

## *Barred Subjects*

### *Framing the Criminal Body with Foucault and Butler*

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#### *Introduction: From Terri Schiavo to Chelsea Manning*

As Foucault demonstrates in *The Archaeology of Knowledge*, the carving up of history is an arbitrary process. With this in mind, I want to bookend a recent and ongoing history with reference to two figures, Terri Schiavo and Chelsea Manning. These are individuals that, it might be argued, play significant symbolic roles in defining the shifting stakes of Western biopolitics in the opening decades of the twenty-first century. The intention here is to set the scene for rethinking the anatomo-political in relation to the biopolitical.

Terri Schiavo spent 15 years in a coma following cardiac arrest as a result of a long term eating disorder. Her family fought to have her feeding tube removed but faced high level opposition from senior U.S. politicians including the then president George W. Bush. They finally won their case to terminate life support in 2005. As Slavoj Žižek suggested at the time, the affirmation of an ethico-legal duty to maintain a life at all costs, even when this life had arguably been reduced to the living death of irreversible coma, came at a time when other 'living deaths' secured the detention of *those the bombs missed* in Guantanamo.<sup>1</sup> What the case of Terri Schiavo demonstrated was the persistence of a rhetoric which identified life as sacred, a rhetoric which should have rung hollow in light of the military interventions in Afghanistan and Iraq. Moreover, the juxtaposition of such events – the domestic versus the international - highlighted not only the complexities of contemporary biopolitics understood as the positioning of life, human life, as the ultimate value to protect and enhance but also highlighted the multiple ways in which such a positioning might flip over into what Giorgio Agamben refers to as a *thanatopolitics*

<sup>1</sup> Slavoj Žižek, 'Biopolitics: Between Terri Schiavo and Guantanamo', *ArtForum* (December 2005).

which exposes the sovereign core of the biopolitical. This is clearly more complex than simply pitting one life or set of lives against another, which constitutes the justification for the reemergence of a sovereign 'right to kill' within biopolitics in the form of racism, which Foucault identifies at the end of *Society Must Be Defended*. Following Butler's notion of *grievable* life, what is at stake is the 'values' associated with a certain set of lives as well as the reduction of the lives of 'others' to perceived values at odds with our own.

In July 2013, Chelsea Manning, born Bradley Edward Manning was convicted of violations of the Espionage Act for leaking documents whilst in the U.S. army. Having been tried as Bradley, Manning issued a statement on sentencing that she wished to live as a woman. Although, the issue of Manning's gender had been introduced in court as testimony, what does the very specific wish to serve out a military prison sentence as a woman, or pre-op transsexual, rather than a man tell us about the conditions within this carceral space and, moreover, the way such a space is structured and organized according to certain gender norms? At the same time, why did Private Bradley Manning only fully identify his/herself as 'Chelsea' at sentencing? What does this tell us about the performance of gender within the military and, moreover, during a high profile court case? The transgressive act of whistleblowing and perceived betrayal of the security of his country bound up with this act can be mapped far too easily onto the 'transgressive' body of Chelsea Manning. To some degree, Manning has become symbolic in various senses of the complexities and hypocrisies of Western democracy along with notions of truth and freedom such democracy claims to promote and protect. The focus of this paper, however, has less to do with Manning as symbol of such paradoxes but, rather, the specific material conditions of her incarceration and, I want to suggest, any and all incarceration. Manning is facing a maximum of 35 years in military prison and a minimum of 8 years.

This paper is an attempt to think beyond notions of the exceptional, the supra-legal, beyond the bare life, the precarious life, the indefinitely suspended life which have dominated discussions on incarceration and detention since 911. In particular, I want to consider how Butler has developed a critical stance which, in focusing on the exceptional, risks disregarding the everyday. At stake, therefore, is Manning in her cell *not* Schiavo on her drip.

In the aftermath of 911, much of the intellectual left in the U.S. and Europe was forced to re-evaluate its position together with its role in both speaking out against and usefully conceptualizing the parameters and implications of the so-called ‘war on terror’ as well as the discourses and representations which underpinned and framed it. Looking here at Butler’s particular, and arguably highly personal, response in *Precarious Life* and subsequently, in *Frames of War*, a series of tensions emerge which are as important for thinking through the role of the public intellectual as they are for articulating the current socio-political terms defining society in the U.S. and elsewhere in the West. Where Butler draws extensively on Foucault’s work on governmentality in her explorations of the extra-legal activities of the U.S. government and military, how might we shift the focus from abstracted discussions of the law and detention, to the real, everyday, material conditions of life in incarceration? Moreover, without denying the importance of ongoing critical debates about the treatment of terror suspects, the outsourcing of torture and the perpetual state of exception endorsing a permanent war industry, how might we return our attention to the *status quo* maintained by such exceptions – the institutional spaces which continue to affirm a disciplinary mode of power?

Reflecting on both the various responses and various *possible* responses to 911 open to those working in U.S. academia in the immediate aftermath, in *Precarious Life*, Butler considers the statement made by a friend/colleague that the collapse of the Twin Towers marked the ‘end of first world complacency.’<sup>2</sup> Where do we go from this observation? Butler suggested that instead of attempting to ‘heal’ such a wound and restore such complacency which can only ever really entail what we have indeed seen happen over the past decade or so, the ‘more or less permanent war’ and ‘the dry grief of political rage,’<sup>3</sup> there is the possibility of something different here. What is needed is to put an end to the ‘endless cycle of revenge.’ Thus, instead of lamenting the loss of such complacency, Butler suggests allowing it to stand in order to ‘begin to build a different politics on its basis?’<sup>4</sup>

<sup>2</sup> Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London and New York, NY: Verso, 2004), p. 8.

<sup>3</sup> *Ibid.*, p. xix.

<sup>4</sup> *Ibid.*, p. 8.

If retrospectively, the hope for a radical reconfiguration of U.S. international relations seems naïve at best, this is not where I take issue with Butler. Rather, it is in the distinction she establishes between the inner space of the U.S. and the rest of the world. Such a distinction risks reaffirming a sense of first world superiority, if not complacency in the very act of acknowledging its loss or disappearance. It repeats the gesture of Michael Moore's *Fahrenheit 911* in assuming a predominantly U.S. audience rather than a wider reception. Moreover, in claiming that previously 'the only violence we knew was the kind we inflicted on ourselves',<sup>5</sup> Butler is not only presenting a universalized image of the U.S. via the notion of shared suffering but seems to dismiss the systemic violence, suffering and social inequality which operates within the U.S. If 911 demonstrated anything, it was the need to bring *the age of the world picture* to a close. Consequently, Butler's call for a rethinking of politics must also be applied to the domestic as well as the international. It is not simply a question of how one relates to the 'other' perceived as foreign threat from without but how relations within a nation state are configured through its internal, social institutions and spaces.

My aim here is to think specifically about one such regular, disciplinary space. The prison or penitentiary. In addition, to demanding that we examine Foucault's work on discipline, anatomo-politics and the prison afresh, I want to give further attention to the notion of representation as it applies to the carceral space. There are a series of critical conjunctions which bring Foucault and Butler together again in potentially useful ways.

Running throughout the essay will be a reflection on how one negotiates one's position as an academic responding to such events as well as the potential for a more active rather than purely reactive stance here. In this respect, it might be helpful to juxtapose the tensions experienced by Foucault and other intellectuals during their work as part of the *Groupe d'Information sur les prisons* [*Prisons Information Group*] during the early 1970s. Not only does this have specific relevance to the discussion of the prison and life in incarceration but very important questions are raised both by the group themselves and others during and after the enquiries they carried out as to the nature and degree of involvement academics might have in the analysis and critique of such spaces.

<sup>5</sup> *Ibid.*, p. 39.

