Bill C-51, the *Anti-terrorism Act, 2015*, ostensibly as a response to the state of perceived emergency and insecurity following the attacks, by stating that the policy was a necessary mechanism to “protect Canadians from terrorism” (Harper, 2015). Harper continued,

jihadist terrorism is not a future possibility, it is a present reality. Violent jihadism is not just a danger somewhere else, it seeks to harm us here in Canada, in our cities and in our neighbourhoods, through horrific acts, like deliberately driving a car at a defenceless man, or shooting a soldier in the back as he stands on guard at a war memorial. (Harper, 2015)

Here, Harper explicitly identifies the imminence and perpetuity of the terrorist threat as a “present reality” that “seeks to harm us here in Canada”, while specifically citing the attacks committed by Couture-Rouleau and Zehaf-Bibeau, respectively, to foreground the proximity and urgency of these threats. However, while Harper specifically cites these attacks, he also invokes the future potentiality of indeterminate and unknowable terrorist threats, which he broadly suggests aim to undermine national security and target the population for systematic attack. In turn, Harper stresses the imperative for the mobilization of preemptive governmental mechanisms of anti-terrorism and securitization designed to counteract these unspecified threats while fostering the security, vitality, and wellbeing of the population. Indeed, “to fully protect Canadians from terrorism in response to evolving threats”, Harper declares, “we must take further action” (Harper, 2015). While the specific nature of these anticipated and feared threats remains unarticulated, Harper consistently foregrounds their imminently dangerous, emergent, and violent capacities, and consequently stresses the imperative for preemptive governmental intervention to prevent these indeterminate and undefined threats before they occur.

Toward this end, Harper concludes that “it would be a grave mistake to ignore their threats” (Harper, 2015). Several months later, following its enactment, the policy text of Bill C-51 reiterated these imperatives for preemptive governmental intervention and securitization in the context of ostensibly imminent and proliferating terrorist threats by stressing the urgency of deploying governmental mechanisms of anti-terrorism “in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (Parliament of Canada, 2015, p. 2).

To this end, the discourses of threat surrounding the formulation and enactment of Bill C-51 are constitutive of what Massumi (2011) refers to as the generalized crisis environment, characterized by an extended state of perceived insecurity and instability in the context of the indeterminate and unspecified yet perpetually and imminently dangerous figure of threat. As Massumi explains,

This is the figure of today’s threat: the suddenly irrupting, locally self-organizing, systematically self-amplifying threat of large-scale disruption. This form of threat is not only indiscriminate; coming anywhere, as out of nowhere, at any time, it is also indiscriminable. Its continual microflapping in the background makes it indistinguishable from the general environment, now one with a restless climate of agitation. Between irruptions, it blends in with the chaotic background, subsiding into its own preamplified incipience, already active, still imperceptible. (p. 20)

Here, Massumi suggests that the contemporary figure of threat is indeterminate and indistinguishable from perpetual conditions of perceived insecurity and susceptibility within the generalized crisis environment. Indeed, the widespread prevalence of such indiscriminate and indiscriminable threats, Massumi posits, reveals the “normality of the generalized crisis environment” (p. 20). In this regard, Massumi observes that within the generalized crisis environment, the perception of threat is naturalized as an everyday cultural phenomenon, and, consequently, “the ubiquity of the indiscriminate threat is transduced into an emergent global order” (p. 34). Importantly, within this generalized

environment of threat, Massumi contends that “uncertainty truly determines a threat, prior to any elaboration, to be a potential national security concern”, observing that “in a crisis-prone environment, threat is endemic, uncertainty is everywhere” (p. 21). Here, Massumi suggests that, within the generalized crisis environment, this figure of indeterminate threat is not necessarily associated with any materialization or emergence of violence, danger, or insecurity; rather, the future possibility and emergent capacity of the indiscriminate and indiscriminable figure of threat gives rise to enduring national security concerns. This figure of threat, then, is “formless and contentless”: as Massumi observes, “post 9/11, governmentality has molded itself to *threat*. A threat is unknowable. If it were known in its specifics, it wouldn’t be a threat” (2005, p. 35). Accordingly, Massumi posits that “a threat is only a threat if it retains an indeterminacy” (p. 35). To this end, the figure of threat is virtual, immaterial, and indeterminate, yet functions to constitute a generalized crisis environment characterized by perceived insecurity and fear, and, in turn, legitimizes preemptive governmental intervention.

Despite the indeterminacy and virtuality of this figure of threat, however, Massumi suggests that it is manifest in the fear and insecurity that characterize the generalized crisis environment. Indeed, Massumi observes that “threat does have an actual mode of existence: fear, as foreshadowing. Threat has an impending reality in the present. This actual reality is affective” (2010, p. 54). Within the generalized crisis environment, then, the virtual and indeterminate figure of threat constitutes affective conditions of fear, susceptibility, and insecurity, which in turn legitimize the deployment of preemptive governmental mechanisms of intervention in order to forestall and counteract this perceived threat. This production of an affective state of fear and insecurity, Massumi suggests, “saves threat from having to materialize as a clear and present danger — or

even an emergent danger — in order to command action” (p. 55). Indeed, Massumi contends that within the generalized crisis environment, “any action taken to preempt a threat from emerging into a clear and present danger is legitimated by the affective fact of fear, actual facts aside” (p. 54). In this regard, the indeterminate and unknowable figure of threat, which is not necessarily connected to any observable conditions of danger or insecurity, is discursively constituted as a governmental tactic of fostering affective conditions of fear and vulnerability, and, in turn, legitimizing the deployment and expansion of preemptive governmental powers. To this end, Massumi observes that “preemption’s logical regress from actual fact makes for a disjointedness between its legitimating discourse and the objective content of the present context, which its affirmations ostensibly reference” (p. 55). In other words, Massumi posits that within the affective state of perpetual fear that characterizes the generalized crisis environment, the mobilization of preemptive governmental powers is legitimized as an ostensible response to the indeterminate figure of threat, despite the absence of any objective or material conditions of threat or insecurity. Consequently, within the generalized crisis environment, the figure of the imminently dangerous yet indeterminate and unspecified threat is discursively produced in order to legitimize the mobilization of preemptive mechanisms of governance, including invasive programs of anti-terrorism, counterterrorism, and securitization.

Throughout the parliamentary debates and governmental discourses surrounding the formulation and enactment of Bill C-51, which occurred within the state of insecurity following the attacks of October 2014, government officials consistently stressed the immediate danger of proliferating yet indeterminate terrorist threats, thus discursively constituting a generalized crisis environment, and, in turn, justifying the anti-terrorist

measures and security mechanisms enforced by the policy. Indeed, during his public introduction of Bill C-51, former Prime Minister Stephen Harper stated that “over the last few years, a great evil has been descending upon our world, an evil which has been growing more and more powerful: violent jihadism”, and subsequently contended that “jihadist terrorism, as it is evolving, is one of the most dangerous enemies our world has ever faced” (Harper, 2015). Harper proceeded by stressing the urgency and imminent danger of these terrorist threats, stating that “jihadist terrorism is not a future possibility, it is a present reality”, and insisting that “through their deeds, these jihadists have declared war on Canada and with their words they urge others to join their campaign of terror against Canadians” (Harper, 2015). During the parliamentary debates preceding the enactment of Bill C-51, multiple government officials similarly invoked a state of emergency by suggesting that terrorist threats, broadly characterized as “jihadist terrorism”, “the international jihadist movement”, or agents of ISIS, have declared war on the Canadian state, following Harper’s assertion that “violent jihadism is not a human right, it is an act of war” (Harper, 2015). Indeed, former Minister of Public Safety and Emergency Preparedness Steven Blaney stated that “the international jihadist movement has declared war on Canada and our allies...terrorists are targeting Canadians simply because they despise our society and the values it represents” (House of Commons, 2015 February 18, p. 11360), and another government official subsequently stated that “the international jihadist movement has declared war on Canada...Canadians are being targeted by these terrorists simply because these terrorists hate our society and the values it represents. Jihadi terrorism is not a human right; it is an act of war” (House of Commons, 2015 May 5, p. 13441).

Throughout the parliamentary debates preceding the enactment of Bill C-51, multiple government officials subsequently reiterated the urgency and immediate danger of these proliferating terrorist threats within this state of emergency and insecurity that characterized the aftermath of the attacks of October 2014. Indeed, referring explicitly to the attacks of October 2014, one government official stated that “the threat environment we face in Canada today has escalated considerably from what it used to be. We have seen the recent ISIS-inspired acts of terror against soldiers in Saint-Jean-sur-Richelieu and here in Ottawa...we all lived through the shooting on Parliament Hill on October 22, 2014” (House of Commons, 2015 May 5, p. 13454), while another government official stated that “rarely a week goes by without some kind of terrorist attack or incident inspired by the Islamic state somewhere in the world against those they have identified as targets, many of which are outside of what might be called the conflict area” (House of Commons, 2015 February 19, p. 11394). In turn, this government official asserted that “we are living in an era when threats continue to escalate and continue to change” (p. 11395), and another government official contended that “the pace, the barbarity and the culture of this terrorism is growing at a rate that is alarming” (House of Commons, 2015 February 23, p. 11554) within what was later referred to as the “ever-evolving global terrorism climate” (p. 11508). As one government official explained, “the jihadi terrorist threat to Canada has never been as direct and immediate as it is today...Canada and most of our close allies have been directly impacted by the scourge of terrorism” (House of Commons, 2015 May 4, p. 13368). Similarly, referring to these heightened conditions of danger and insecurity in the aftermath of the attacks of October 2014, one government official stated that

we find that the world we live in today is a dark and dangerous place. This was most brutally demonstrated by last October's attacks in Ottawa and in Saint-Jean-sur-Richelieu. We are not immune to the threat of terrorism, nor are our allies. We have tragically seen this in Paris, Sydney, and Copenhagen, beacons of western civilization struck by jihadist terrorists. Let us make no mistake: the international jihadist movement has declared war on Canada and her allies. (House of Commons, 2015 February 19, p. 11405)

Consequently, referring to these proliferating terrorist threats, another government official stated that "activities that undermine the security of Canada are often carried out in a clandestine, deceptive, or hostile manner, and are increasingly global, complex, and sophisticated. They often emerge and evolve rapidly", and insisted that "we need to be sure that our security forces can also adapt and react rapidly and do what we need to do to counter these threats" (House of Commons, 2015 April 24, p. 12983).

In turn, multiple government officials stressed the urgency, proximity, and violent capacity of these terrorist threats within this continuing state of emergency and insecurity. As one government official stated, "the international jihadi movement has declared war on Canada and its allies...these jihadi terrorists want to kill every westerner. Every Canadian is on their hit list" (House of Commons, 2015 May 5, p. 13483). Another government official asserted that "the radical jihadists declared war on this country, Canada. If there is one thing we can count on terrorists to do, that is to keep their word. They said they are coming to the west to drink our blood" (p. 13485). Moreover, in a communication to German Chancellor Angela Merkel following the attacks committed by Michael Zehaf-Bibeau in October 2014, Stephen Harper insisted that "one of the jihadist monster's tentacles reached as far as our own parliament" (Forcese & Roach, 2015, p. 86). Thus, throughout these discourses, government officials consistently highlighted the immediate danger and violent capacities of these terrorist threats, yet the specific nature of these threats remained unarticulated. As Massumi (2011) has observed, this

indeterminate and undefined figure of threat is symptomatic of the generalized crisis environment, within which “uncertainty truly determines a threat, prior to any elaboration, to be a potential national security concern” (p. 21). To this end, throughout the parliamentary debates surrounding the formulation and enactment of Bill C-51 in the aftermath of the attacks of October 2014, multiple government officials invoked the urgency and immediate danger of these indeterminate terrorist threats in order to discursively constitute a state of emergency and insecurity, and, in turn, articulated imperatives for the deployment of anti-terrorist measures and security mechanisms through the introduction of the policy.

