THE "ILLEGAL ALIEN":

A GENEALOGICAL AND INTERSECTIONAL ACCOUNT

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To my parents,

Deborah Packard Cisneros

and

Salvador Packard Cisneros

TABLE OF CONTENTS

INTRODUCTION

The concerns which motivate and animate this project are at once philosophical, political and deeply personal. As a descendent of Mexican-American immigrants born and raised in California, the realities of both "immigrant identity" and life on the México/US border have always informed my ways of knowing and asking questions about the world. For this reason among others, political and ethical questions surrounding immigration and racism in the United States are central concerns that have motivated my political and community involvement, before and during my graduate studies. In this sense, the seeds of this project were planted before my academic study of philosophy. This dissertation project, then, is explicitly rooted in the personal and political.

But the particular formulation of the questions which motivate this project—questions about the constitution of the "illegal alien" as a type of subject at the center of different strategies of power—has come directly out of my engagement with specific modes of critical philosophical thinking. In particular, my study of the work of Michel Foucault and Gloría Anzaldúa has been central to both the formulation and execution of this project. In their distinct but (as I endeavor to show in this dissertation) mutually resonant accounts, both Anzaldúa and Foucault describe and model modes of critique which explore how particular forms of identity are constituted by oppressive structures of power in multiple and intersectional ways. In an essay published in 1983 (a year before his death), Foucault described the purpose of his work as not "to analyze the phenomena of power, nor to elaborate the foundation of such an analysis," but rather to produce "a history of the different modes by which, in our culture, human beings are made

subjects."[1] I hope to contribute to one such account—to show how, in the United States, particular human beings have been made into "illegal aliens." In doing so, my goal is to explore how and why the "illegal alien" is constructed by discourses and practices that are not merely juridical—that is, that the "illegal alien" subject is defined by factors other than the "letter of the law" which purport to constitute them. I contend that this particular kind of subjectivity functions within larger formations of power, including those surrounding race, gender, sexuality and criminality. These non-juridical "power-knowledges," such as popular political discourse and practices of immigrant detention both extend and, at times, subvert the juridical functions of power which are supposed to govern "legality" and "alienness."

In *Discipline and Punish*, Foucault describes his methodology as an attempt to provide a "history of the present," distinguishing his genealogical analysis from a historical one by emphasizing that it is motivated and informed by present events rather than "historical facts."[2] Foucault makes clear that his critique of the carceral system exists not by virtue of investigation into the past, but instead because of his encounter with present events: "That punishment in general and the prison in particular belong to a political technology of the body is a lesson that I have learnt not so much from history as from the present."[3] Foucault's insights into how "delinquent" bodies are disciplined and subjectivities are formed come from contemporary political struggles. My analysis of "illegal alien" subjectivity in the United States context is in this sense in line with

[1] Hubert L. Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, 2nd ed. (University of Chicago Press, 1983), 203.
[2] Michel Foucault, *Discipline & Punish: The Birth of the Prison*, Second Vintage Books ed. (Vintage, 1995), 30–31.
[3] Ibid., 30.

Foucault's goals of writing a "history of the present." By focusing on current constructions of the "illegal alien," my dissertation centers on this formation of subjectivity as it is being constituted in the midst of current political struggles and discourses.

As a genealogical and intersectional approach to political and ethical questions surrounding immigration, this project focuses on the ways that the "illegal alien" has come to be raced, gendered, and criminalized in specific ways. My analysis places the formations of "illegal alien" subjectivity at the center of various discourses and operations of power. In particular, I discuss the constitution of the "illegal alien" as occupying a position at the center of what Foucault calls regulatory and disciplinary functions of power:

> …we have, then, two technologies of power which were established at different times and which were superimposed. One technique is disciplinary; it 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. And we also have a second technology which is centered not upon the body but upon life: a technology which brings together the mass effects characteristic of a population…[4]