*Real Bodies in Real Spaces?*

In *Bodies that Matter*, Butler appears to have two main objectives – the first is to take stock of which bodies matter and which bodies don't with the aim of redressing the hierarchies which privilege the rights and needs of certain bodies above others. The second is to provide a certain revision or, if you prefer, renegotiation of some of the positions assumed in *Gender Trouble* particularly those which led to confusion. Both objectives are predicated upon a rethinking of the 'material' body, the body *as* matter as something *that* matters. A similar set of objectives structure what follows. The bodies in question are both different and the same as Butler's 'bodies' in that no body can ever coincide with its physical, political or conceptual renderings yet instead might be defined by its potential, a potential all bodies possess to exceed and subvert existing presentations and representations. At the same time, such potential is at risk of exhausting itself in its own posturing and rhetoric or, indeed, succeeds so convincingly that all that remains is imitation and recuperation as it is co-opted by the prevailing hegemony.

Nevertheless, of interest here is not so much the body's, any body's, potential for subversion of gender norms and categories, but rather, the way in which the body which has already been cast as dangerously subversive, the criminal body, continues to attest to a certain modality of disciplinary power which affirms subjectivisation as the production of the subject *qua* subject. Moreover, in emphasizing the persistence of 'disciplinary' power here, the aim is also to indicate how such power continues to crystallize within certain institutional spaces, their architecture and infrastructures in a very material way. This requires returning to the body that Butler explores in *Bodies that Matter*. Like Butler, my intention is not to offer biological determinations of the body but, rather, to consider how such determinations are produced within different frameworks of power. To do so, I will argue, involves acknowledging rather than disregarding the effects of such institutional spaces precisely at a moment where they seem to have been discounted or written off. Such spaces, the prison, the hospital but also the school and workplace continue to require certain normalizing techniques that appear out of sync with neoliberal-inflected modes of self-promotion, surveillance and management.

Foucault's claim made in an interview in 1978 that 'in the future we need to distance ourselves from today's disciplinary society',<sup>6</sup> should not be read as a simple indictment of institutional forms of power but, rather, a call to pay attention to different, emerging forms of power. One of Agamben's most well-known criticisms of Foucault, made in *Homo Sacer*, is that he fails to analyse the relationship between sovereign and biopower or attempt to identify a point of intersection between the two discourses.<sup>7</sup> Both *Discipline and Punish* and *The Will to Knowledge* present power in terms of a fundamental shift from one form to another. However, following Dan Beer's account of Foucault's very specific rhetoric and the deliberate structural techniques he sets up in his written texts, we should acknowledge the intentional, over-emphasis put on the contrast between the two models of power in these texts.<sup>8</sup> This becomes clear in the light of a more nuanced account of the changing modalities of power, which Foucault provides in his Collège de France lectures. Thus, in his 1973 lecture series, *Psychiatric Power*, he identifies elements of disciplinary (*anatomopolitical*) power which came into existence within the mechanisms of sovereign power:

Disciplinary apparatuses come from far back; for a long time they were anchored and functioned in the midst of sovereignty; they formed like islands where a type of power was exercised which was very different from what could be called the period's general morphology of sovereignty.<sup>9</sup>

Here, he also provides a detailed account of how the family unit, associated with the exercise of sovereign power via the forbidding figure of the father, came to provide the model for the asylum, which Foucault declares an essentially disciplinary institution. However, Foucault also insists that the notion of the family is evoked in psychiatric power not as a residue from old discourses of sovereign power but is actually gains an increasingly fundamental role within psychiatric techniques for regulating and managing the 'sick' or 'deviant' body:

<sup>6</sup> Michel Foucault, 'La société disciplinaire en crise', in *Dits et écrits II: 1976-88* (Paris: Gallimard, 2001), pp. 532-534 (my translation).

<sup>7</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998).

<sup>8</sup> Dan Beer, *Michel Foucault: Form and Power* (Oxford: Legenda, 2002).

<sup>9</sup> Michel Foucault, *Psychiatric Power: Lectures at the Collège de France, 1973-73* (New York, NY: Palgrave, 2008), p. 63.

Inasmuch as the family conforms to the non-disciplinary schema of an apparatus (*dispositif*) of sovereignty, I think we could say that it is the hinge, the interlocking point, which is absolutely indispensable to the very functioning of all the disciplinary systems. I mean that the family is the instance of constraint that will permanently fix individuals to their disciplinary apparatuses (*appareils*), which will inject them, so to speak, into the disciplinary apparatuses (*appareils*).<sup>10</sup>

The same reading needs to be applied today in thinking about the relationship between the sovereign, the disciplinary and security. Disciplinary techniques which defined the nineteenth century factory, school, hospital and prison, continue to supplement and underpin more contemporary manifestations of power aimed at the organization, management and control of populations.

In *Security, Territory, Population*, Foucault introduces the notion of 'security', a term he doesn't explore elsewhere, in order to further articulate the two-fold (bi-polar) operation of bio-power as it targets both individuals and populations defined via a 'political technology of life'.<sup>11</sup> In taking as its aim the population at large, security is defined by Foucault in terms of the supplement it offers to disciplinary power which focuses on the individual body. Together they make up modern biopower. Where sovereign power involves coercion and violence and disciplinary power is comprised of techniques of regulation and normalization, security operates according to a principle of circulation. Unlike disciplinary power which seeks to contain and limit, security is, instead, concerned with growth and production, and the increase of its mechanisms. Where disciplinary power is centripetal, security is a centrifugal force operating within and beyond society.<sup>12</sup> This is why, unlike sovereign power, security does not target fixed territories. Rather, it is aimed at populations whose sizes, configurations and locations are in constant flux. According to Foucault, security can be linked to the emergence of capitalism. Security provides the possibility for economic growth by simultaneously encouraging and restricting the circulation of goods, opening up borders and delineating new boundaries.

Recent critical theory on the body tends to assume one of two positions. On the one hand, much theoretical discourse is taken up with

<sup>10</sup> Ibid., p. 81.

<sup>11</sup> Michel Foucault, *The History of Sexuality I* (New York, NY: Vintage, 1990), p. 145.

<sup>12</sup> Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78* (New York, NY: Palgrave, 2009), pp. 44-45.



considerations of the ‘post-human’ body found in the work of Donna Haraway and numerous disciples of Deleuze and Guattari. The post-human body is the utopian/dystopian body. On the one hand, we have the depoliticised body – representing a utopian, affirmation of a BwO (BodyWithoutOrgans) – the body as a series of flows or an assemblage which exceeds limitations of the physical, fleshly body, calling into question ideas about gender, sexuality, desire and so on. The flipside of this takes on a dystopian dimension which is epitomised by the shift from disciplinary society to Deleuze’s ‘control society’. Bodies are no longer organised in institutional spaces but subjectivity has been reduced to different types of data. We have become a series of passwords, pin numbers, usernames and barcodes. The second position, and this is where we might to some extent locate Butler’s recent work, takes as its focus the bare life of the non-western victim who has become the poster boy or girl of Western human rights discourses. In other words, the suffering, tortured body which has been stripped of all identity, citizenship and culture.

However, underpinning both these positions are a set of biopolitical assumptions which continue to posit life as societies’ ultimate goal or value above all other values. Moreover, any attempt to think our bodies without our bodies – invariably fails and, as Lyotard has suggested in *The Inhuman*, is a futile exercise.<sup>13</sup> So we could call to mind here films like *The Matrix* and *Surrogates* - in which the human body has been rendered obsolete or fully subservient to machines yet nevertheless must be introduced either as mental projection (in the case of *The Matrix*) or as surrogate – a robot designed to replicate one’s own physical body or to provide a preferable alternative.