The policy text of Bill C-51 similarly represents terrorists threats, and “activity that undermines the security of Canada” more broadly, as urgent, proximate, and imminently dangerous, thus functioning to discursively constitute a generalized crisis environment, and, in turn, legitimize the deployment of expansive governmental programs of anti-terrorism, counterterrorism, and securitization. Specifically, Bill C-51 expands previous legislative frameworks of anti-terrorism through the establishment of exceptionally broad and imprecise definitions of terrorist activity, thus producing a generalized environment of threat and insecurity. Indeed, throughout the policy text, the terrorist threat is rendered as a perpetually dangerous yet indeterminate and unspecified force that aims to undermine public safety and national security and target the state population for systematic attack. While the specific mechanisms through which these threats ostensibly aim to undermine national security remain unspecified throughout the policy text, Bill C-51 foregrounds their imminently dangerous, emergent, and violent capacities, thus constituting a state of indefinite insecurity and fear. Consequently, the policy posits the imperative for preemptive governmental intervention through the mobilization anti-

terrorist measures and security mechanisms in order to reinforce the ostensibly vulnerable and insecure population against these indeterminate threats. To this end, through the discursive construction of the imminently dangerous yet indeterminate figure of the terrorist threat and the production of a generalized crisis environment, Bill C-51 legitimizes the deployment and expansion of preemptive anti-terrorism and counterterrorism measures which operate under the auspices of security imperatives. Indeed, the policy identifies the imperative for preemptive governmental intervention, stating that “there is no more fundamental role for a government than protecting its country and its people”, and that, consequently, the deployment of anti-terrorist measures and security mechanisms is necessary “in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (Parliament of Canada, 2015, p. 2).

Throughout the policy text, this indeterminate figure of threat is consistently referred to with the expansive and generalized phrase “activity that undermines the security of Canada”, which constitutes an exceptionally broad and unprecedented framework of terrorist activity. Indeed, this establishes “a definition broader than any other definition of national security ever codified in Canadian law” (Forcese & Roach, 2015, p. 29). Specifically, the policy states that “activity that undermines the security of Canada” includes any activity that “undermines the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada” (Parliament of Canada, 2015, p. 3). Through the deployment of this expansive definition of “activity that undermines the security of Canada”, the policy constitutes a generalized environment of threat and insecurity, which is characterized by the ostensible proliferation of imminently dangerous yet unspecified activities determined to constitute threats to public safety and

national security. To this end, Bill C-51 presupposes the existence of urgent and proximate threats, and asserts that public safety and national security are susceptible to these threats, but does not explicitly specify the mechanisms or tactics through which these threats ostensibly aim to undermine the “sovereignty, security or territorial integrity of Canada” or “the lives or the security of the people of Canada” (p. 3).

While Bill C-51 discursively constitutes a state of emergency and insecurity characterized by the imminent danger and future potentiality of terrorist threats, these threats are rendered as indeterminate and unknowable throughout the policy text. Indeed, the policy does not explicitly identify what constitutes “activity that undermines the security of Canada”; rather, it broadly states that “activities that undermine the security of Canada are often carried out in a clandestine, deceptive or hostile manner, are increasingly global, complex and sophisticated, and often emerge and evolve rapidly” (p. 2). In this regard, while the figure of threat is rendered as emergent, hostile, and imminently dangerous, the specific mechanisms through which these threats ostensibly aim to undermine public safety and national security, as well as the specific persons and organizations implicated in these activities, are elided or remain unarticulated throughout the policy text. Indeed, rather than explicitly identifying the nature of this threat, the policy stresses its future potentiality, suggesting that the figure of threat is indeterminate and unknowable yet imminently dangerous, insofar as it holds the capacity to emerge suddenly, operate covertly, circulate globally, and, in turn, disrupt and undermine public safety and national security. This is characteristic of governmental alerts to threat within the generalized crisis environment, which Massumi (2010) suggests “may determine the generic identity of a potential threat, without specifically determining the actual identity of the objects involved” (p. 58). In this regard, this discursive construction of threat

through the deployment of the phrase “activity that undermines the security of Canada” within the policy text of Bill C-51 reflects Massumi’s characterization of the contemporary figure of threat as perpetually “self-organizing, self-amplifying, indiscriminate, and tirelessly agitating as a background condition, potentially ready to irrupt” (2011, p. 23) within the generalized crisis environment.

To this end, within this generalized environment of threat and insecurity, Bill C-51 functions to discursively constitute the figure of threat as an emergent, imminently dangerous, and active force that aims to disrupt and undermine national security and target the population for systematic attack. While the specific mechanisms through which these undefined and unspecified threats ostensibly aim to undermine public safety and national security are not explicitly articulated, the policy foregrounds their agentic capacities to emerge suddenly and operate violently and disruptively. Indeed, the policy posits that these threats operate in a “clandestine, deceptive or hostile manner” and “emerge and evolve rapidly” (Parliament of Canada, 2015, p. 2), and therefore constitute urgent and proximate threats to the security, vitality, and wellbeing of the population. Conversely, Bill C-51 discursively situates the Canadian population in a position of vulnerability and susceptibility, suggesting that it is systematically targeted by these indeterminate threats within this state of insecurity. Indeed, the policy text of Bill C-51 variously refers to “Canada”, “the security of Canada”, “Canada and its people”, “the sovereignty, security or territorial integrity of Canada”, and “the lives or the security of the people of Canada” as the targets of these indeterminate threats. To this end, Bill C-51 discursively constitutes a relationship between the state population and terrorist threats, through which these indeterminate threats are represented as active forces that aim to disrupt and undermine public safety and national security, while the population is

represented as a passive, vulnerable, and insecure target acted on by these undefined threats.

Specifically, through the deployment of the phrase “activity that undermines the security of Canada”, Bill C-51 discursively constitutes the figure of threat as an emergent and imminently dangerous yet indeterminate force that targets the population through covert, disruptive, and violent operations, while the population is relegated to a position of vulnerability and insecurity relative to these undefined threats. This is significant, insofar as the discursive construction of this process through which these indeterminate threats aim to target the ostensibly vulnerable population for attack is explicitly deployed by Bill C-51 to legitimize governmental intervention. Specifically, the policy identifies the imperative for preemptive governmental intervention in order to protect, reinforce, and secure the ostensibly vulnerable and insecure population against these imminently dangerous yet indeterminate threats. Indeed, the policy stresses that the extension of preemptive governmental mechanisms of anti-terrorism, counterterrorism, and securitization is necessary “in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada” (Parliament of Canada, 2015, p. 2). Prior to the enactment of Bill C-51, in the aftermath of the attacks of October 2014, Harper similarly stated that “recent terrorist attacks here and around the world show us that as the terrorists refine and adapt their methods, our police and national security agencies need additional tools and greater coordination”, and that “to fully protect Canadians from terrorism in response to evolving threats, we must take further action” (Harper, 2015), thus identifying the imperative for the deployment of anti-terrorist measures in order to reinforce public safety and national security. To this end, the invocation of the emergent and imminently dangerous yet indeterminate figure of the

terrorist threat functions as a discursive tactic through which the exceptional governmental mechanisms of anti-terrorism and securitization deployed through Bill C-51 are authorized and legitimized.

Moreover, Bill C-51 identifies multiple broadly conceptualized activities deemed to constitute “activity that undermines the security of Canada” within this generalized environment of threat and insecurity. Specifically, Bill C-51 designates “interference with critical infrastructure”, “interference with the global information infrastructure”, and “interference with the capability of the Government of Canada in relation to intelligence, defence, border operations, public safety, the administration of justice, diplomatic or consular relations, or the economic or financial stability of Canada” as activities that constitute threats to public safety and national security (Parliament of Canada, 2015, p. 3). Further, Bill C-51 designates any activity determined to constitute “changing or unduly influencing a government in Canada by force or unlawful means”, or any activity that “undermines the security of another state” (p. 3) as a threat to national security. Bill C-51 also designates “terrorism” as an activity that undermines the security of Canada, although the word “terrorism” remains undefined and unqualified, and the policy does not explicitly identify what constitutes terrorist activity within this framework. This generalized framework of threat is further expanded through the deployment of the exceptionally broad phrase “terrorism offences in general” throughout the policy text. In this regard, this framework of “activity that undermines the security of Canada” designates a broad range of activities as potential threats to public safety and national security, including activities determined to disrupt or undermine economic stability, critical infrastructure, border security, public health, military operations, and processes of governance. To this end, through the deployment of the phrase “activity that undermines

the security of Canada”, Bill C-51 effectively reframes the terrorist threat as a more broadly conceptualized threat to national security. Consequently, through the establishment of this expansive framework of “activity that undermines the security of Canada”, Bill C-51 functions to constitute a generalized crisis environment characterized by widespread and imminently dangerous yet indeterminate threats.

To this end, this figure of threat that is discursively produced through Bill C-51 is characterized as complex, multidimensional, and indeterminate, insofar as it potentially encompasses a broad range of activities determined to constitute threats to public safety and national security. In this regard, this indeterminate figure of threat is symptomatic of the complex and systemic environment of indiscriminate and indiscriminable threat that Massumi (2011) suggests characterizes the generalized crisis environment. Indeed, Massumi observes that within the generalized crisis environment, “the overall environment of life now appears as a complex, systemic threat environment”, where threat “irrupts without warning, coming from any direction, following any path through the increasingly complex and interconnected world” (p. 22-23). In this regard, Massumi suggests that the contemporary figure of threat necessarily transcends categorization within any particular system, instead circulating throughout systems and constituting a generalized environment of totalizing threat with “pansystemic reach” and the capacity to produce “pansystemic disruption” (p. 26). As Massumi observes, “the complexity of the interdependency among the changing climate system, the food supply system, the energy supply system, social systems, national governments, their respective legal systems, and military-security apparatuses is an increasingly preoccupying case in point” (p. 22) of this systemic and global environment of indeterminate threat that is characteristic of the generalized crisis environment. Indeed, Massumi contends that “if indiscriminate threat

could be categorized...it would not be indiscriminate” (p. 24).

Within Bill C-51, this indeterminate and systemic figure of threat is rendered as “increasingly global, complex and sophisticated” (Parliament of Canada, 2015, p. 2), insofar as it transcends and blurs the distinctions between multiple systems, ostensibly aiming to undermine and disrupt economic stability, critical infrastructure, border security, public health, military activity, and processes of governance. Consequently, Bill C-51 identifies the imperative for preemptive governmental intervention through the mobilization of anti-terrorist measures and security mechanisms that involve the coordination of multiple governmental institutions with mandates broadly related to national security, including institutions concerned with governing public health, immigration and border controls, financial regulation, and military activity. Indeed, Bill C-51 states that “protecting Canada and its people against activities that undermine the security of Canada often transcends the mandate and capability of any one Government of Canada institution” (p. 2) within this generalized crisis environment. To this end, Bill C-51 deploys mechanisms of anti-terrorism and securitization that involve the coordinated activity of multiple governmental institutions, ostensibly as a means to preempt, counteract, and disrupt these complex, systemic, and indeterminate threats to national security. Specifically, Bill C-51 mobilizes preemptive anti-terrorist measures and security mechanisms, including expansive regimes of surveillance and information sharing among CSIS, the RCMP, the CSE, and multiple other governmental institutions with mandates broadly related to national security, aiming to “encourage and facilitate information sharing between Government of Canada institutions”, and stating that “information needs to be shared — and disparate information needs to be collated — in order to enable the Government to protect Canada and its people against activities that undermine the

security of Canada” (p. 1-2) within this systemic and totalizing environment of threat that is characteristic of the generalized crisis environment.