For Foucault, disciplinary and regulatory mechanisms of power are in some sense distinct or distinguishable—the former operates through institutional mechanisms of surveillance and training in individualizing bodies, and the latter functions through state regulation of biological processes. But that these regimes of power are theoretically distinguishable does not mean, for Foucault, that they are mutually exclusive; to the contrary, because these two sets of mechanisms exist at different levels, they can be "articulated with each

[4] Michel Foucault, *"Society Must Be Defended": Lectures at the Collège De France, 1975-1976*, trans. David Macey (Picador, 2003), 249.

other."[5] In fact, these two regimes of power *are* both operational in what Foucault calls "the normalizing society":

> The normalizing society is a society in which the norm of discipline and the norm of regulation intersect along an orthogonal articulation. To say that power took possession of life in the nineteenth century, or to say that power at least takes life under its care in the nineteenth century, is to say that it has, thanks to the play of technologies of discipline on one hand and technologies of regulation on the other, succeeded in covering the whole surface that lies between the organic and the biological, between the body and population. We are, then, in a power that has taken control of both the body and life or that has, if you like, taken control of life in general—with the body as one pole and population as the other.[6]

For Foucault, our existence in a "normalizing society" or "biopolitical society" means that we are simultaneously subjected to and by both disciplinary and regulatory power—power has covered the whole surface of life through its management of individual organisms on one hand and disindividuated biological processes on the other. Rather than mechanisms of regulatory power replacing those of disciplinary power, Foucault makes clear that technologies of the body on both of these levels function together in the service of the "care of life." These two mechanisms of power "took possession of life" in this way through and towards the enforcement of norms; in regulatory disciplinary regimes, "the norm is something that can be applied to both a body one wishes to discipline and a population one wishes to regularize."[7] Disciplinary regulatory power or "biopower" is at its center a normalizing regime, and so, for Foucault, is at the center of an investigation into how "human beings are made into subjects" in the contemporary era.

Through an analysis informed by this description of biopower, I provide an account of how the "illegal alien" has been constituted as a subject on the United States'

[5] Ibid., 250.
[6] Ibid., 253.
[7] Ibid.

southwest border, both materially (in terms of locations of governmental institutions and disciplinary technologies) as well as symbolically (in terms of language, ethnicity and culture). In this vein, in addition to drawing on Foucault's genealogical analyses, my dissertation also draws conceptually and methodologically on Anzaldúa's *Borderlands/La Frontera*. Like Foucault, Anzaldúa is interested in "how human beings are made into subjects" within normalizing structures of power. In particular, Anzaldúa's project is concerned with the formations of subjectivity on the linguistic, cultural and material border between the United States and Mexico. She describes the U.S. Mexican border as a "vague and undetermined" home of bodies pushed to the margins by the processes of normalization:

> The prohibited and forbidden are its inhabitants. Los atravesados live here: the squint-eyed, the perverse, the queer, the troublesome, the mongrel, the mulatto, the half-breed, the half dead; in short, those who cross over, pass over, or go through the confines of the "normal.[8]

Her project, unlike Foucault's discussions of normalizing regimes of power, deals explicitly and at length with the formation of perverse, criminal, and impure subjectivities in the context of immigration discourses and practices in particular. The inhabitants of the "borderlands" are the subjects who have been constituted by their marginalization as the nation's "other." Anzaldúa's use of the Spanish word "atravesados" to characterize these inhabitants points to their constitution as broadly immigrant (the Spanish verb "atravesar" can be translated as "to cross" or "to pass/ go through") and perversely hybrid (as an adjective, "atravesado" can be translated as perverse, troublesome, mongrel, half-breed). In this way, Anzaldúa provides an account of how the "transgressions" of the border-crossers through immigration are linked with other kinds of perversity and impurity

[8] Gloria Anzaldua, *Borderlands/La Frontera, the 1st Edition* (aunt lute books, 1987), 2.

within a normalizing regime of power. In this vein, this project attempts to make room for a reflection on how Anzaldúa's work might contribute to new reflection on how "illegal aliens" are constituted in and by discourse and the ways that the oppressive mechanisms of the "normalizing society" might be resisted by these "abnormal" borderland subjects through the enactment of what Anzaldúa calls mestizaje—a consciousness which is rooted in the embracing of the hybrid impurity of identity.