The tension between subjectivity which extends beyond the physical limitations of the body and the continued primacy of such a body in conceptions of the self highlights what cultural theorist Jeffrey Nealon has referred to as an ‘intensification’ in power or power relations.<sup>14</sup> Since identity and subjectivity cannot be reduced to purely embodied experience nor can they take place entirely in hyperreality – both modes of existence and identification call upon one another to supplement, provide substantiation

<sup>13</sup> Jean-François Lyotard, *The Inhuman: Reflections on Time* (Stanford, CA: Stanford University Press, 1991).

<sup>14</sup> Jeffrey Nealon, *Foucault Beyond Foucault: Power and its Intensifications Since 1984* (Stanford, CA: Stanford University Press, 2008).



of or offer commentary upon the other. The GPS on our phone tells us where we are and Facebook or other social media provides a narrative or commentary on this. Yet, as obvious as this might seem, in order to do so we also need to exist in concrete space. We need a physical location and not simply an IP address.

Nevertheless, it is possible to note here a conceptual shift occurring in emphasis from disciplinary modes of power to Foucault's notion of security in terms of circulation drawing upon the idea of a world population as fluid or in flux. Whether as a result of forced or chosen migration, whether we decide to take a vacation or are obliged to flee civil war and natural disaster, it seems that we are no longer defined in terms of the fixed space or territory we inhabit but in terms of a displacement which is either validated or denigrated. Each individual might thus be conceived in terms of a trajectory, what Paul Virilio calls a 'trajectivity,' a line drawn between points as opposed to a point intersected by a series of lines.

What this skewed perspective fails to take into account is what happens at the borders? In the detention camps? What is at stake in our reference to certain spaces as 'non-places' following the work of Marc Augé? Such a designation puts us at an ironic remove from these spaces, constituting an unconvincing refusal of the role they play in controlling and regulating our experience but also this allows us to ignore other non-places, the margins or edges, the excesses of biopolitical society. These are the spaces where death, disease, violence and crime occur not as a result of failures or gaps in a society's disciplinary apparatus but in order to affirm the necessity of such apparatus. In this respect, security and disciplinary power are even more intertwined than Foucault implies. One of the clearest examples of this is the nation state building that goes hand in hand with free market circulation.<sup>15</sup>

So in other words, what I am proposing here is a return to Foucault's notion of *anatomo-politics* defined as follows:

centered on the body as a machine: its disciplining, the optimization of its capabilities, the extortion of its forces, the parallel increase in its usefulness and its docility, its integration into systems of efficient and economic controls, all

<sup>15</sup> On this see Gianni Vattimo and Santiago Zabala, *Hermeneutic Communism: From Heidegger to Marx* (New York, NY: Columbia University Press, 2011).

this was ensured by the procedures of power that characterized the *disciplines*: an *anatomo-politics of the human body*.

Such an anatomo-politics, it seems to me, continues to function as a fundamental dimension of the biopolitical, even as contemporary readings and problematisations of the biopolitical found in the work of Agamben and others, have resulted in a richer, more complex understanding of Foucault's original definition here.

Therefore, to return to disciplinary power is not to deny the systemic deterritorialisation which has occurred since WWII through the reorganisation of individuals into migrant workers whereby labour-forces are no longer bound by nations or territories. At the same time, archetypal forms of institutional power the factory, hospital, school or prison and their austere architecture seem to have disappeared from certain skylines or converted into expensive residential and office property, its original signage providing a misplaced palimpsest of nostalgia. Yet, if disciplinary power ceases, in some places, to crystallise within a fixed space, henceforth of a different density, fragmented and dispersed through a city's infrastructure via a complex multi-layered empire of signs and surveillance, elsewhere, such institutions not only still dominate the horizon but do so not as relics of a bygone era but, rather, as the new constructions bringing together the latest techniques and technologies for the control and management of individual bodies. In addition to maximum security prisons and border restrictions, within the same context, we might also think about the distribution centres run by Amazon in the UK and Europe which employ various tracking devices to ensure maximum productivity by workers in completing orders and other tasks.

By returning our focus to the disciplinary, I also want to suggest here that there are certain bodies that matter *in theory* and, more importantly, *to theory*, that end up producing frustrating binaries which fail to change the terms in which we think about such bodies or groups of bodies. Moreover, there are some bodies that are necessarily excluded from such discussions precisely because they do not 'fit' certain critical agendas. Here, I want to focus on the 'criminal' body but precisely in terms of the body of the one who has committed a crime rather than with recourse, at least initially, to the more ubiquitous processes of criminalization and securitization which might be argued to apply to all of us in some way or other.

### *Dangerous Acts*

In reasserting how more attention needs to be paid to the real bodies in real spaces of Foucault's anatomico-political, it is necessary to look at the criminal *qua* law-breaker rather than simply as the transgressive, subversive, troubling other. This is not to suggest that all those who find themselves incarcerated are guilty of breaking the law but, rather, to explore and expose the workings of the system which defines criminality as such. The criminal 'identity', the criminal 'subject' can only be produced as such as long as there is a founding set of laws to adhere to and consequently break.

In her critique of the 'indefinite detention' applied to suspects as part of the U.S. 'war on terror', Butler structures her analysis around the absence of any trial or, indeed, any empirical evidence that those being detained had committed the 'dangerous acts' that U.S. government intelligence claimed they had the potential to commit.<sup>16</sup> But what of the notion of a 'dangerous act' in itself? Where Butler accurately identifies a link between the suspension of the justice system and its functioning via the relationship between trial and sentence, she gives less attention to the definition of a dangerous act except to problematize the very deliberate inability of Rumsfeld and Cheney to adequately articulate exactly what the Guantanamo detainees were supposed to have done. Thus, in evoking the absence of dangerous acts or, at the very least, absence of any concrete proof of such acts, Butler fails to address what should or should not happen in the case such acts did occur and can be proved. This seems to be something of a blind spot which risks endorsing a legal and penal system which requires further critique both in itself and in its relationship to extra-legal, military procedures carried out both on U.S. soil and abroad.

To further explore the question of the 'dangerous act', the following quotation is taken from French prison director, Olivier Maurel's 2010 autobiography:

We keep [*nous gardons*] in our prisons those who burgle your houses and steal your cars, those who sell drugs to your children and friends, those who sexually assault or rape your daughters, your mothers, your sisters and your cousins, those

<sup>16</sup> Butler, *Precarious Life*, pp. 77ff.

who steal your money and those who murder and kill people you know and care about. We keep those who abduct, rape then murder young children. We keep those who plant bombs and want to destroy, for political and religious reasons, the very essence itself of our civilization, our long shared, democratic, republican history.<sup>17</sup>

Who exactly is Maurel addressing here? Coming at the end of his account of life as self-professed '*taulier*' [jailer], this exhortation reads as an act of special pleading, a last ditch attempt to gain public sympathy and approval through a warning issued to any reader tempted to side with the inmates over and above those charged with keeping them locked up. The 'nous' [us] and 'vous' [you] are bound together through a 'shared history' which is under threat from an homogenous '*ceux qui*' [those who], whereby those in incarceration are reduced to a list of violent and vindictive crimes. This is a hyperbolic reminder that those serving prison sentences are a direct menace to the well being of both the reader and his or her family and friends. In play here is a straightforward *politics of fear* intended to legitimate the penal system and those running it.<sup>18</sup> There is also an assumption in his evocation of certain acts, most notably paedophilia and terrorism, that the reader will acquiesce with the incarceration of those having committed them without any further questioning of the social structures producing and defining such acts in the first place. Moreover, Maurel defines such a system as beyond recrimination, positing it in terms of a *civilization*, a *republic* and a *democracy*.