The discursive constitution of the generalized crisis environment, which is characterized by perpetual and imminently dangerous yet indeterminate threats, is also evident in the government’s deployment of the national terrorism threat level spectrum, which ostensibly functions to “identify risks and vulnerabilities from threats, and in turn determine what responses may be needed to prevent or mitigate a violent act of terrorism in Canada” (Government of Canada, 2019). The national terrorism threat level consists of a colour-coded spectrum identifying the varying degrees of danger that terrorist threats are determined by the government to constitute to public safety and national security. These degrees of danger range from ‘very low’, represented by pale orange and signalling that a “violent act of terrorism is highly unlikely”, to ‘critical’, represented by bright orange and signalling that “a violent act of terrorism is highly likely and could occur imminently” (Government of Canada, 2019). Immediately following the attacks of October 2014, the terrorism threat level was raised from ‘low’ to ‘medium’, where it has remained indefinitely, indicating that “a violent act of terrorism could occur”, and that additional security measures have been implemented (Government of Canada, 2019). Insofar as it identifies varying degrees of threat ranging from ‘very low’ to ‘critical’, the terrorism threat level spectrum forecloses the possibility of conditions of safety and security and the total absence of threat. Indeed, while the spectrum indicates that terrorist threats fluctuate in intensity, it holds that these threats are perpetually present within an indefinite state of danger and insecurity. Consequently, the spectrum posits that “regardless of threat level, Canadians should always remain alert to the danger of terrorism” (Government of Canada, 2019). To this end, as Massumi (2005) has observed,

writing of the United States terror alert system, “‘safe’ doesn’t even merit a hue. Safe, it would seem, has fallen off the spectrum of perception. Insecurity, the spectrum says, is the new normal” (p. 31). Further, within this normalized state of danger and insecurity, the terrorism threat level spectrum signals that preemptive security measures are deployed regardless of the intensity of threat, stating that in environments of ‘medium’ threat, “additional measures are in place to keep Canadians safe”, while in environments of ‘critical’ threat, “exceptional measures are in place to keep Canadians safe” (Government of Canada, 2019). Indeed, the terrorism threat level spectrum is predicated on the assumption that “the ever-changing nature of the threat environment means that Canada must remain continually vigilant”, thus foregrounding the imperative for the continual deployment of preemptive anti-terrorist measures and security mechanisms (Government of Canada, 2019). In this regard, the national terrorism threat level spectrum is constitutive of an indefinite and normalized state of insecurity characterized by perpetual and imminently dangerous yet indeterminate threats.

To this end, the deployment of the national terrorism threat level spectrum functions as a biopolitical tactic of governance that aims to affectively modulate and regulate public fear and anxiety within this state of emergency and insecurity. Through the discursive constitution of the urgent and imminently dangerous yet indeterminate figure of threat, the terrorism threat level spectrum engenders an affective state of fear and vulnerability throughout the population. As Massumi (2005) observes, the terrorism threat level spectrum thus functions as a “perceptual focal point for the spontaneous mass coordination of affect” (p. 33). Indeed, the governmental deployment of the terrorism threat level spectrum, Massumi contends, operates through “the habituation of the viewing population to affect modulation as a governmental media-function” (p. 34-35).

While the figure of threat constituted by the spectrum is indeterminate and undefined, it functions as what Massumi refers to as an “activation contour” (p. 32), insofar as it induces an affective state of fear and insecurity, and consequently elicits affective responses from bodies and populations that are subject to governmental control and regulation. Indeed, through raising the intensity of the terrorism threat level, the government holds the capacity to modulate and calibrate this affective state of fear, and, in turn, regulate the conduct of the population. To this end, Massumi observes that the terrorism threat level spectrum functions through “the engraining in the bodies of the populace of anticipatory affective response to signs of fear even in contexts where one is clearly in no present danger”, a tactic of biopolitical governance that he suggests “significantly expands the purview of threat” (p. 40-41). In this regard, the intensification of the terrorism threat level functions to constitute an environment of generalized and indeterminate threat characterized by a heightened affective state of fear and susceptibility, despite the absence of any observable conditions of danger or insecurity.

Insofar as the terrorism threat level spectrum functions to produce this affective state of insecurity and fear that is symptomatic of the generalized crisis environment, it legitimizes the deployment and expansion of governmental mechanisms of anti-terrorism and securitization as an ostensible response to perceived threats. Indeed, the raising of the national terrorism threat level from ‘low’ to ‘medium’ in the aftermath of the attacks of October 2014 functioned to constitute a generalized environment of threat and insecurity through the regulation and modulation of this affective state of fear, thus legitimizing the mobilization of the invasive and exceptional programs of anti-terrorism, counterterrorism, and securitization introduced through Bill C-51. To this end, insofar as it functions to legitimize the deployment of exceptional mechanisms of governance, Massumi (2005)

contends that “this refocusing of government sign-action on complex affective modulation is a tactic of incalculable power” (p. 46).

Following Foucault’s (1972) conceptualization of discourse as both a series of texts and a system of knowledge production, Fairclough (1992) develops a three-dimensional approach to discourse analysis in order to trace the interrelationships between texts, the social, cultural, and political contexts within which these texts are produced, and the systems of knowledge and power that these texts are embedded within. Thus, Fairclough’s three-dimensional model of discourse analysis offers a methodological framework through which to examine the connections between the policy text of Bill C-51, the discursive practices through which the policy is produced, distributed, consumed, and interpreted, and the social practices, or systems of knowledge and power relations, within which the policy is situated. Specifically, through the establishment of an exceptionally broad framework of “activities that undermine the security of Canada”, which the policy suggests are “often carried out in a clandestine, deceptive or hostile manner, are increasingly global, complex and sophisticated, and often emerge and evolve rapidly” (Parliament of Canada, 2015, p. 2), the policy text of Bill C-51 foregrounds the urgency and proximity of terrorist threats, and designates a wide range of activities as potential threats to national security, thus signalling a significant departure from previously established definitions of ‘terrorism’ in Canadian anti-terrorism policy. However, as Fairclough (1992) observes, these textual shifts are connected to broader shifts in discursive and social practices. In particular, at the level of discursive practice, this definition of “activity that undermines the security of Canada” in the policy text of Bill C-51 was produced through the parliamentary debates preceding the enactment of the policy, which occurred within the state of insecurity following the attacks of October

2014, during which multiple government officials stressed the urgency and immediacy of terrorist threats and identified imperatives for preemptive governmental intervention and securitization. Further, this definition of “activity that undermines the security of Canada” is subject to the interpretation of government agents, who are authorized to designate a wide range of activities as potential threats to national security within the exceptionally broad framework established by the policy. Thus, at the level of social practice, Bill C-51 was formulated and enacted within the generalized crisis environment that emerged following the attacks of October 2014, which was characterized by enduring conditions of emergency and insecurity in the context of indiscriminate and indiscriminable threats. In other words, this generalized environment of threat and insecurity that characterized the aftermath of the attacks of October 2014 constituted the conditions of possibility for the emergence of Bill C-51. However, Bill C-51 also functions to reproduce this generalized crisis environment, insofar as it represents terrorist threats as urgent, dangerous, and indeterminate threats to public safety and national security, thus discursively constituting a state of emergency and insecurity.

Thus, through this discursive construction of the urgent, proximate, and imminently dangerous yet indeterminate figure of threat within the generalized crisis environment, Bill C-51, and the governmental discourses surrounding its formulation and enactment, function to authorize and legitimize the implementation and enforcement of invasive programs of anti-terrorism, counterterrorism, and securitization, which ostensibly aim to reinforce the security and vitality of the state population against these perceived threats. Indeed, throughout the discourses surrounding the introduction of Bill C-51, these ostensible threats to public safety and national security were consistently rendered as imminently dangerous yet unspecified forces that required urgent governmental

intervention and counteraction through the deployment of anti-terrorist measures and security mechanisms. Further, these discourses rendered the population as a vulnerable target of these indeterminate threats, and, in turn, identified imperatives for preemptive governmental intervention as a means to reinforce public safety and national security.

To this end, the mechanisms of anti-terrorism and securitization deployed by Bill C-51 operate through the biopolitical capacity to “make live and to let die” (Foucault, 2003b, p. 241), simultaneously targeting these perceived threats for identification, management, and elimination, while aiming to promote and foster the security, vitality, and wellbeing of the state population. Indeed, Foucault suggests that biopolitical techniques of governance, which ostensibly aim to extend communications, optimize health, and reinforce security as a means to promote and foster life, are predicated on the designation and elimination of perceived threats to the security, vitality, and normativity of state populations. To this end, Foucault suggests that biopolitical regimes of governance operate through the deployment of state racisms, which function to subdivide state populations through the identification of ostensible “threats, either external or internal, to the population and for the population” (p. 256) determined to constitute potential dangers to public safety and national security. Thus, Foucault observes that state racism 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” (p. 254). Consequently, biopolitics operates through targeting these perceived threats for governmental discipline, regulation, and elimination through regimes of ‘letting die’, while simultaneously aiming to reinforce the security and vitality of state populations through regimes of ‘making live’. In this regard, through the designation and elimination of ostensible threats to the state population, Foucault writes that state racism functions to

justify “the death-function in the economy of biopower by appealing to the principle that the death of others makes one biologically stronger insofar as one is a member of a race or a population, insofar as one is an element in a unitary living plurality” (p. 258). Mbembe (2003) similarly contends that within biopolitical regimes of governance, state racism operates through “the perception of the existence of the Other as an attempt on my life, as a mortal threat or absolute danger whose biophysical elimination would strengthen my potential to life and security” (p. 18). To this end, through the discursive construction of the imminently dangerous yet indeterminate figure of the terrorist threat and the production of a generalized crisis environment, Bill C-51 authorizes and legitimizes the deployment of preemptive anti-terrorist measures and security mechanisms which ostensibly function to reinforce public safety and national security, thus operating through a biopolitical logic of governance. However, within this generalized crisis environment, Bill C-51 mobilizes invasive and exceptional programs of anti-terrorism, counterterrorism, and securitization, including expansive regimes of surveillance and information sharing, tactics of preventative detainment, programs of deportation and expulsion, implicit and explicit forms of censorship, measures that function to suppress protest and resistance, and other extralegal techniques of governance that effectively suspend the normative operation of law within this state of emergency and insecurity that characterized the aftermath of the attacks of October 2014.

The State of Exception

During the formulation and enactment of Bill C-51, which occurred within this indefinite state of emergency and insecurity following the attacks of October 2014, the government consistently stated that it would not underreact to the heightened conditions

of danger and insecurity constituted by ostensibly proliferating terrorist threats. However, the government maintained that it would not overreact to these threats either. To this end, multiple government officials stressed the imperative for the implementation of additional governmental mechanisms of anti-terrorism, counterterrorism, and securitization, ostensibly as a means to preempt and counteract these indeterminate terrorist threats and reinforce the security and vitality of the population, but maintained that these measures must necessarily be consistent with the legal rights and protections afforded by the *Canadian Charter of Rights and Freedoms* in particular, and with Canadian and international laws more broadly. Indeed, in his public announcement of Bill C-51, former Prime Minister Stephen Harper declared that “recent terrorist attacks here and around the world have shown us that as the terrorists refine and adapt their methods, our police and national security agencies need additional tools and greater coordination”, and that “to fully protect Canadians from terrorism in response to evolving threats, we must take further action” (Harper, 2015). However, Harper maintained that the mechanisms of anti-terrorism and securitization deployed through Bill C-51 would not violate the normative operation of law or the rights and protections established through the *Canadian Charter of Rights and Freedoms*. Indeed, Harper stated that “these new measures have been carefully chosen to be both strong and practical, to enhance our security in a way that strengthens our rights”, asserting that “through judicial oversight, these measures will protect the constitutional rights of Canadians: the rights of speech, association, and religion, among others — rights that violent jihadists seek to destroy” (Harper, 2015). To this end, Harper contended that the programs of anti-terrorism and securitization introduced through Bill C-51, while reinforcing public safety and national security, would not impose limitations on legal rights and civil liberties, stating that “what Canadians

understand is that their freedom and their security more often than not go hand in hand” (Harper, 2015). This claim was reiterated by Steven Blaney, former Minister of Public Safety and Emergency Preparedness, who asserted that within Bill C-51, “there are robust safeguards in place to protect the liberties of Canadians”, contending that “there is no liberty without security” and that, consequently, “freedom and security go hand in hand” (House of Commons, 2015 February 18, p. 11363). The policy text of Bill C-51 similarly identifies the imperative for preemptive governmental intervention through the mobilization of programs of anti-terrorism and securitization in order to “enable the Government to protect Canada and its people against activities that undermine the security of Canada” (Parliament of Canada, 2015, p. 2). However, the policy states that these mechanisms of anti-terrorism and securitization are designed to be both “effective and responsible”, and must be deployed “in a manner that is consistent with the *Canadian Charter of Rights and Freedoms* and the protection of privacy” (p. 2).