As guiding resources for my genealogical and intersectional account of "illegal alien" subjectivity, Anzaldúa and Foucault's works are joined by a variety of works in critical race theory and gender and feminist theory. Theoretical resources from these fields, and particularly work on intersectionality (and especially that by women of color feminists such as Angela Davis) have been indispensable to my analysis of how the "illegal alien" has been constituted in the United States context. In my integration of these various analyses of race, gender, sexuality, colonialism, immigration, migration, subjectification and biopower, my account of the "illegal alien" is both inspired and informed by Foucault and Anzaldúa's resistances to historical meta-narratives. In this spirit, these other critical accounts serve as disruptions and tools for criticism rather than alternative narratives to which my account adheres. Instead of incorporating these texts into my project as unquestioned guides, I position all of these theoretical contributions as contingent and historically-situated theoretical tools, in fidelity to the genealogist's commitment that "Knowledge is not made for understanding; it is made for cutting."[9]

Besides providing an approach to political and ethical questions surrounding immigration and citizenship in particular, then, this project also contributes to the fields

[9] Michel Foucault, *Language, Counter-Memory, Practice: Selected Essays and Interviews* (Cornell University Press, 1980), 154.

of critical race and feminist theory, as well as Chican@ and Latin@ studies and Foucault studies. In analyzing the constitution of "illegal alien" subjectivity, my intersectional account is in conversation with already existing works on the intersecting functions of racism, sexism, heterosexism and classism. In drawing from, interpreting and critically expanding on Foucault's project, this dissertation also contributes to the expansive body of literature on Foucault and biopower. And though my analysis, interpretation and application of Anzaldúa's *Borderlands/La Frontera* is for the most part an anomaly in the context of literature in Social and Political Philosophy and Philosophy of Law that deals with immigration, it is resonant with many contributions in Chican@ and Latin@ Studies.

In giving an account of the "illegal alien" that is informed by and rooted in present struggles and interests, this dissertation is organized thematically around different aspects of this "type" of subject as it is constituted by normalizing (or biopolitical) functions of power. Specifically, I discuss how the "illegal alien" is constructed as a racially impure, criminal, sexually perverse and deathly "anti-citizen" subject. As an investigation into the "history of the present," my analysis of "illegal alien" subjectivity focuses on how discourses and practices surrounding race, class, gender, sexuality and criminality are deployed in the constitution of "anti-citizen" subjects. My analysis is oriented by both my thematic and temporal foci—the specific discourses and practices I discuss have been chosen based on my focused concern with contemporary struggles as well as my emphases on the constitution of "illegal alien" subjectivity with respect to race, class, gender, sexuality, and criminality.

To this end, in chapter one I discuss how the always-already criminally deviant "illegal alien" is constituted as an always-already racialized subject. I take as the particular subject of my analysis Arizona State Bill 1070, also known as the "Support Our Law Enforcement and Safe Neighborhoods Act." Drawing on the work of critical philosophers of race in addition to Foucault's analysis of biopolitical racism and Anzaldúa's account of the roles that racial, cultural and linguistic difference play in borderland identity, I analyze how the practices and discourses initiated surrounding the bill and by the legislation itself not only operate as mechanisms of disciplinary regulative racism, but also betray the ways that "illegal alien" subjectivity is always-already racialized/ethnicized. My analysis makes intelligible the law's reliance on the already racialized nature of the "illegal alien" subject for its intelligibility, while illustrating how the discourses of its justification and the practices it inaugurates reproduce this racialization.