Maurel's outburst runs counter to most of his narrative which is predominantly taken up with showing what a reasonable, decent guy he is, sympathetic to the needs and problems of his inmates even when they are holding him hostage. Thus, if we are to take anything from the text, it must be that Maurel does not and cannot see things in black and white but, rather, recognizes the inherent failure of the penal system and his role in it here. This is why he is right, perhaps unwittingly, to present this to us as a 'confession' despite largely reading as a series of self-aggrandizing 'war stories.' To present the inmates in terms of a select list of crimes

<sup>17</sup> Olivier Maurel, *Le Taulier: Confessions d'un directeur de prison* (Paris: Fayard, 2010), my translation.

<sup>18</sup> Angela Davis has identified a 'politics of fear' as a deep-rooted ideology working to legitimize the existence and development of prisons in the U.S. in *Are Prisons Obsolete?* (Open Media, 2003), p. 16.

is the only means of perpetuating the logic of incarceration, presenting those locked up as a direct threat to individual safety and freedom. Again, this is the reemergence of a sovereign notion of life within the biopolitical presented as a direct attack by one population upon another. Foucault touches on the notion of the 'biocriminal' and the link between racism and criminality at the end of *'Society Must Be Defended.'*<sup>19</sup> Although he refers only to the 'execution' or banishment of the criminal body here, there is scope for a rereading here which, drawing on the work of Angela Davis, considers the systemic racism of the prison.

What Maurel's text demonstrates is the difficulty of thinking life without prison. Where it has come to constitute his entire *raison d'être* since he passed the 'fonctionnaires' [public service] exam, the idea of conceiving of society without prisons, detention centers and other 'secure units', is something we all find deeply complex and unsettling. In *Are Prisons Obsolete?* Angela Davis provides a good explanation of the way in which discussions of 'decarceration' and 'abolition' are precluded via a primary focus on prison reforms.<sup>20</sup> To focus one's attention on 'reforming' the carceral space ultimately endorses that space and its structural logic, contributing to a call for bigger and more 'efficient' prisons. Davis is not suggesting those fighting for improved prison conditions should cease to do so. Rather, such a fight should work alongside an ongoing debate about the role of prison within society based around abolition as a genuine rather than utopian possibility. Such a debate requires an analysis which looks at how today's prisons constitute an integral part of the social fabric and economic system of a country. As Davis points out, a critique of today's industrial prison complex cannot be predicated on a reformist rhetoric.<sup>21</sup> In an interview given in the 1970s, Foucault posed a similar problem:

You want me to describe a utopian society where there would be no prison. The problem is to know if we can imagine a society in which groups themselves controlled the application of rules. It is the whole question of political power, the problem of hierarchy, of authority, of the state and state apparatuses. It is only when we have cleared away the brushwood from this immense problem that

<sup>19</sup> Michel Foucault, *'Society Must Be Defended': Lectures at the Collège de France. 1975-76* (London: Penguin, 2003), p. 258.

<sup>20</sup> *Ibid.*, p. 20.

<sup>21</sup> Davis, *Are Prisons Obsolete?*, p. 100.

we will finally be able to say: yes, we should be able to punish this way, or, it is completely useless to punish, or again, society ought to give such a response to this irregular conduct.<sup>22</sup>

In particular, specific attention needs to be paid to this idea of ‘dangerous’ acts which functions to legitimate keeping people locked up as a means of ‘protecting’ those outside. To focus on ‘acts’ in this way is a faulty premise. If followed to its logical conclusion it ends up mattering little whether someone has actually committed an act or simply is deemed to be capable of doing so. Moreover, in linking the abolition of slavery to the development of prison labour, Davis has highlighted the way certain acts and activities such as vagrancy became penal offences precisely to assure the continuation of slavery albeit in the guise of ‘hard labour’ and the chain gang.

In the immediate aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the possibilities of freedom for newly released slaves. Black people became prime targets of a developing convict lease system, referred to by many as a reincarnation of slavery.<sup>23</sup>

Indeed, the racialization of certain crimes like shooting, drug use as ‘black crimes’ continues today with widely divergent sentences handed out to black and white adolescents and young men (and women) for the same drug misdemeanors. Again, the ‘potential’ or even *the appearance of having the potential* to commit ‘dangerous’ acts by dint of the colour of one’s skin played out in the case of Trayvon Martin in 2012 which resulted in the acquittal of George Zimmerman, his killer, deemed by the jury to have the right to such ‘profiling’ in the name of personal protection according to Florida State’s *Stand Your Ground* statute.

Yet, despite her focus on the absence of the act rather than its existence, elsewhere in *Precarious Life*, Butler is also sensitive to the ‘conditions’ which make certain acts possible. She writes:

[W]e need to situate individual responsibility in light of its collective conditions. Those who commit acts of violence are surely responsible for them; they

<sup>22</sup> Michel Foucault, ‘Prisons et révoltes dans les prisons’, in *Dits et écrits II*, pp. 425-432.

<sup>23</sup> Davis, *Are Prisons Obsolete?*, p. 29.

are not dupes or mechanisms of an impersonal social force by agents with responsibility. On the other hand, these individuals are formed, and we would be making a mistake if we reduced their actions to purely self-generated acts of will or symptoms of individual pathology or “evil.” But the discourse of individualism and of moralism (understood as the moment in which morality exhausts itself in public acts of denunciation) assume that the individual is the first link in a causal chain that forms the meaning of accountability.<sup>24</sup>

In pinpointing the need to radically rethink the relationship between conditions and acts, Butler is warning against a simplified reading of such conditions which drastically limits the agency of certain individuals as a result of their specific, personal circumstances in favour of an analysis which considers the conditions of existence which are systemic in the oppression and exclusion of certain groups. This also works to provide a link between actively committing certain ‘dangerous’ acts and passively allowing other dangerous acts to take place. Furthermore, in her discussion of the ‘frame’ in *Frames of War*, which we will return to later, she provides a more nuanced recognition of how no act possesses an inherent moral or ethical value but, rather, is defined as such within a given context, in turn providing the ‘context’ for identifying individuals and groups in relation to such acts. ‘Some way of organizing and presenting a deed leads to an interpretive conclusion about the deed itself.’<sup>25</sup> At the same time, the analysis needs to be pushed further still. Butler does little to circumvent the idea that certain acts should always be punished or that punishment should assume some form of imprisonment. Thus, perhaps what is needed is not simply an insistence on the ‘presence’ of dangerous acts in order to detain or imprison someone, but a radical critique of how acts are presented as more or less ‘dangerous’ depending on who is committing them.

Therefore, although I want to eschew a lengthy discussion of the relationship between the legal, the political and the cultural which define the terms and conditions of existence within a given society for different sets of individuals, I do want to draw attention to the way in which the criminal act continues to function as a kind of degree zero in public consciousness and as such continues to legitimize prison in terms of both

<sup>24</sup> Butler, *Precarious Life*, pp. 15ff.

<sup>25</sup> Judith Butler, *Frames of War: When is Life Grievable?* (London and New York, NY: Verso, 2010), p. 8.



retributive punishment, rehabilitative treatment and public security rather than in terms of the warehousing of unwanted, unneeded labour.

Without rejecting Butler's concepts of 'grievable' and 'precarious' lives outright since these might also be applied to how we perceive those in incarceration as well as those suspended in 'indefinite detention' or the unnamed, unseen casualties of a never ending war – I want to propose the notion of the 'intolerable' which structured the GIP's enquiry into the state of prisons in France in the 1970s as a means of more effectively bringing together those in a position to tolerate or refuse to tolerate something, academics and activists primarily, and those for whom existence is 'intolerable.'