Yet, the governmental programs of anti-terrorism, counterterrorism, and securitization deployed through Bill C-51 are unprecedented, and the policy functions to implement and enforce exceptional and invasive techniques of governance that violate the legal rights and protections afforded by the *Canadian Charter of Rights and Freedoms* in particular, and Canadian and international laws more broadly, thus effectively suspending the normative operation of law. Specifically, Bill C-51 authorizes the mobilization of various exceptional governmental mechanisms of anti-terrorism and securitization, including expansive regimes of information sharing and surveillance, tactics of preventative detainment, programs of deportation and expulsion, measures that function to suppress protest and resistance, and implicit and explicit forms of censorship, which operate under the auspices of emergency security measures. Further, Bill C-51 establishes

exceptionally low evidentiary thresholds for the mobilization of preemptive anti-terrorist measures, authorizing the deployment of these measures in situations in which government agents suspect “on reasonable grounds” that they are necessary to preempt or counteract potential threats to public safety and national security. Consequently, within the framework established through Bill C-51, the administration of these preemptive anti-terrorist measures is subject to the informal conjecture and discretionary judgement of various government officials. Critically, Bill C-51 also authorizes government agents to engage in extralegal anti-terrorism operations, including activities that systematically violate the *Canadian Charter of Rights and Freedoms* in particular, and Canadian and international laws in general, ostensibly in order to preempt, disrupt, or counteract potential threats to the security, vitality, and productivity of the population, and to national security more broadly.

To this end, through the deployment of these exceptional mechanisms of anti-terrorism and securitization, which function through the suspension of the rule of law and operate under the auspices of security imperatives, Bill C-51 is constitutive of what Agamben (2005) refers to as a state of exception. As Agamben explains, the state of exception emerges in extended periods of perceived crisis and insecurity in which exceptional techniques of governance and emergency security procedures, which are ostensibly deployed as a means to maintain the juridical order, gradually lead to the indefinite suspension of the normative operation of law and the withdrawal of legal rights and protections. To this end, Agamben observes that the state of exception operates through the “transformation of provisional and exceptional measures into a technique of government” (p. 2) within an indefinite state of perceived emergency or crisis. As Puar (2007) explains, for Agamben, the state of exception functions through “the sanctioned

and naturalized disregard of the limits of state juridical and political power through times of state crisis, a ‘state of exception’ that is used to justify the extreme measures of the state” (p. 3). Specifically, through the discursive construction of what Massumi (2011) refers to as the generalized crisis environment, which is characterized by an indefinite state of emergency and insecurity in the context of the ostensibly imminent yet indeterminate figure of threat, Bill C-51 both emerges within and functions to produce a state of exception, thus effectively suspending the normative operation of law and authorizing the deployment of emergency security procedures. Consequently, within this state of exception, the invasive and exceptional techniques of governance deployed through Bill C-51 are authorized and legitimized under the auspices of security imperatives, insofar as they ostensibly function to reinforce public safety and national security against these generalized and indeterminate threats.

Agamben (2005) theorizes the state of exception as a situation of perpetual emergency and imminent threat within which the normative operation of law is disrupted or suspended and emergency security procedures are mobilized. Specifically, Agamben suggests that the state of exception emerges when emergency security measures that ostensibly aim to defend or preserve the juridical order lead to the gradual dissolution of the rule of law in extended periods of perceived crisis. In turn, Agamben argues that provisional or exceptional security measures transform into normative techniques of governance, insofar as the perceived crises they ostensibly respond to are generalized or standardized within an indefinite state of emergency, or what Massumi (2011) refers to as a generalized crisis environment. Thus, Agamben (2005) notes that “one of the essential characteristics of the state of exception... shows its tendency to become a lasting practice of governance” (p. 7). To this end, Agamben suggests that the state of exception shows a

tendency to crystallize as a permanent and normative regime of governance, insofar as it functions to produce an indefinite state of emergency characterized by enduring threats, and consequently authorizes the deployment of emergency security measures and exceptional techniques of governance, ostensibly as a means to counteract these perceived threats. Insofar as the state of exception emerges as a normative technique of governance in the context of an indefinite state of crisis or emergency, Agamben (1998) writes that *“the state of exception thus ceases to be referred to as an external and provisional state of factual danger and comes to be confused with the juridical rule itself”* (p. 168). In this regard, Agamben (2005) contends that the state of exception becomes constitutive of the juridical order itself, writing that *“the declaration of the state of exception has gradually been replaced by an unprecedented generalization of the paradigm of security as the normal technique of government”* (p. 14). Thus, as Agamben writes, the state of exception

has continued to function almost without interruption from World War One, through fascism and National Socialism, and up to our own time. Indeed, the state of exception has today reached its maximum worldwide deployment. The normative aspect of law can thus be obliterated and contradicted with impunity by a governmental violence that — while ignoring international law externally and producing a permanent state of exception internally — nevertheless still claims to be applying the law. (p. 86-87)

To this end, Agamben observes that the state of exception, rather than emerging through the temporary or provisional suspension of the normative operation of law and restriction of legal rights and protections, operates as a permanent regime of governance and thus *“tends increasingly to appear as the dominant paradigm of government in contemporary politics”* (p. 2). In other words, as Agamben states, *“the state of exception has now*

become the rule” (p. 9).¹⁶

Insofar as it emerges in contexts of perceived crisis characterized by urgent and imminently dangerous yet indeterminate threats, Agamben suggests that the state of exception operates through the production of an indefinite state of emergency within which the normative operation of law is effectively suspended or disrupted and emergency security procedures are deployed. Indeed, Agamben observes that “the voluntary creation of a permanent state of emergency...has become one of the essential practices of contemporary states, including so-called democratic ones” (p. 2). To this end, Agamben contends that the production of a state of emergency and indeterminate threat, or what Massumi (2011) refers to as a generalized crisis environment, is foundational to the operation of the state of exception. Indeed, through the production of an environment of permanent emergency and indeterminate threat, the state of exception authorizes the deployment of exceptional techniques of governance which operate under the auspices of security imperatives. Thus, as Agamben (2005) explains, the state of exception operates through the production of “a situation in which the emergency becomes the rule, and the very distinction between peace and war (and between foreign and civil war) becomes impossible” (p. 22).¹⁷ To this end, Mbembe (2003) observes that within the state of

¹⁶ While Agamben (2005) traces the state of exception as it has emerged as the dominant paradigm of governance within Western legal systems, he fails to consider spaces of colonization as states of exception. Yet, as Mbembe (2003) observes, “the colony represents the site where sovereignty consists fundamentally in the exercise of a power outside the law” (p. 23). In turn, Mbembe insists that “the colonies are the location par excellence where the controls and guarantees of judicial order can be suspended — the zone where the violence of the state of exception is deemed to operate in the service of ‘civilization’” in conditions of “absolute lawlessness” (p. 24). For a consideration of the interrelationships between colonialism and the state of exception, see Mbembe (2003) and Weheliye (2014).

¹⁷ Agamben (2005) contends that the invocation of the state of war is a crucial tactic in the production of a state of exception, insofar as it functions to establish conditions of

exception, “power (and not necessarily state power) continuously refers and appeals to exception, emergency, and a fictionalized notion of the enemy” while simultaneously functioning to “produce that same exception, emergency and fictionalized enemy” (p. 16) as a means to legitimize the extension of exceptional mechanisms of governance. This discursive production of threat, Butler (2004) argues, is constitutive of the state of exception, insofar as it operates as “part of a broader tactic to neutralize the rule of law in the name of security”, whereby “the exceptional becomes established as a naturalized norm” (p. 67). Consequently, Butler suggests that the state of exception functions as “the occasion and the means by which the extra-legal exercise of state power justifies itself indefinitely, installing itself as a potentially permanent feature of political life” (p. 67). To this end, Agamben observes that the state of exception operates through the production of an indefinite state of emergency and crisis within which the rule of law is suspended and emergency security procedures are enforced. Thus, Agamben (2005) stresses that the emergence of the state of exception signals “an unprecedented generalization of the

indefinite crisis, threat, and insecurity, and, consequently, legitimizes the deployment of exceptional techniques of governance. Indeed, as Agamben explains, writing of the capacity of the American president to constitute a state of exception, “because the sovereign power of the president is essentially grounded in the emergency linked to a state of war, over the course of the twentieth century the metaphor of war becomes an integral part of the presidential political vocabulary whenever decisions considered to be of vital importance are being imposed” (p. 21). This invocation of the state of war as a means to establish a state of exception is evident in the declaration of what is commonly referred to as the ‘war on terror’ by former President George W. Bush on September 16, 2001 in the immediate aftermath of the September 11, 2001 attacks. More broadly, this metaphor of warfare has also been deployed throughout the discourse of the ‘war on drugs’ and the ‘war on poverty’. Former Prime Minister Stephen Harper similarly invoked the state of war during his public announcement of Bill C-51 on January 30, 2015, in which he declared that “through their deeds these jihadists have declared war on Canada and with their words they urge others to join their campaign of terror against Canadians”, and subsequently stated that “violent jihadism is not a human right, it is an act of war” (Harper, 2015), thus discursively constituting a state of exception, and, in turn, legitimizing the deployment of exceptional techniques of governance.

paradigm of security as the normal technique of government” (p. 14).

Within this indefinite state of emergency and indeterminate threat that characterizes the state of exception, Agamben contends that economic crises increasingly operate alongside generalized crises related to national security, public safety, and military activity as mechanisms that function to legitimize the deployment of exceptional techniques of governance which operate under the auspices of security imperatives. Indeed, Agamben observes that the operation of the state of exception is characterized by a “modern tendency to conflate politico-military and economic crises” (p. 15), whereby economic crises are designated as urgent threats to public safety and national security. Consequently, through the invocation of the perpetual threat of economic crises, in addition to political and military crises, the state of exception functions to constitute a permanent state of perceived emergency and, in turn, legitimize the deployment of exceptional techniques of governance. In other words, Agamben contends that the state of exception operates through establishing a “parallelism between military and economic emergencies” (p. 22), whereby the conflation of economic crises with urgent threats to public safety and national security functions to produce an indefinite state of emergency and insecurity within which the normative operation of law is effectively suspended and emergency security procedures are mobilized. Thus, as Agamben observes, “it is significant that military emergency has now ceded its place to economic emergency (with an implicit assimilation between war and economics)” (p. 13) within the state of exception. This conflation of economic crises with crises related to national security, warfare, and terrorism that characterizes the state of exception is evident in Bill C-51, which lists “interference with critical infrastructure” and “interference with...the economic or financial stability of Canada” alongside other threats, including “terrorism”,

“espionage, sabotage or covert foreign-influenced activities”, and the “proliferation of nuclear, chemical, radiological or biological weapons” within its exceptionally broad definition of “activity that undermines the security of Canada”, thus positing that these activities constitute equivalent threats to the security, vitality, and productivity of the state population, and to national security more broadly (Parliament of Canada, 2015, p. 3).