The notion of the 'intolerable' raises the question as to what is considered to be 'intolerable' and by whom. On the one hand, that prisons were and, indeed still are, intolerable is taken as a starting point by the GIP. Yet, the aim of the project was to discover what exactly it was about them that was 'intolerable.' In an interview given in 1971, Foucault defined the problem as follows:

Simply put, I perceive the intolerable. The blandness of the soup or the coldness of winter is relatively bearable. But to imprison an individual just because he has a run-in with justice, that is unacceptable!<sup>26</sup>

Such a statement makes it clear that Foucault thought that prison reforms were not enough. Butler's references in *Prekarious Life* to the metal sheet standing in for a roof in Guantanamo (p.73) perhaps miss the point here. The specific material conditions are deplorable. Foucault is not contesting that the food served in prisons is disgusting. As Butler makes clear in *Bodies that Matter*, to fixate on the material body without considering the structures of power which define such materiality or put it to use in this or that way is a meaningless exercise which simply endorses existing hierarchies based on archaic biological assumptions about gender and race. The same applies to the material conditions in a prison. As indicated above following Davis' position, too much focus on specific material aspects of prison life risk affirming the prison system *per se*. Instead, what is required is to take these conditions as a start not end point in order to recognize the various technologies of power underpinning these conditions.

<sup>26</sup> Michel Foucault, 'Je perçois l'intolérable', interview with G. Armledet (July 1971), reproduced in *Dits et écrits I: 1954-75* (Paris: Gallimard, 2001), pp. 1071-1073.

This is also why further attention needs to be focused on the criminal as the body we are all complicit in defining as such rather than the merely ‘troubling’ body. I want to suggest a reading which engages with Butler and specifically the notion of performativity but which at the same time provides a critique of the parameters which, for one reason or another, have resulted in a privileging of certain ‘other’ bodies. Women – Homosexual – Muslim. Victim – Deviant – Terrorist. Perhaps all three. Such bodies, I would suggest, are ‘docile’ even when at their most dangerous or volatile. Even, moreover, when they enact a necropolitics such as are embodied by the extreme eating disorders of Schiavo and others, HIV ‘bugchasers’ or suicide bombers. Bodies which function largely as illusory threats, constructed as spectral doubles (as much by the intellectual left as the moral majority right) to the equally fictional image of the U.S. citizen as white, Christian, male and heterosexual. Yet, at the same time, such transgressive bodies are ‘docile’ even when the threat is real precisely because they have come to embody an ‘exceptionalism’ which serves to maintain and reaffirm the *status quo*.

### *Butler’s Repressive Hypothesis*

One of the main difficulties faced by academics working in the humanities and social sciences, is how to respond both accurately and adequately to current and recent events particularly when those events call into question established and comfortable categories of thought and frameworks. Knee jerk polemics to the order of intellectual journalism should be avoided as should the over-abstraction of unfolding events. In his work on prisons, Foucault was attentive to these problems as well as to the complex relationship between his role as academic and his involvement in what he called ‘political action.’

If I occupy myself with the GIP, it is only because I prefer effective work to university yacking and the scribbles of books. To write a sequel today to my *Histoire de la folie*, one that would cover material up to the present era, is devoid of interest to me. On the other hand, a concrete political action in favour of prisoners appears to me charged with meaning. An aid in the struggle of detainees and, ultimately, against the system that puts them in prison.<sup>27</sup>

<sup>27</sup> Michel Foucault, ‘Le grand enfermement’, in *Dits et écrits I*, pp. 1164-1174.

Despite his indictment of such ‘scribbles’, Foucault’s subsequent written account in *Discipline and Punish* of how incarceration became the dominant form of punishment in Europe during the eighteenth century is far more nuanced as a negotiation between current events and the socio-historical conditions and discourses underpinning these. In pointing out that what he is effectively writing is a ‘history of the present’,<sup>28</sup> Foucault is also making a statement about the role of the academic in contradistinction to that of the activist. *Discipline and Punish* not only intentionally avoids direct references to the work of the GIP and the accounts of those who responded to the enquiry but at the same time issues a warning about the traps of conflating sustained intellectual reflection and direct political action. As a result, the ‘respectful’ distance established between the work of the GIP and the publication of *Discipline and Punish* also results in a text which benefits from the more sophisticated analysis of disciplinary power that came to distinguish Foucault from Althusser and other Marxist philosophers working on institutional forms of power at the time.

If the Gulf War of the early 1990s was the first fully ‘mediatised’ war then the Iraq War of the early 2000s saw another layer of reflexivity added here via an almost instant commentary on the images and reports circulating and saturating public consciousness which as a result of the internet occurred on a rolling basis rather than punctuated by programming schedules. A 24-hour meta-commentary. As W.J.T. Mitchell points out in *Cloning Terror*, ‘Every history is really two histories. There is the history of what actually happened, and there is the history of the perception of what happened.’<sup>29</sup> If philosophers and scholars have always provided commentary on world events, after 9/11 the need and pressure for academics to do so has intensified in unprecedented ways. At the same time the role and responsibility of the academic as representative of the increasingly privatized *industrial university complex* has come under further scrutiny. If engagement with a more public audience is encouraged (in the UK this is known as ‘impact’), there is increased policing as to what one might say in public.

This is Butler’s contention, reporting in *Precarious Life* on the way in which discussion and debate was shut down after 9/11 within the university

<sup>28</sup> Michel Foucault, *Discipline and Punish: Birth of the Prison* (New York, NY: Random House, 1977), p. 31.

<sup>29</sup> W.J.T. Mitchell, *Cloning Terror: The War of Images, 9/11 to the Present* (Chicago, IL: The University of Chicago Press, 2011), p. xi.

as much as outside its confines. Yet, if the shock and horror in the immediate aftermath of the attacks on the World Trade Center, made academics wary of jumping to quick conclusions and critical of those amongst them who did, surely intellectual engagement with these issues was not repressed but actually proliferated here? Moreover, academics (especially in the U.S.) were forced to acknowledge the relationship between their research, their politics as well as their personal affiliations which previously could have to a large extent co-existed unproblematically and unquestioned.

Looking at *Precarious Life* with the benefit of a decade of further reflection and critical distance, it is possible to read Butler's response to what she views as a critical impasse in two ways. The first is to read it as a straightforward attempt to redress the refusal of colleagues to think beyond the images of the World Trade Center collapsing, in which any vague invitation to consider the wider conditions and implications of this attack was countered with accusations of anti-Semitism. Alternatively, we might read Butler's own extensive commentary on this as evidence that debate and discussion *were* effectively being pursued in academic circles but that with the 'first world complacency' previously enjoyed by academics severely shaken, the possibility for polite *disagreements* was no longer an option. In this respect, Butler seems to be evoking her very own 'repressive hypothesis' in relation to the intellectual discourse surrounding 9/11.

Foucault sets up the 'repressive hypothesis' in the opening chapter of *The Will to Knowledge*. Playing on a longstanding 'myth' of Victorian prudery and repression, Foucault taps into our assumptions that discussions of sex and sexuality were precluded in Victorian society and that in the late twentieth century, we were just beginning to 'liberate' ourselves from the constraints imposed on sexual discourse and activity during the nineteenth century. Here, Foucault performs a sleight of hand in which he confirms what we think we know precisely in order to pull the rug out from under us. Drawing our attention to the multiple discourses, theories, prescriptions and instructions about sex emerging in the eighteenth and nineteenth centuries, Foucault forces us to think again about this notion of repression. Essentially, he is calling us to look at what is there rather than what we are told is there. In this sense, he is continuing his critique of discourses and the conditions which make certain statements possible and acceptable where others are inadmissible that we find in *The Order of Discourse*.

I would like to propose we carry out a similar reading of the discourses, images, theories and commentaries produced since 911 in relation and response to the ‘war on terror.’ To some extent, such a reading follows the trajectory established by Mitchell in *Cloning Terror* but would focus instead on the discourses rather than the images which have saturated public and academic consciousness. Moreover, if, as Mitchell suggests, the reign of a certain type of ‘image’ of terror ended with Obama’s inaugural election campaign,<sup>30</sup> the same does not hold true of the discursive frameworks which continue to operate according to certain logics, most notably, that of the exception.