To this end, insofar as it establishes an indefinite state of generalized emergency, and authorizes the deployment of exceptional governmental mechanisms of anti-terrorism and securitization which function to disrupt the rule of law, Bill C-51 both emerges within and functions to produce a state of exception. Specifically, through the discursive construction of a generalized crisis environment, Bill C-51 functions to constitute a state of exception within which the normative operation of law is suspended, legal rights and protections are withdrawn, and emergency security measures are mobilized. Indeed, Massumi (2011) observes that the generalized crisis environment, which he refers to as a “condition of exception” (p. 40), is characterized by the operation of “arbitrarily invokable ‘exceptions’ to such civil guarantees as habeas corpus and the right to privacy” (p. 21). As he explains, “the state of emergency, turned everyday life condition, affords ample exceptional outs from such process encumberments as the international laws of war, internationally instituted human rights, and domestic civil liberties” (p. 40). To this end, within this permanent state of emergency, within which the rule of law is indefinitely suspended, Bill C-51 foregrounds the imperative for preemptive governmental intervention through the mobilization of emergency security procedures, ostensibly as a means to reinforce public safety and national security against indeterminate threats and crises. Consequently, within this state of exception, the invasive and exceptional mechanisms of anti-terrorism and securitization deployed through Bill C-51, including

regimes of mass surveillance, tactics of preventative detainment, programs of deportation and expulsion, measures that function to suppress protest and resistance, implicit and explicit forms of censorship, and other governmental operations that violate the *Canadian Charter of Rights and Freedoms* and other Canadian and international laws, are authorized and legitimized under the auspices of security imperatives. In this regard, Bill C-51 is both constituted by and constitutive of a state of exception.

This constitution of a state of exception through the introduction of Bill C-51, however, is not unprecedented in the history of Canadian anti-terrorism and national security law. On October 16, 1970, Prime Minister Pierre Trudeau declared martial law through the invocation of the *War Measures Act* in response to the activities of the Front de libération du Québec (FLQ), a Quebec separatist organization, during what is commonly referred to as the October Crisis. Specifically, the invocation of the *War Measures Act* functioned to constitute an indefinite state of emergency within which the right to habeas corpus was suspended and police forces were authorized to engage in extralegal activities, including preemptively arresting and detaining persons suspected to constitute threats to public safety and national security. This declaration of a state of emergency and subsequent suspension of the rule of law through the implementation of the *War Measures Act* occurred in response to the violent operations of the FLQ, including the bombing of the Montreal Stock Exchange in February 1969, which injured 27 people, as well as the kidnapping of British Trade Commissioner James Richard Cross and Minister of Labour and Vice-Premiere of Quebec Pierre Laporte, and the subsequent murder of Laporte in October 1970, in addition to multiple other kidnappings, bombings, and robberies. Following this declaration of a state of emergency within which the rule of law was indefinitely suspended, the Canadian government and the RCMP engaged in

multiple extralegal activities, including the arrest and detainment of 497 persons; the public deployment of military forces; implicit and explicit forms of censorship; the surveillance of academics, government officials, and Indigenous peoples; robberies, including the theft of large quantities of dynamite and a membership list for the Parti Québécois; kidnappings; property damage; and other acts of police brutality. Moreover, within this state of emergency, RCMP officers committed arson, setting fire to a barn in order to disrupt a meeting between the FLQ and the Black Panther Party. The RCMP later manufactured and disseminated false communiqués, which they suggested were authored by the FLQ, and subsequently cited these communiqués to the government as evidence of ostensibly imminent terrorist threats. As Forcese and Roach (2015) observe, many of these extralegal activities engaged in by the state during the October Crisis could potentially be authorized by the provisions introduced through Bill C-51.¹⁸

Throughout the parliamentary debates preceding the enactment of Bill C-51, which occurred within the indefinite state of perceived emergency and insecurity that followed the attacks of October 2014, government officials consistently appealed to these ostensibly exceptional circumstances as a means to justify the implementation of the extreme and exceptional programs of anti-terrorism, counterterrorism, and securitization introduced by the policy. Indeed, during his public announcement of Bill C-51 following

¹⁸ The operation of the *War Measures Act* was suspended in November 1970, and the *War Measures Act* was later repealed and replaced by the *Emergencies Act* in 1988, which established legislated limitations on the conduct of the government and police forces in states of emergency. The introduction of the *Emergencies Act* followed the recommendations of the Royal Commission of Inquiry into Certain Activities of the RCMP, colloquially known as the McDonald Commission, which was issued in 1977 in response to the illegal conduct of the RCMP and other government agencies during the October Crisis. Specifically, the McDonald Commission posited that national security and policing institutions, including CSIS and the RCMP, should be explicitly prohibited from engaging in illegal acts, particularly within states of emergency or crisis.

the attacks of October 2014, former Prime Minister Stephen Harper stated that “through their deeds these jihadists have declared war on Canada and with their words they urge others to join their campaign of terror against Canadians”, insisting that “violent jihadism is not a human right, it is an act of war” (Harper, 2015). Here, through contending that terrorist threats constitute a form of warfare against the Canadian state, Harper invokes a state of emergency, and, in turn, legitimizes the exceptional mechanisms of governance deployed through Bill C-51. Similarly, referring explicitly to the attacks of October 2014, former Minister of Public Safety and Emergency Preparedness Steven Blaney reiterated Harper’s invocation of a state of emergency characterized by the declaration of warfare by terrorist organizations, stating that “the international jihadist movement has declared war on Canada and our allies...terrorists are targeting Canadians simply because they despise our society and the values it represents” (House of Commons, 2015 February 18, p. 11360) during the parliamentary debates preceding the enactment of Bill C-51.

This invocation of a state of emergency in general, and the claim that terrorist organizations — variously characterized as “violent jihadists”, “the international jihadist movement”, or agents of ISIS — have declared war on the Canadian state in particular, was subsequently reiterated by multiple proponents of Bill C-51 throughout the parliamentary debates surrounding the formulation and enactment of the policy. Indeed, one government official, stressing the imperative for the deployment of anti-terrorist measures and security mechanisms through the introduction of Bill C-51, stated that “it is clear that the international jihadist movement has declared war on Canada”, insisting that “Canadians are being targeted by jihadi terrorists simply because these terrorists hate our society and the values it represents” (House of Commons, 2015 February 19, p. 11403), while another government official asserted that “terrorism is not a human right...it is an

act of war” (p. 11425). Similarly, citing this state of perceived emergency in order to justify the mechanisms of anti-terrorism introduced through Bill C-51, one government official stated that “extreme jihadists have declared war on all free people, and on Canada specifically” (House of Commons, 2015 February 23, p. 11545), and another government official subsequently contended that “jihadi terrorism is not a human right; it is an act of war” (p. 11543). Moreover, explicitly referring to the attacks of October 2014, another government official further reiterated the urgency and proximity of terrorist threats within this state of emergency, stating that

the fact of the matter is that the international jihadist movement has declared war on Canada. Canadians are being targeted by jihadi terrorists simply because these terrorists hate our society and the values it represents and the actions we have taken to protect the people who share our values. Jihadi terrorism is not a human right; it is an act of war. That is why our government has put forward measures to protect Canadians against jihadi terrorists who seek to destroy the very principles that make Canada the best country in the world to live in. It is also why Canada is not sitting on the sidelines as some would have us do. It is instead joining our allies in supporting the international coalition in the fight against ISIL (House of Commons, 2015 May 5, p. 13478).

In turn, another government official asserted that the anti-terrorist measures and security mechanisms implemented through Bill C-51 are necessary in order to reinforce public safety and national security against proliferating terrorist threats, suggesting that these measures introduced by the policy would “enable our national security agencies to keep pace with the ever-evolving threats to our national security”, and contending that “Canada, like our allies, needs to modernize our laws to arm our national security agencies in the fight against jihadi terrorists who we know have declared war on Canada” (p. 13440).

As Agamben (2005) has observed, this invocation of a state of emergency characterized by the declaration of warfare is a discursive tactic that functions to

constitute a state of exception, which he suggests emerges as “a situation in which the emergency becomes the rule, and the very distinction between peace and war (and foreign and civil war) becomes impossible” (p. 22), within which emergency security procedures and exceptional techniques of governance are deployed by the state. Consequently, appealing to this state of emergency during the parliamentary debates preceding the enactment of Bill C-51, Peter MacKay, former Minister of Justice, contended that the mechanisms of anti-terrorism and securitization deployed by the policy “might be seen as extraordinary in normal circumstances”, but that “in the context of this entire debate, we are talking about an elevated threat assessment based on what occurred here in October, 2014, based on what is happening around the world and based on the assessment of our security forces” (House of Commons, 2015 February 18, p. 11375). Here, MacKay insists that the heightened conditions of danger and insecurity in the aftermath of the attacks of October 2014 do not constitute “normal circumstances”, but are instead exceptional circumstances that warrant exceptional forms of governmental intervention. Thus, throughout the parliamentary debates surrounding the formulation and enactment of Bill C-51, various government officials cited this ostensible state of emergency and insecurity following the attacks of October 2014 in particular, and in the wake of the September 11, 2001 attacks in the United States more broadly, in order to discursively constitute a state of exception, and, in turn, justify the exceptional anti-terrorist measures and security mechanisms enforced through Bill C-51.

To this end, within this state of exception, Bill C-51 authorizes the deployment of multiple invasive and exceptional mechanisms of anti-terrorism and securitization, which function to indefinitely suspend the normative operation of law and restrict legal rights and protections, ostensibly in order to reinforce the security and vitality of the state

population against indeterminate terrorist threats. Specifically, Bill C-51 authorizes CSIS agents to engage in preemptive anti-terrorism operations in order to disrupt potential threats to the security, vitality, and wellbeing of the population, and to national security more broadly, stating that “if there are reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada”, then CSIS agents “may take measures, within or outside of Canada, to reduce the threat” (Parliament of Canada, 2015, p. 49). To this end, Bill C-51 authorizes CSIS agents to deploy any measures deemed necessary to preempt, disrupt, or counteract perceived threats to public safety and national security. Moreover, Bill C-51 permits the government to issue warrants authorizing CSIS agents to engage in extralegal activities, including actions that violate the *Canadian Charter of Rights and Freedoms* in particular, and Canadian and international laws in general, ostensibly in order to disrupt these threats to national security. Indeed, through the administration of these warrants, the policy states that CSIS agents may act “despite any other law” within Canada, and “without regard to any other law, including that of any foreign state” (p. 51), thus authorizing CSIS to violate both national and international laws when engaging in these disruptive anti-terrorism operations. In this regard, Bill C-51 effectively neutralizes the normative operation of law, insofar as it authorizes CSIS agents to engage in anti-terrorist measures that systematically violate any law, within or outside of Canada, under the auspices of security imperatives.

Critically, Bill C-51 fails to establish effective limitations on the conduct of CSIS agents when engaging in these preemptive anti-terrorist measures: the policy simply states that, when engaging in these operations, CSIS agents are not authorized to “cause, intentionally or by criminal negligence, death or bodily harm to an individual”, to “willfully attempt in any manner to obstruct, pervert or defeat the course of justice”, or to

“violate the sexual integrity of an individual” (p. 49). In other words, through the provisions established by Bill C-51, CSIS agents are permitted to engage in any activity, including violating any law, ostensibly in order to preempt or counteract perceived threats to national security, as long as these activities do not inflict bodily harm, violate sexual integrity, or obstruct justice. To this end, Bill C-51 paradoxically authorizes CSIS agents to systematically violate national and international laws, but maintains that CSIS agents are not permitted to “obstruct, pervert or defeat the course of justice” (p. 49) when engaging in these extralegal operations. In other words, Bill C-51 holds that the violation of the law through extralegal governmental operations is necessary in order to defend or preserve the normative operation of law. This paradoxical logic of the imperative to preserve the rule of law through the selective and systematic violation of the law, Agamben (2005) argues, is symptomatic of the state of exception, which emerges as a zone of indistinction that is simultaneously situated within and outside of the juridical order. Thus, as Agamben explains, “the state of exception is neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other” (p. 23).

Moreover, when issuing a warrant permitting CSIS agents to engage in these preemptive anti-terrorist measures, Bill C-51 states that a judge must simply determine on “reasonable grounds” that the authorization of these extralegal operations is necessary to enable CSIS to “take measures, within or outside Canada, to reduce a threat to the security of Canada”, while considering “the reasonableness and proportionality, in the circumstances, of the proposed measures, having regard to the nature of the threat, the nature of the measures and the reasonable availability of other means to reduce the threat”

(p. 50). However, Bill C-51 fails to establish systems of judicial control or regulation over the conduct of CSIS agents engaging in extralegal operations when executing these warrants, through which they are authorized to indiscriminately violate any law. To this end, through authorizing government agents to consistently and systematically violate the rights and protections established by the *Canadian Charter of Rights and Freedoms* in particular, and Canadian and international laws more broadly, ostensibly in order to preempt or counteract potential threats to public safety and national security, Bill C-51 functions to effectively suspend the normative operation of the law through the withdrawal of legal rights and protections, thus constituting a state of exception.