If Butler’s response in *Precarious Life* often seems to consist of a straightforward exercise in self-validation, I don’t think there is much mileage in simply denouncing this as an act of ‘bad faith’ on her part. Instead, we might ask where the merits of such an exercise in justifying one’s own position lie? Is there another way to read *Precarious Life*, particularly the most personal passages which would focus on it as an archive, documenting a specific moment in an intellectual history as much as a political one? Moreover, would Butler’s analysis of precarious and grievable life have the same potency or function if they were untethered from her accompanying narrative on the state of affairs in U.S. academia? To try to respond to such tensions, it might be useful to look in more detail at what might be termed an *academic discourse of exceptionalism* emerging in the wake of 911.

### *Suspended State*

A particularly vociferous example of academic discourse on 911 might be easily identified in the writing of Slavoj Žižek. In his comments on the shifting paradigms of Western biopolitics, Žižek is a useful interlocuteur here and his statement from *Welcome to the Desert of the Real* is particularly telling in this respect:

Who is really alive today? What if we are ‘really alive’ only if we commit ourselves with an excessive intensity which puts us beyond ‘mere life’? What if, when we focus on mere survival, even if it is qualified as ‘having a good time’, what we ultimately lose is life itself? What if the Palestinian suicide bomber on

<sup>30</sup> Ibid., p. 2.

the point of blowing him – or herself (and others) up is, in an emphatic sense, ‘more alive’ than the American soldier engaged in a war in front of a computer screen against an enemy hundreds of miles away, or a New York yuppie jogging along the Hudson river in order to keep his body in shape?<sup>31</sup>

If Žižek is calling into question a Western biopolitics which has emptied all political commitment out of life and living, he is also constructing a (deliberately) problematic binary composed of easy clichés. While his readings of 9/11 might, along with much of his writing, seem reactionary not least in the speed with which they followed events themselves – the book of essays also marks a watershed and seems to define the stakes, if not for Western politics and culture, then certainly for left-wing intellectual readings of identity and culture over the past decade and a half. Thus, when he suggests that the claims circulating post 9/11 that *nothing would ever be the same again*, were disingenuous, intended to maintain life as usual for the average American – he both missed the mark and succeeded in defining it. As it turns out *nothing will ever be the same again* politically, culturally or intellectually.

What has followed has been an obsession with the ‘exceptional’ body. The academic gaze reproducing the repulsed fascination with which the world, and more specifically, the U.S. and Europe consumed images and narratives of torture and abuse in Abu Ghraib, Guantanamo and elsewhere by armed forces representing a free and democratic West. Yet, in focusing on the ‘exception’, to what extent has this succeeded in endorsing the systematic oppression of other bodies? More specifically, if Butler and others have focused their efforts on certain instances of precarious life, certain images of torture – what of those who fall outside the exceptional spaces and moments which emerged into public consciousness after 9/11? What of those existing in spaces which are also marginal, exclusionary spaces but at the same time fully integrated into a society, or section of society, not subject to martial law or enacting a ‘state of exception’? While Agamben asserts that the law functions precisely via its suspension, its *inoperativity* constituting both its suspension and fulfillment, this is not what is going on in today’s penal system. The law with all its niceties, predilections and pathologies is to all intents and purposes functioning as ‘normal’ here.

<sup>31</sup> Slavoj Žižek, *Welcome to the Desert of the Real* (London and New York, NY: Verso, 2002), p. 88.

In other words, those serving time in San Quentin, Attica or Colorado are not the ones *the bombs missed*. There are now over 2.2 million incarcerated in the U.S., a total of 0.7% of the population.<sup>32</sup> Incarceration has become a form of warehousing, which, with the introduction of the ‘super max’ has led to more not less incarceration for increasingly long periods of time. As Davis and others have indicated, this form of incarceration is not unique to the U.S. but is being adopted by other Western countries faced with an increasing prison population.

### *To Have Done with the Docile Body*

All this leads me to propose that we have done with the ‘docile’ bodies which shape much contemporary theorizing of otherness focusing instead on the *criminal* other who has committed acts of violence towards others. This is not a question of endorsing or trivializing such acts but, rather, suggesting that the association of certain crimes and ultimately all crime with imprisonment is something we continue to take for granted and which often underpins (and undermines) the challenges we pose to other forms of detention and exclusion.

Consequently, what is implicit in Butler’s work, especially *Precarious Life* but, as I will also demonstrate, *Frames of War*, is the call for a complete rethinking about both conditions of existence and the terms of representation which determine, legitimize and perpetuate such conditions. If the parameters of her own discussion are predicated on the supra-legal, the exceptionalism of Guantanamo as opposed to the regularity of San Quentin or Attica, I would argue that she sets the scene for a deeper analysis of the conditions which produce the criminal body and then demand his or her incarceration.

Firstly, how might Butler’s in-depth analysis of ‘indefinite detention’ be applied to a penal system, such as we find in the U.S., which largely refuses any discourse of ‘rehabilitation’, preferring instead to view inmates as bodies to be managed? To what extent does Clinton’s *Three Strikes* rule meting out life sentences for repeat offenders embody this notion of detention in the absence of concrete acts? If the Guantanamo detainees

<sup>32</sup> As of 2011. Data available: <http://prisonstudies.org>



had not committed any 'dangerous' acts but simply were deemed capable of contributing to their planning and execution in no matter how small a way, the three strikes rule, also uncouples a specific, concrete crime from an 'appropriate' punishment by focusing on a notion of criminality based on repeat offences, no matter how minor. Drawing again on the complex relationship between individual responsibility and the conditions structuring such responsibility, as highlighted by Butler, we can see the extent to which the three strikes rule is both a tacit acknowledgment of this relationship and a direct attempt to deny its existence.

Secondly, what is the scope for mapping Butler's work on gender onto the space of the prison? One of the main dangers in ongoing discussions of gender within the carceral space concerns the way in which sociological research carried out on the different experiences in male and female units along with statistics about crime and gender end up reaffirming traditional gender hierarchies and binaries via the statements such studies make about how men and women interact with members of their own gender within certain spaces. It is possible to see how such findings are predicated on an underlying assumption that prison is the *de facto* mode of punishment if not for everyone then, at the very least, for the heterosexual male 'offender.'

The stakes are twofold here, on the one hand, what is required is a questioning of exactly how the architecture, infrastructure and organization of the prison works to *produce* rather than simply *affirm* certain normative gender divisions and constructions. Secondly, such arguments must be used to develop the abolition debate rather than limited reforms which themselves are often implicated in the reinforcement of gender norms rather than their critique.

If the prison is a space which produces as much as it affirms existing hierarchies, how are such productions or performances of gender and criminality as well as race and class mapped back on to the space outside the prison? In the next section, I want to explore the tension between what might be referred to as a saturation of images of incarceration via the mainstream media and, most notably, the U.S. prison documentary over the past decade and, at the same time, the ongoing absence of other images of incarceration.

*How to Take a Photograph of the Frame*

The notion of the frame, the *parergon*, as expounded upon by Jacques Derrida in *The Truth in Painting*, seems to lend itself particularly well to exposing the tensions and paradoxes of the carceral space. A space which is both 'inside' and 'outside'. A space subject to multiple acts of framing in the carving up of space and time. Cells, blocks, wings. Mealtimes, visiting hours, recreation, lights out. There is also the double meaning of framing which is not lost on either Derrida or Butler. To frame someone not only means to place them in a certain context but also to set them up. Regardless of whether one is 'guilty' of a certain act or not, an inmate is both contextualized and set up within the frame, or frames of the prison. So, to what extent are we, as viewing public, complicit in such *setting up*? In *Frames of War*, Butler poses the question as to the possibility of 'photographing' the frame and what this might mean. I want to propose two possible examples with which to explore this framing of the frame: Foucault's opening account of torture in *Discipline and Punish* and television entertainer Louis Theroux's *Behind Bars* documentary. Then I will suggest how we might identify challenges to such acts of framing emerging from within the space of the prison itself.