Furthermore, within this state of exception, Bill C-51 establishes exceptionally low evidentiary thresholds for the deployment of preemptive mechanisms of anti-terrorism and securitization targeting persons deemed to constitute threats to public safety and national security. Specifically, prior to the enactment of Bill C-51, the *Anti-Terrorism Act* authorized the preventative detainment of persons determined to constitute threats to national security when a government agent “suspects on reasonable grounds that the detention of the person in custody is necessary to prevent a terrorist activity” (Parliament of Canada, 2001, p. 36). Further, the *Anti-Terrorism Act* authorized the imposition of regulations on the conduct of suspected persons when a government agent “believes on reasonable grounds that a terrorist activity will be carried out” and “suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is necessary to prevent the carrying out of the terrorist activity” (p. 36). However, the provisions established through Bill C-51 function to explicitly lower the evidentiary thresholds for the deployment of these preemptive mechanisms of anti-terrorism targeting ostensible threats to the security of the state population. In particular,

Bill C-51 authorizes the preventative detention of persons designated as threats to public safety and national security when a government agent “suspects on reasonable grounds that the detention of the person in custody is likely to prevent a terrorist activity” (Parliament of Canada, 2015, p. 30). Moreover, Bill C-51 authorizes the enforcement of governmental regulations on the conduct of suspected persons when a government agent “believes on reasonable grounds that a terrorist activity may be carried out” and “suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is likely to prevent the carrying out of the terrorist activity” (p. 29).

To this end, through the substitution of the words “may” for “will”, and “likely” for “necessary”, Bill C-51 explicitly lowers the thresholds for governmental intervention, while expanding the discretionary powers of government officials to preemptively detain or impose regulations on the conduct of persons deemed to constitute threats to public safety and national security. Indeed, through the provisions introduced by Bill C-51, government agents are authorized to deploy these preemptive tactics of anti-terrorism in situations in which they believe or suspect on “reasonable grounds” that terrorist threats “may” emerge as a future potentiality, despite the absence of any observable or material conditions of threat or insecurity. Further, government agents are permitted to preventatively detain or impose regulations on the conduct of suspected persons in situations in which they determine on “reasonable grounds” that these preemptive measures are “likely”, but not necessary, to forestall or circumvent these anticipated and feared terrorist threats. In this regard, within the framework established by Bill C-51, the deployment of these preemptive mechanisms of anti-terrorism and securitization is subject to the informal conjecture and discretionary judgement of various government

officials. Thus, within the state of exception, Bill C-51 posits that the establishment of these exceptionally low evidentiary thresholds for the deployment of preemptive mechanisms of anti-terrorism and securitization, and the consequent expansion of the discretionary powers of government officials, is necessary in order to reinforce the security, vitality, and productivity of the state population against indeterminate threats.

Within this state of exception, Bill C-51 further expands the discretionary capacities of government agents by authorizing the deployment of these exceptional mechanisms of anti-terrorism and securitization in situations in which various government officials believe, suspect, or fear on “reasonable grounds” that they are necessary to preempt or counteract potential threats to public safety and national security. Specifically, Bill C-51 authorizes the preventative detainment of persons determined to constitute threats to national security when a government agent “suspects on reasonable grounds that the detention of the person in custody is likely to prevent a terrorist activity” (p. 30). Further, Bill C-51 authorizes the imposition of governmental regulations on the conduct of suspected persons when a government agent “believes on reasonable grounds that a terrorist activity may be carried out” and “suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is likely to prevent the carrying out of the terrorist activity” (p. 29). Moreover, the policy authorizes the enforcement of regulations on the conduct of suspected persons when a government official “fears on reasonable grounds that another person may commit a terrorism offence” (p. 35). Additionally, Bill C-51 authorizes CSIS agents to engage in extralegal anti-terrorism operations in order to preempt or counteract ostensible threats to national security in situations in which a government agent has “reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada” (p. 49).

Through the employment of the phrase “reasonable grounds” throughout the policy text, Bill C-51 establishes exceptionally low evidentiary thresholds for the mobilization of these anti-terrorist measures and security mechanisms. Indeed, as Forcese and Roach (2015) observe, “reasonable grounds to believe” constitutes “a standard of proof much lower than the criminal trial standard of ‘beyond a reasonable doubt’” (p. 18), while “reasonable grounds to suspect” constitutes “the lowest standard known to law” (p. 126), and “reasonable grounds to fear” is “one of the lowest standards of proof in Canadian law” (p. 219). In this regard, the administration of these mechanisms of anti-terrorism and securitization is subject to the suspicion, fear, or belief of government officials, who are authorized to broadly determine on “reasonable grounds” that the mobilization of these emergency security procedures is necessary to reinforce public safety and national security against indeterminate terrorist threats. Thus, the provisions established by Bill C-51 function to expand the discretionary powers of various government officials, and the deployment of the invasive and exceptional governmental mechanisms introduced by the policy is therefore subject to the informal conjecture and subjective judgement of these government officials.

Toward this end, Bill C-51 holds that these exceptional mechanisms of anti-terrorism and securitization will only be deployed in circumstances in which they are deemed by government officials to be necessary in order to preempt or counteract ostensible threats to the security and vitality of the state population, and to national security more broadly. However, as Agamben (2005) observes, the declaration of the necessity or imperative for governmental intervention within the state of exception is never an objective determination, but is rather subject to the informal deliberation and discretionary judgement of government officials. Indeed, Agamben contends that within

the state of exception, “far from occurring as an objective given, necessity clearly entails a subjective judgment”, and, consequently, “the only circumstances that are necessary and objective are those that are declared to be so” (p. 30). To this end, within the state of exception, government officials hold the discretionary capacity to declare imperatives for governmental intervention, and, in turn, deploy exceptional mechanisms of governance that function to effectively suspend the rule of law under the auspices of security imperatives.

Toward this end, Butler (2004) observes that the state of exception is characterized by the expansion of the discretionary powers of administrative officials to mobilize exceptional techniques of governance which function through the selective disruption or suspension of the normative operation of law. Thus, Butler contends that the exceptional mechanisms of governance deployed within the state of exception are “determined by discretionary judgments that function within a manufactured law or that manufacture law as they are performed” (p. 58), insofar as they are founded on the informal conjecture and subjective determination of government officials who are authorized to suspend normative legal operations. As Butler explains, through the state of exception, “not only is law treated as a tactic, but it is also suspended in order to heighten the discretionary power of those who are asked to rely on their own judgment to decide fundamental matters of justice, life, and death” (p. 54). Through this suspension of the rule of law, and consequent expansion of the discretionary capacities of administrative officials, Butler contends that the state of exception operates through “rules that are not binding by virtue of established law or modes of legitimation, but fully discretionary, even arbitrary, wielded by officials who interpret them unilaterally and decide on the condition and form of their invocation” (p. 62). Consequently, within the state of exception, extreme

governmental measures are implemented by administrative officials who “become invested with the task of the discretionary fabrication of law” (p. 93). In this regard, Bill C-51 expands the discretionary capacities of government officials by authorizing the deployment of exceptional techniques of governance in situations in which these officials believe, suspect, or fear on “reasonable grounds” that they are necessary to preempt or counteract potential threats to national security. Through the provisions established by Bill C-51, the mobilization of these emergency security procedures is therefore subject to the informal conjecture and subjective judgement of government officials, who are authorized to arbitrarily and unilaterally apply and suspend legal mechanisms. Thus, through expanding the discretionary powers of government officials to deploy exceptional and extralegal techniques of governance, Bill C-51 functions to effectively suspend the normative operation of law, and, in turn, constitute a state of exception.

Bill C-51 also expands the discretionary powers of government officials by authorizing these officials to informally designate persons as potential threats to national security on the basis of conjecture and subjective judgement, and, in turn, preemptively detain or impose governmental regulations on the conduct of these persons. Specifically, the policy states that preventative detainment is permitted when a government agent “suspects on reasonable grounds that the detention of the person in custody is likely to prevent a terrorist activity” (Parliament of Canada, 2015, p. 30), while the imposition of governmental regulations is authorized when a government agent “believes on reasonable grounds that a terrorist activity may be carried out” and “suspects on reasonable grounds that the imposition of a recognizance with conditions on a person, or the arrest of a person, is likely to prevent the carrying out of the terrorist activity” (p. 29). Thus, the decision to detain or impose governmental regulations on suspected persons is subject to

the discretion of government officials, who must simply deem these persons to pose potential dangers to the security of the state. Importantly, Butler (2004) observes that “this act of ‘deeming’ takes place in the context of a declared state of emergency in which the state exercises prerogatory power that involves the suspension of law, including due process for these individuals” (p. 59). Consequently, Butler writes that “the act is warranted by the one who acts, and the ‘deeming’ of someone as dangerous is sufficient to make that person dangerous and to justify his indefinite detention” (p. 59). In other words, this act of deeming someone as potentially dangerous is not grounded in normative legal procedures, but is rather subject to the discretion and unilateral judgement of administrative officials. As Butler observes, suspected persons “have to be ‘deemed’ dangerous but the ‘deeming’ is not...a judgment for which there are rules of evidence. They have to be ‘deemed’ dangerous, but the danger has to be understood quite clearly as a danger in the context of a national emergency” (p. 71). Persons are therefore deemed to be potentially dangerous on the basis of the discretion of government officials rather than through standard trial procedures, and, as Butler suggests, “‘deeming’ someone dangerous is an unsubstantiated judgment that in these cases works to preempt determinations for which evidence is required” (p. 76). Thus, within this state of emergency, persons deemed to be potentially dangerous by government officials are denied legal protections, including the right to habeas corpus and fair trial procedures, and are consequently subject to continued detainment.

Moreover, Bill C-51 extends the possible duration of preventative detainment for persons deemed as potential threats to national security from three to seven days. Specifically, the policy authorizes the judicial extension of this period of detention if a government official determines that “the investigation in relation to which the person is

detained is being conducted diligently and expeditiously” (Parliament of Canada, 2015, p. 30). Critically, however, Bill C-51 fails to establish regulations on the conditions under which persons deemed to be potentially dangerous are detained, as well as the conduct of government agents in relation to detained persons, thus withdrawing the legal rights and protections of these persons. Thus, detention is extended insofar as detained persons continue to be deemed as potential threats to public safety and national security by government officials. Consequently, as Butler (2004) has observed, within the state of exception, “this means that conjecture is the basis of detention, but also that conjecture is the basis of an indefinite detention without trial” (p. 69). To this end, through authorizing government officials to deem persons as potential threats to national security on the basis of conjecture and discretionary judgement, and subsequently target these persons for preemptive detainment and other forms of governmental regulation, Bill C-51 functions to disrupt normative legal procedures and withdraw the legal rights and protections of persons determined to be potentially dangerous by the state.

Bill C-51 further disrupts the normative operation of law by expanding the ability of the government to deploy security certificates, which authorize the administrative detention, deportation, or expulsion of non-citizens determined by government officials to be inadmissible to Canada on the grounds of constituting threats to national security. Specifically, through a series of amendments introduced to the *Immigration and Refugee Protection Act*, Bill C-51 states that, during the adjudication of security certificate proceedings, government officials are permitted to prevent the disclosure of any information or evidence related to persons designated as potential threats to national security if it is determined that the disclosure of this information “would be injurious to national security or endanger the safety of any person” (Parliament of Canada, 2015, p.

56). Further, the policy states that the evidence employed throughout security certificate proceedings is “not disclosed to the permanent resident or foreign national and their counsel” (p. 58) who is subject to the security certificate. Moreover, through the provisions established by the *Secure Air Travel Act*, Bill C-51 states that, when designating a person as a potential threat to national security, a judge “may receive into evidence anything that, in the judge’s opinion, is reliable and appropriate, even if it is inadmissible in a court of law, and may base a decision on that evidence” (p. 17). To this end, Bill C-51 permits the state to employ secret evidence, and prevents the disclosure of this evidence to persons designated as potential threats to national security during trial procedures. In turn, persons deemed to be potentially dangerous by government officials are denied the right to habeas corpus and the opportunity to be legally represented and defended throughout these adjudicative processes. Consequently, Bill C-51 effectively forecloses the possibility of fair trial procedures and suspends the rule of law during these governmental procedures through which persons are designated as potential threats to national security by the state.

Butler (2004) contends that such trials, which operate through the suspension of normative legal procedures, are characteristic of the state of exception: as she observes, “if these trials make a mockery of evidence, if they are, effectively, ways of circumventing the usual legal demands for evidence, then these trials nullify the very meaning of the trial, and they nullify the trial most effectively by taking on the name of the ‘trial’” (p. 69). Indeed, as Butler explains, “the very meaning of the trial has been transformed by the notion of a procedure that explicitly admits unsubstantiated claims, and where the fairness and non-coercive character of the interrogatory means used to garner that information has no bearing on the admissibility of the information into trial”

(p. 69). In other words, these trials operate under the auspices of normative legal procedures by taking on the name of the ‘trial’, yet function to subvert the rule of law, particularly by authorizing the state to employ secret or illicit evidence, and preventing the disclosure of this evidence to persons designated as threats to national security. Indeed, through these extralegal trial procedures established by Bill C-51, persons deemed to be potentially dangerous by the state “have no entitlement to hear the charge, to prepare a case for themselves, or to obtain release or final judgment through a tribunal procedure” (p. 70). In this regard, through foreclosing the possibility of fair trial procedures during these governmental processes through which persons are designated as potential threats to national security, Bill C-51 functions to effectively suspend the rule of law, and, in turn, constitute a state of exception.

To this end, Bill C-51 deploys several exceptional and extralegal anti-terrorist measures and security mechanisms, which ostensibly function to maintain public safety and national security within the state of emergency following the attacks of October 2014. Moreover, Bill C-51 establishes exceptionally low standards of evidence for the mobilization of preemptive anti-terrorist measures, including preventative detainment and the imposition of other governmental mechanisms of control and regulation, authorizing these measures when a government agent “believes on reasonable grounds that a terrorist activity may be carried out” and “suspects on reasonable grounds” that these measures are “likely to prevent a terrorist activity” (Parliament of Canada, 2015, p. 29-30). Specifically, through amending previous policies by replacing the words “will” with “may”, and “necessary” with “likely”, and employing the phrase “reasonable grounds” throughout the policy text, Bill C-51 lowers the evidentiary thresholds for the deployment of these anti-terrorist measures, while expanding the discretionary capacities of

government agents to enforce these measures. Critically, Fairclough (1992) suggests that these textual shifts are significant, insofar as they are related to broader shifts in discursive and social practices. Indeed, through the development of a three-dimensional framework of discourse analysis, Fairclough highlights the connections between texts, the discursive practices through which these texts are produced, distributed, consumed, and interpreted, and the social practices, or systems of knowledge and power relations, that these texts are situated within. Specifically, at the level of discursive practice, these exceptionally low evidentiary thresholds for the deployment of preemptive anti-terrorist measures within the policy text of Bill C-51 were formulated during the governmental debates preceding the enactment of the policy, which occurred within the state of emergency following the attacks of October 2014. Throughout these debates, government officials invoked this state of emergency in order to justify the exceptional techniques of governance introduced by the policy. Indeed, during these debates, former Minister of Justice Peter MacKay insisted that these were not “normal circumstances” (House of Commons, 2015 February 18, p. 11375), but rather constituted exceptional circumstances that necessitated the deployment of exceptional mechanisms of anti-terrorism and securitization. Moreover, the deployment of these preemptive anti-terrorist measures is subject to the discretionary judgement of government agents, who are authorized to enforce these measures in circumstances in which they suspect on “reasonable grounds” that terrorist threats “may” exist, and that these measures are “likely” to disrupt or counteract these threats. Consequently, at the level of social practice, Bill C-51 both emerged within and functioned to constitute a state of exception. Specifically, Bill C-51 was introduced within the indefinite state of emergency and crisis following the attacks of October 2014, within which government officials stressed imperatives for the

mobilization of emergency security measures. However, Bill C-51 also functions to reproduce this state of exception, insofar as it deploys exceptional and extralegal mechanisms of anti-terrorism and securitization, including measures that disrupt the normative operation of law and withdraw legal rights and protections, which operate under the auspices of security imperatives within this state of emergency.

Thus, through the introduction of these exceptional and extralegal programs of anti-terrorism and securitization, which ostensibly aim to reinforce public safety and national security against indeterminate terrorist threats, Bill C-51 functions to produce a state of exception, which, as Agamben (2005) observes, is “a space devoid of law” (p. 50) within which the normative operation of law is indefinitely suspended. Within this state of exception, the exceptional techniques of governance mobilized by Bill C-51 operate through a biopolitical logic of governance, which Foucault (2003b) suggests is characterized by the right to “make live and to let die” (p. 241). Indeed, within the state of exception, extreme governmental measures, which operate under the auspices of security imperatives, are ostensibly mobilized as a means to reinforce the security and vitality of state populations through regimes of ‘making live’. Thus, as Agamben (2005) observes, the emergence of the state of exception represents “an unprecedented generalization of the paradigm of security as the normal technique of government” (p. 14). Butler (2004) similarly contends that the state of exception functions as “part of a broader tactic to neutralize the rule of law in the name of security” (p. 67), where “in the name of a security alert and national emergency, the law is effectively suspended in both its national and international forms” (p. 51). In this regard, within this state of exception, the exceptional techniques of governance deployed by Bill C-51, which impose invasive mechanisms of control and regulation over bodies and populations, are ostensibly

designed to promote the security, productivity, and vitality of the state population, or, as the policy text states, “the sovereignty, security or territorial integrity of Canada” and “the lives or the security of the people of Canada” (Parliament of Canada, 2015, p. 3) through regimes of ‘making live’.

However, these mechanisms of anti-terrorism and securitization introduced through Bill C-51 also target perceived threats to the security of the state population for governmental discipline, regulation, and elimination, and thus constitute tactics of ‘letting die’ within this biopolitical frame of governance. Indeed, the extreme governmental measures introduced by the policy, including expansive regimes of information sharing and surveillance, tactics of preemptive detention, programs of deportation and expulsion, measures that function to restrict protest and resistance, implicit and explicit forms of censorship, and other extralegal governmental operations that withdraw legal rights and protections, constitute not only acts of state violence and killing, but also tactics of ‘letting die’, which Foucault (2003b) suggests include “every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on” (p. 256). Specifically, these governmental tactics of ‘letting die’ operate through the deployment of state racisms, which, as Foucault has observed, function to subdivide state populations through the identification of perceived threats to public safety and national security, and subsequently target these threats for governmental discipline, regulation, and elimination. Thus, within the state of exception, legal rights and protections are withdrawn from subjects determined to constitute potential threats to national security, and these subjects are consequently targeted through governmental tactics of ‘letting die’ in this state of abandonment by law. Specifically, subjects designated as potential threats to the state

population are targeted through the exceptional mechanisms of anti-terrorism and securitization introduced through Bill C-51, including surveillance, detainment, imprisonment, deportation, expulsion, repression, and other mechanisms of governmental discipline and regulation. Thus, through the production of a state of exception and the deployment of extralegal techniques of governance, Bill C-51 ostensibly aims to promote the security, vitality, and productivity of the state population through governmental mechanisms of anti-terrorism and securitization, while simultaneously targeting perceived threats to public safety and national security for regulation or elimination, thus functioning to “*foster* life or *disallow* it to the point of death” (1978, p. 138), a process which Foucault contends is foundational to the operation of contemporary biopolitics.

Conclusion: Theorizing Biopolitics and Anti-Terrorism

Prior to the attacks of October 22, 2014, during which Michael Zehaf-Bibeau shot and killed an unarmed guard near the National War Memorial in Ottawa before infiltrating the parliament buildings, where he wounded another security officer, and was subsequently killed by security forces, Zehaf-Bibeau recorded a statement in which he explicitly situated the attack as a response to Canadian military operations in Afghanistan and Iraq, stating that he was acting “in retaliation for Afghanistan and because Harper wants to send his troops to Iraq”. Zehaf-Bibeau continued by issuing a warning:

So we are retaliating, the Mujahedin of this world. Canada’s officially become one of our enemies by fighting and bombing us and creating a lot of terror in our countries and killing us and killing our innocents. So, just aiming to hit some soldiers just to show that you’re not even safe in your own land, and you gotta be careful. (Zehaf-Bibeau, 2015)

Zehaf-Bibeau concluded this statement by declaring, “we’ll not cease until you guys decide to be a peaceful country and stay to your own and...stop going to other countries and stop occupying and killing the righteous of us who are trying to bring back religious law in our countries” (Zehaf-Bibeau, 2015). The attacks committed by Zehaf-Bibeau closely followed the attacks of October 20, 2014, during which Martin Couture-Rouleau struck two Canadian Armed Forces officers with a vehicle, killing one and wounding the other, and attempted to attack several police officers with a knife before being shot and killed by police forces in Saint-Jean-sur-Richelieu. Both of these attacks were immediately condemned by former Prime Minister Stephen Harper and multiple other government officials as acts of terrorism, and Zehaf-Bibeau and Couture-Rouleau were subsequently designated as terrorists.

During the parliamentary proceedings immediately following these attacks, on October 23, 2014, government officials responded by observing a moment of silence and

mourning the deaths of Corporal Nathan Cirillo and Warrant Officer Patrice Vincent, who were killed by Michael Zehaf-Bibeau and Martin Couture-Rouleau, respectively, during the attacks. Following these public acts of mourning, Stephen Harper, referring specifically to the attacks committed by Zehaf-Bibeau and Couture-Rouleau, stated that “the objective of both of those attacks was to spread fear and panic in our country and to interrupt the business of government”, but maintained that “Canadians will never be intimidated” by such attacks, which he unequivocally condemned as acts of terrorism (House of Commons, 2014 October 23, p. 8692). Indeed, Harper insisted that “we will not be intimidated. We will be vigilant, but we will not run scared. We will be prudent, but we will not panic” (p. 8692). Harper concluded that “Canada will never yield to terrorism...we carry on” (p. 8692). However, in the period following the attacks of October 2014, which was characterized by enduring conditions of heightened danger and insecurity and the escalation of Canada’s national terrorism threat level, multiple government officials articulated imperatives for the deployment of anti-terrorism and counterterrorism measures and security mechanisms in order to maintain and reinforce public safety and national security against future terrorist threats. Indeed, Harper subsequently stated that “security in Canada is the government’s primary responsibility”, and, in turn, insisted that “our laws and police powers need to be strengthened in the area of surveillance, detention, and arrest. They need to be much strengthened” (p. 8692). Consequently, stressing the imperative for governmental intervention and securitization in the context of ostensibly proliferating terrorist threats following the attacks of October 2014 in particular, and in the aftermath of the September 11, 2001 attacks in the United States and the subsequent declaration of the ‘war on terror’ more broadly, Harper stated,

jihadist terrorism is not a future possibility, it is a present reality. Violent jihadism is not just a danger somewhere else, it seeks to harm us here in Canada, in our cities and in our neighbourhoods, through horrific acts, like deliberately driving a car at a defenceless man, or shooting a soldier in the back as he stands on guard at a war memorial. (Harper, 2015)

To this end, Harper insisted that “recent terrorist attacks here and around the world have shown us that as the terrorists refine and adapt their methods, our police and national security agencies need additional tools and greater coordination”, suggesting that “the highest responsibility of our government, of any Canadian government, is to keep Canadians safe and keep our country secure”. In turn, Harper stated that “to fully protect Canadians from terrorism in response to evolving threats, we must take further action” (Harper, 2015).