*The spectacle of surveillance*

If the GIP succeeded in getting 'ordinary' (rather than intellectual or political) prisoners to produce their own narratives, there was still a lack of visual representation of incarceration in France excluding the stock footage, which up until today mostly consists of empty prison corridors or aerial views authorized by the prison authorities. Before going on to explore the saturation of images of incarceration that defines public consciousness of the U.S. penal system, I want to explore the absence of the prison image in other contexts as counterpoint to such saturation.

The absence of an image is no longer a straightforward form of exclusion or repression. Today we can also note a deliberate framing of the absent or deferred image. Perhaps the most obvious example of such framing is the photo of 'The Situation Room', the image of senior White House staff gathered around to watch video footage of the capture and killing of Osama Bin Laden by Seal Team Six. But is that what we are actually looking at? As it transpired, the photo that was so widely circulated

could have been taken at any point during the screening of what was no doubt hours of special ops footage. So why was the picture taken and circulated at all? If the image is deferred once then it is deferred again in the uncertainty that the moment captured corresponded to the precise moment of Osama bin Laden's death. This is a double absence which includes or contains precisely via the gesture of excluding. A radical inversion has occurred in which it is the technique of surveillance itself, and not that which is being surveilled or monitored, that now constitutes the spectacle. This is something I think we might explore further via Foucault's account of the spectacle of torture in *Discipline and Punish*.

Foucault's much cited account of Damians versus the prison timetable continues to be one of the most powerful, if hyperbolic, accounts of the penal system in Europe. Attempts to paraphrase often fail to do justice [sorry] to the poetry of his graphic description. Moreover, I would argue that where frequently references to this opening passage within larger discussions of power, penal systems and the criminal body do not necessarily tell us anything new or different, there might be a more interesting way of reading these acts of citation and paraphrasing. What is it about the opening passage which is so appealing and which works so well? What is the function of the image of punishment rendered as narrative. Is this a case of transforming the reader into another spectator alongside those in the crowd watching Damians being torn into pieces? Or, is there an injunction here to distinguish reader from spectator?

Furthermore, how do we then relate this opening to the plates in the middle of the text, a question raised by François Boullant in *Michel Foucault et les prisons*. Foucault never includes actual images in his texts except in *Ceci n'est pas une pipe*. This is not to say he does not provide accounts of images such as *Las Meninas* in *The Order of Things* but key here as with the account of Damians is the image rendered as narrative. Unlike Deleuze, Foucault does not even seem to be a fan of the diagram. Again these only appear in *Ceci n'est pas une pipe*. The image plates in *Discipline and Punish* are therefore important. Why are they there? And, how do they affect our reading of *Discipline and Punish*?

In the GIP's call for prisoners, former prisoners and their families along with all those involved in the penal system – lawyers, social workers and education officers to speak up and out about prison life – a supplementary call went out for those involved in facilitating the project to col-

lect as much other information including photos. At the time there was a paucity of images documenting prison life in France. The idea of filming within and around the prison was, at that point, also posited but as a possible but ambitious and distant prospect for the group.

Written in the aftermath of this concrete work on the current prison system in France, *Discipline and Punish* should be read as both emanating from Foucault's active engagement and as a sustained reflection on the way in which techniques of discipline and normalization are engrained within contemporary society, how such techniques harness space and time in specific ways and capture both the criminal, deviant and the docile, law-abiding bodies. Foucault himself insisted that the book should not be read as shameless intellectual profiteering, the recuperation of the current or recent suffering of those incarcerated and their families in order to produce philosophical reflections. Acknowledging these as a starting point for his enquiry, Foucault demonstrates how one might be sensitive to both events and the individuals they affect whilst at the same time recognizing the necessity for sustained analysis concerning how one arrives at this point. How have we arrived at the specific forms and levels of the intolerable experienced throughout the world today?

Foucault's account of Damiens should be read as deliberately affective. Not only to emphasize our assumptions about changes in methods of punishment but at the same time in order to draw attention to the role narrative plays and should continue to play as well as perhaps to alert us to the way in which we, scholars, students, are so easily seduced by such instances of the 'intolerable.' Thus, where Foucault's opening passage is a rhetorical device, the stakes operate on two levels. Yes, unsettle our presumptions about the apparent 'humaneness' of modern forms of punishment namely incarceration. But, at the same time, call us to account for the way we revel in being unsettled in a way that is often counterproductive, narcissistic, metadiscursive and thus which rarely results in concrete action.

Similarly, the relish with which those of us working with and on Foucault seize these descriptions and leaf through the pages in the middle of the book attests, I think, to the return and persistence of the spectacle even whilst Foucault is making the case for its disappearance. What is different, however, is how such a space, the space of the spectacle, is framed and contained. The public spectacle of torture and execution became the

very site where sovereign power was subverted and contested rather than affirmed making it a volatile space privy to mob rule. A more complex, refracted process is at work today in which surveillance has itself become a spectacle exemplified in television shows like *Gogglebox* in the UK in which viewers watch the same families watching prime time television each week. But also the U.S. prison documentary. Mob rule is co-opted here as a self-disciplining, self-regulating force. The watchtower is no longer a concrete architectural structure within a specific disciplinary institution but, instead, has moved inside the home, diffuse yet neatly contained within the space of the TV or computer screen.

### *Shock Photography*

If the visual imagery of Foucault's accounts of punishment are, in fact, deflections or deferrals, shifting our focus away from the modern day, contemporary prison precisely in order to expose its foundations and workings, such imagery is also an attempt to 'capture' the processes of 'framing' at work in our perception of incarceration. Writing on 'shock photography' in *Mythologies*, Roland Barthes points out that the photographer has been 'shocked' precisely so we don't have to be. Judgments have been made on our behalf and the terrible image of atrocity neutralized, our potential for action exhausted in the moment of looking without really seeing. As obvious as such a statement might now seem, this does not make it any less relevant with regards to the framing processes at work in contemporary prison documentaries. Such techniques of representing life in incarceration continue to perpetuate a politics of fear even as we openly acknowledge the sensationalism at work. Moreover, the regularity with which U.S. penitentiaries like San Quentin feature in such documentaries means that the presence of film crews within the carceral space is something which is accepted as commonplace by inmates as well as correctional officers. Thus, in a similar way to Charcot's use and development of photography in the diagnosis of various forms of madness and hysteria in La Salpêtrière, the role of the film crew within the U.S. penal system has become both complicit and essential in diagnosing and 'framing' different forms of criminality.

In particular this pertains to the way in which those incarcerated are actively encouraged to perform a certain criminality. This plays out, for example, in the carnivalesque performance of normative gender roles (for

example, husband and wife couplings) in San Quentin prison as filmed for *Locked Up* together with the seemingly more 'intelligent' and 'sensitive' framing of Louis Theroux's *Behind Bars* (BBC, 2008). One approach here might be to apply Butler's reading of the film *Paris is Burning* in *Bodies that Matter*, to the performance of gender in prison. Where it is possible to locate the desire of characters like Venus in *Paris is Burning* to conform to both the ideal of woman and the domesticity such an ideal facilitates within a complex series of exclusions pertaining to both class and gender, the performance of femininity in prison by those who would define themselves as homosexual males in the outside world attests to a different form of 'passing.' The complex, paradoxical notion of the 'natural' as something which takes considerable time and effort to achieve undergoes a certain inflection in prison. If Venus risked her life (and indeed Butler suggests that this was probably what led to her death shortly after the film was made) in trying to 'pass,' individuals like those interviewed by Louis Theroux in San Quentin, acknowledge that the performance of femininity in jail is regarded as a form of 'honesty' rather than deceit about one's identity. If this leaves one open to certain abuses, it also makes things 'smoother' as one inmate puts it since it neutralizes the subversive threat of the dominant homosexual male, rendering him as woman. It is also interesting to note how such performances engender couplings between openly homosexual and otherwise heterosexual men (often married on the outside). This appears to be more than a simple rationalization of homosexuality by otherwise 'straight' males or indeed a replication of traditional hierarchies and power relations between a 'male' and 'female' couple. Theroux's documentary is largely taken up with observing the different social configurations and relationships produced within San Quentin, navigating between discussions with gang members and former members and those in romantic relationships in prison. A former member of a Nazi, white supremacist gang, now in a relationship with a gay Jewish inmate, offers some insight into the way both gangs and couples provide a certain type of exclusive friendship and loyalty deemed necessary to survive in prison not simply physically through protection from harm in the case of gangs or the fulfillment of desire in the case of a romantic relationship but also in order to feel special and included in a space in which one is both excluded from society and subject to the homogeneous routine of the prison.

By setting up this link between gang affiliation and coupling, Theroux provides a way of thinking differently about gang membership and gender within the space of the prison, attesting to the persistence of values such as friendship, trust and loyalty as opposed to the usual discourses of racism, homophobia and violent power structures applied to both sets of relationships. Nevertheless, in his conversations with Deborah, a pre-op transvestite, a different link is set up between criminality and homosexuality, that of recidivism. Deborah's enthusiasm for her new younger partner is tempered by a certain resignation which comes from having been 'doing this a long time.' She is both referring to her life in and out of prison and the type of relationships both inside and out that accompany her recidivism. When asked why she has been in and out of jail for the past twenty years, Deborah suggests it is as a direct consequence of the men she hangs out with. If Deborah is the one who 'sets up' the link between criminality and sexuality, it is Theroux's line of questioning which makes this possible and which allows such a connection to stand unchallenged.

Theroux's more nuanced form of 'framing' might be supplemented with other more conventional (here read 'sensationalist') examples of prison documentary and the various techniques employed ranging from the pixelated faces and distorted voices of 'at risk' inmates to the positive depictions of the correctional officers via certain scenes and narrative conventions. Yet, if both inmate and CO, at least in certain well-documented U.S. penitentiaries, have become accustomed to performing their roles of criminal and guard for the benefit of public consumption, what about other forms of representation and, more specifically, self-representation of those incarcerated elsewhere?

### *Conclusion: Towards a Tactics of Counterveillance*

It is possible to carry out a reading in which all forms of representation necessarily involve a certain performativity which ends up affirming those incarcerated as criminal or deviant. Even when possibilities of 'positive' self-representation arise such as the Koestler Foundation's initiatives to fund and disseminate art produced in prisons and by those in secure units in the UK, these often lack sustained critical reflection as to the underlying role of such projects. While the myth of rehabilitation



such projects ascribe to is surely preferable to the notion of managing or ‘warehousing’ bodies that is openly acknowledged by those both working in and incarcerated in the U.S. penal system, a more direct link might be made between documentary images and those produced by inmates themselves. To what extent do both serve to perpetuate a certain exoticism of the ‘dangerous’ other, contained within the frame of the television screen or housed in a respectable art gallery or museum for the purposes of our safe, comfortable consumption? The dirty politics of fear of most prison documentaries is underpinned by the same logic as the heartwarming, emancipatory tale of the inmate turned artist. Both suggest that prison works, that prison is necessary and that it is the best place for those being kept there.

However, in evoking the hidden similarities between the different myths of criminality and the way these are framed outside of the prison, I am calling for a more critical discussion of these myths and their perpetuation rather than shutting down further the possibilities for such criticism. Thus, by way of conclusion, I want to focus on the potential for self-representation within the space of the prison as series of tactics which resist as much as conform to established notions of criminality. Borrowing Michael Welch’s notion of ‘counterveillance’ which he uses to describe the work of the GIP in getting prisoners to find their own ‘voices,’ how might we begin to identify a tactics of counterveillance operating within and beyond the space of the prison?<sup>33</sup> Here, we might also look at the alternative systems of communication set up within the space of the prison by inmates in the form of kites and yoyos. The complex codes used in kites, tiny pieces of paper containing detailed information on gang politics, wrapped up and swallowed for safe keeping, demonstrate a form of literacy and communication which defies the oft-quoted statistics about an illiterate prison population.

Another example is the use of smuggled mobile phones by inmates to produce their own ‘filmed’ testimony about life in prison. One such film was made in Europe’s largest prison, Fleury-Mérogis in France, in 2008 before being shown on French news show *Envoyé Spécial*. Filming inside French prisons continues to be heavily regulated in contradistinction to the saturation of images emerging from U.S. prisons. The poor technol-

<sup>33</sup> Michael Welch, ‘Counterveillance: How Foucault and the Groupe d’information sur les prisons reversed the optics’, *Theoretical Criminology* 15:3 (August 2011), pp. 301-313.

ogy and editing of the self-made ‘reportages’ risks rendering these into pure novelty. Nevertheless, I would argue that they constitute important documents not so much as a result of their content but in their contestation of who gets to decide on the limits of the frame.

Thus, we have moved from the complex relationship between the ‘dangerous’ act and the conditions which led to such an act being committed to the issue of a different agency. The agency of those incarcerated in defining and producing their own mode of self-representation. If Manning’s decision to enter the space of the U.S. military prison as a woman embodies one such instance of this, the awareness of how gender must be performed *differently* within the carceral space acknowledged by the inmates of San Quentin seems to affirm this. The anatomopolitics of prison life, does not simply define the criminal *as* criminal through various processes of framing or subjectivisation. Today, the inmate is not simply complicit in his or her own ‘framing’ but is deeply, painfully aware of such complicity and the impossibility of refusing to comply.

Moreover, I would argue that if Butler has identified the importance of the frame as an object of analysis in thinking through the circulation and censorship of images of torture, more attention is needed to the way in which Butler sets up her own frame of reference here. The frame is at once inside and outside, part of the image and part of the background. In the instance of a window frame – what is inside and what is outside? It is easy to reverse the binary here. The same applies to the prison, the ‘inside’ which is both ‘outside’ of society, located at its edges yet a central, integral part to its everyday functioning. What is needed here is to consider further the way in which the frame keeps inside and outside apart, the global and the local, the international and the domestic enabling the mutually endorsed, uncontested legitimation of the intolerable as both exceptional and everyday occurrence.

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*Barred Subjects. Framing the Criminal Body with Foucault and Butler*

This essay enacts a return to the notion of the anatomopolitical which constitutes one of the main focuses of Foucault's work on discipline, power and knowledge. If much academic discourse on power and control has, in recent years, tended to focus on the biopolitical defined as the management of populations and groups rather than the specific physical conditions of individual bodies, the role of disciplinary institutions, the school, the factory or workplace, the hospital and the prison continue to embody a disciplinary form of power identified by Foucault as emerging in the eighteenth and nineteenth centuries. If the biopolitical has been reconceived by Butler, Agamben and others as predicated upon the exception, what of these spaces which continue to maintain the *status quo* underpinning such an exception? Here, I will consider the space of the prison as, first and foremost, an interior rather than exterior space, in order to unpack, critique and develop Butler's work on indefinite detention, dangerous acts and processes of framing. The central tenet here is that more attention on the domestic, the anatomopolitical and the everyday is required in relation to the international, the biopolitical and the exceptional. At the same time, I will consider the complex role of the public intellectual in speaking on and about current political events.

*Keywords:* Foucault, Butler, Indefinite detention, Anatomopolitical, Biopolitics, Prison, Criminality.