These imperatives for anti-terrorism efforts and securitization culminated in the formulation and enactment of Bill C-51, the *Anti-terrorism Act, 2015*, in the months following the attacks of October 2014, which constitutes the most substantive expansion and radical reconfiguration of Canadian anti-terrorism policy and national security programming since 9/11, and thus signals a critical event in the historical developments and contemporary trajectories of Canadian anti-terrorism and counterterrorism efforts. Through analyzing the policy text of Bill C-51 and the governmental discourses surrounding its introduction, in this thesis I have theorized the mechanisms of anti-terrorism, counterterrorism, and securitization deployed by Bill C-51 as biopolitical techniques of governance that operate through the right to “make live and to let die” (Foucault, 2003b, p. 241). Specifically, in order to examine the biopolitical logic of governance underpinning the operation of Bill C-51, I have employed a methodological approach to critical discourse analysis, drawing on Foucault’s (1972) conceptualization of discourse as both a text or communicative form and a system of knowledge production

and Fairclough's (1992) three-dimensional model of discourse, in order to trace the interrelationships between the policy text of Bill C-51, the governmental discourses surrounding its formulation and enactment, and the broader systems of knowledge and power relations that these texts emerged within and functioned to constitute. Toward this end, I have argued that the anti-terrorist measures and security mechanisms mobilized by Bill C-51 ostensibly function to reinforce the security and vitality of the state population, or, as the policy text states, "the sovereignty, security or territorial integrity of Canada" and "the lives or the security of the people of Canada" against terrorist threats, and "activity the undermines the security of Canada" more broadly (Parliament of Canada, 2015, p. 3). In particular, the policy text states that these anti-terrorist measures are necessary "in order to enable the Government to protect Canada and its people against activities that undermine the security of Canada", positing that "there is no more fundamental role for a government than protecting its country and its people" (p. 2) from these threats. Yet, I have suggested that these anti-terrorist measures operate through targeting bodies and populations designated as potential threats to public safety and national security for surveillance, detainment, imprisonment, deportation, expulsion, repression, and other mechanisms of governmental discipline and regulation enforced by the policy. To this end, I have contended that the mechanisms of anti-terrorism and securitization deployed by Bill C-51 aim to foster and promote the security, vitality, and productivity of the state population through regimes of 'making live', while targeting segments of the population designated as threats to national security for governmental control, regulation, and elimination through regimes of 'letting die', thus operating through the right to "make live and to let die" (2003b, p. 241) which Foucault suggests is foundational to contemporary biopolitics. Further, through tracing the discursive

construction of the indiscriminate and indiscriminable figure of the terrorist threat through the policy text of Bill C-51 and the governmental discourses surrounding its introduction, I have argued that Bill C-51 functions to constitute an environment of generalized threat and insecurity, or what Massumi (2011) refers to as a generalized crisis environment, and, in turn, authorizes and legitimizes the mobilization of radical and invasive mechanisms of anti-terrorism and securitization. Moreover, through tracing the deployment of these exceptional and extralegal anti-terrorist measures and security mechanisms within this state of emergency and insecurity that characterized the aftermath of the attacks of October 2014, I have suggested that Bill C-51 is both constituted by and constitutive of a state of exception, which Agamben (2005) characterizes as an indefinite state of emergency within which the normative operation of law is suspended, legal rights and protections are withdrawn, and emergency security procedures and exceptional techniques of governance are enforced.

To this end, through examining the deployment of these exceptional programs of anti-terrorism, counterterrorism, and securitization, I have argued that Bill C-51 functions to impose an increasingly totalizing grid of governmental discipline, control, and regulation over the Canadian state population. However, as Foucault (1978) has observed, “where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power” (p. 95). Following Foucault’s observation that forms of resistance are immanent to and coextensive with relations of power, in this thesis I have aimed to highlight several critical forms of resistance to the invasive and exceptional mechanisms of anti-terrorism and securitization enforced through Bill C-51. Specifically, I have situated Bill C-51 in relation to contemporary developments in Canadian anti-terrorism policy and national security programming

through considering the introduction of Bill C-59, the *National Security Act, 2017*. Bill C-59 was explicitly situated by the government as a response to ongoing resistance to Bill C-51 throughout public and governmental discourses, and introduces several amendments which ostensibly function to restrict and withdraw the radical anti-terrorist measures and security mechanisms deployed by the policy. While I have argued that Bill C-59 largely fails to establish effective restrictions on the governmental programs of anti-terrorism and securitization introduced through Bill C-51, it nonetheless signals an important form of resistance to these exceptional techniques of governance. Indeed, although it has not yet been enacted, Bill C-59 aims to introduce additional structures of oversight and review designed to regulate the programs of anti-terrorism and securitization implemented through Bill C-51, and establish a series of restrictions on the anti-terrorist measures deployed by the policy. Thus, Bill C-59 represents an important intervention into the framework of anti-terrorism and securitization implemented through Bill C-51. To this end, the introduction of Bill C-59 constitutes an important area for future research in order to situate Bill C-51 in relation to contemporary developments and reconfigurations in Canadian anti-terrorism and national security policy.

Additionally, I have traced the sustained resistance to Bill C-51 throughout the parliamentary debates surrounding its formulation and enactment, during which multiple opponents of the policy, including government officials, lawyers, Indigenous leaders, scholars, and activists appeared in parliamentary hearings to express resistance to the exceptional mechanisms of anti-terrorism and securitization implemented through Bill C-51. While the government consistently dismissed and rejected these critical interventions, and subsequently enacted Bill C-51 despite sustained opposition, resistance, and contestation throughout the parliamentary debates, further research is necessary to

consider the effects of the continuing resistance to Bill C-51 throughout public, governmental, and academic discourses on the development of Canadian anti-terrorism policy and national security programming. Furthermore, while I have argued that Bill C-51 functions to restrict and suppress social movements and resistance, insofar as these activities can be designated as threats to national security, or “activity that undermines the security of Canada” more broadly, and persons engaged in these activities can subsequently be targeted for surveillance, detainment, and other forms of governmental discipline and regulation enforced by the policy, additional research is necessary to examine the implications of Bill C-51 in the restriction of protest and dissent in general, and the suppression of Indigenous, anti-racist, anti-colonial, queer, and environmental social movements, activism, and resistance in particular.

Moreover, in this thesis I have suggested that Bill C-51 was subject to significant resistance from Indigenous peoples during the parliamentary debates preceding the enactment of the policy. In particular, throughout these debates, several Indigenous leaders and other representatives of Indigenous populations appeared in parliamentary hearings to express opposition and resistance to the governmental programs of anti-terrorism and securitization implemented through Bill C-51. Specifically, these Indigenous leaders contended that the anti-terrorist measures and security mechanisms enforced by Bill C-51 functioned to reproduce settler colonial structures of violence, occupation, and dispossession deployed by the Canadian state, particularly through the surveillance, incarceration, and repression of Indigenous populations, and the suppression of Indigenous social movements and resistance. Indeed, during his presentation to the House of Commons Standing Committee on Public Safety and National Security, National Chief of the Assembly of First Nations Perry Bellegarde stated that

Bill C-51 sets up conditions for conflict by creating conditions where our people will be labelled as threats — threats to critical infrastructure or the economic stability of Canada — when asserting their individual or collective rights as First Nations citizens. This is not an abstract argument for our people. We've been labelled as terrorists when we stand up for our rights and our lands and our waters. (House of Commons Standing Committee on Public Safety and National Security, 2015 March 12, p. 15)

In turn, Bellegarde asserted that “First Nations maintain that Bill C-51 will infringe on our freedom of speech and assembly; our right to be free of unreasonable search and seizure; our right to liberty; our fundamental right as peoples under section 35 of the Constitution Act, 1982; our treaty rights; and our right to self-determination” (p. 15). Consequently, Bellegarde stated that “First Nations will vigorously oppose any legislation that does not respect and protect our rights. First Nations will stand up for the rights of our people and our responsibilities to our traditional territories” (p. 15). Bellegarde ultimately issued two critical recommendations to the Canadian government regarding Bill C-51, calling on the government to “withdraw the bill and consult properly with First Nations about its impact on our rights” (p. 16). These arguments were forcefully reiterated by multiple other Indigenous leaders and activists who appeared in parliamentary hearings to resist and protest the introduction of Bill C-51. However, these critical interventions and directives articulated by Indigenous leaders were consistently dismissed or explicitly rejected by the government, and Bill C-51 was subsequently enacted despite significant opposition and resistance throughout the parliamentary debates. To this end, following the interventions of these Indigenous leaders, I have suggested that Bill C-51 functions to restrict and suppress Indigenous social movements, activism, and resistance, insofar as these activities can be designated as threats to public safety and national security, or “activity that undermines the security of Canada”, and, in turn, targeted through the anti-terrorist measures and security mechanisms enforced by

the policy. However, further research is necessary to examine the implications of Bill C-51, and Canadian programs of anti-terrorism, counterterrorism, and securitization more broadly, in the reproduction of settler colonial structures of violence, dispossession, and assimilation, particularly as they are mobilized through biopolitical regimes of ‘making live’ and ‘letting die’ and the operation of state racisms. Indeed, additional research on the implications of Canadian anti-terrorism efforts and national security programming in the reproduction of structures of settler colonialism is crucial to the project of decolonization, following the critical observation of the Truth and Reconciliation Commission of Canada (2015) that “virtually all aspects of Canadian society may need to be reconsidered” (p. vi) in order to move toward reconciliation.

In this thesis, I have theorized the mechanisms of anti-terrorism, counterterrorism, and securitization deployed by Bill C-51 as biopolitical techniques of governance that operate through the right to ‘make live’ and ‘let die’. Specifically, I have argued that the introduction of Bill C-51 was situated by the government as an urgent response to the enduring state of emergency and insecurity that emerged following the attacks of October 2014, within which former Prime Minister Stephen Harper and multiple other government officials declared imperatives for the deployment of anti-terrorism and counterterrorism measures and security mechanisms in order to reinforce the security, vitality, and productivity of the Canadian state population against proliferating terrorist threats. Following its introduction in the aftermath of these attacks, Bill C-51 was quickly enacted, despite sustained opposition and resistance throughout public and governmental discourses in general, and significant contestation during the parliamentary debates in particular. Indeed, throughout the parliamentary debates preceding the enactment of Bill C-51, the government consistently dismissed, disregarded, or explicitly rejected the

critical interventions articulated by multiple opponents of the policy, particularly with regard to the exceptional mechanisms of anti-terrorism and securitization that it introduces. Thus, through the introduction of Bill C-51, the government asserted the imperative for the deployment and expansion of governmental programs of anti-terrorism, counterterrorism, and securitization, while simultaneously attempting to restrict public and governmental debates and critiques regarding these invasive techniques of governance. Harper similarly attempted to restrict and censor public and governmental discourses following a failed plot to bomb a Via Rail train operating between Toronto and New York in April 2013, an attack that was subsequently designated by the government as an act of terrorism, when he asserted that “this is not a time to commit sociology” (Harper, 2013). Through characterizing any efforts to critically engage with or examine governmental responses to these acts of violence as attempts to “commit sociology”, Harper aimed to restrict public and governmental debates regarding the introduction of invasive governmental programs of anti-terrorism and securitization. However, as the continuing resistance to Bill C-51 demonstrates, critical engagements throughout public, governmental, and academic discourses are necessary in order to resist the imposition of increasingly invasive governmental mechanisms of discipline and regulation through the introduction of radical anti-terrorist measures and security mechanisms. To this end, through examining the exceptional programs of anti-terrorism, counterterrorism, and securitization introduced through Bill C-51, in this thesis I have aimed to highlight the importance of opening space for critical debate, dialogue, and resistance in response to the attacks of October 2014 and the government’s subsequent introduction of Bill C-51 as part of a broader effort to — to borrow Harper’s phrase — commit sociology.

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