In chapter two I analyze how the "Illegal Alien" has emerged as an always-already criminal subject. The case study at the center of my discussion is U.S. Immigration and Customs Enforcement's "Secure Communities" program, which is a non-juridical program that the agency describes as an "initiative that improves public safety by implementing a comprehensive, integrated approach to identify and remove criminal aliens from the United States."[10] I describe how "Secure Communities" is a function of biopower in both its disciplinary and regulatory functions—it consists of a set of discourses and practices which are operative at the level of biological processes and individual bodies, and includes the development and implementation of new technologies

[10] "Secure Communities Mission", n.d., http://www.ice.gov/pi/news/factsheets/secure_communities.html.

directed towards the simultaneous management of the "threat of criminality" and disciplining of "criminal alien bodies." I show how "Secure Communities" casts immigration as a large and looming threat while constituting "alien" subjects (despite their technical legal status) as always-already "illegal"—that is, criminal and threatening to our "communities" merely by virtue of their failure to be removed.[11] In this chapter, I draw on the work of both Foucault and Anzaldúa to show how the "illegal alien" is constructed as an always-already abnormal criminal subject through an analysis of "Secure Communities" as an apparatus of normalization.

In chapter three I explore how the "illegal alien" has emerged as a sexually deviant and impure subject. As a specific example of the ways that the "illegal alien" has been constituted with regard to gender and sexuality is the emergence of discourse about so-called "anchor babies," a term which is often used to refer to the children of "illegal alien" subjects. I suggest that the discourses that employ and give meaning to this term are active formations of regulative and disciplinary power in constructing the "illegal alien" as "the perverse, the queer, the troublesome"[12]— they both call for the governmental management of reproduction as a means of preserving the "security" of the nation and cast the (maternal, Latina) "illegal alien" subject as dangerous by virtue of her sexual deviance. In this chapter I draw on the work of feminist theorists including Lauren Berlant and Angela Davis as well as the work of Foucault and Anzaldúa in arguing that contemporary formations of power it is the always-already threatening nature of deviant

[11] I will take up Anzaldúa's suggestion in this passage that the "illegal alien's" criminality intersects with their racialization in the following chapter of my dissertation, which will focus specifically on race, ethnicity and the "illegal alien." Although I have divided my discussion into thematically-based chapters, the intersectionality of these aspects of identity is central to my analysis of "illegal alien" subjectivity.
[12] Anzaldua, *Borderlands/La Frontera, the 1st Edition*, 3.

alien sexuality that makes the management of gendered alien bodies necessary for the security of the state. "Alien" sexuality is constructed as always-already deviant and degenerate by virtue of its reproduction of the alien-ness with which it is irreparably infected.

Finally, in chapter four I explore how the "illegal alien" subject, as abnormal, racially impure, deviant and criminal, is constituted as "deathly"—that is, as a body so threatening to the well-being of the nation in its contagion that its murder is not only justified but required. The specific focus of my analysis will be the operations and conditions of immigration detainment camps, and in particular accounts of the deaths and injuries of detainees due to these conditions. I analyze these deaths as instances of what Foucault calls biopolitical racism and what Anzaldúa describes as the violent "warfare" on the border. In the context of technologies, practices and institutions of immigrant detainment, "illegal alien" subjects, already constituted as degenerate and abnormal, are both directly and indirectly murdered. Through the operations of racism, the political, social and literal deaths of "illegal alien" subjects are not only justified in staving off a "threat" to the existence of the state, but are required for preserving (racial, ethnic, sexual) health and purity. The impure, deviant and contagious nature of "illegal alien" subjectivity justifies and is reaffirmed by this institutionalized killing.

It is my hope that this project, by focusing on what I contend are central characteristics of "illegal aliens" as constituted in the contemporary United States context, provides insight into the way this subjectivity functions differently from simple juridical categories which purport to determine it. In analyzing the ways that human beings are being made into "illegal alien" subjects, my goal is to uncover the function of

this subject in contemporary discourses as deviant, dangerous, contagious and impure "anti-citizen" in order to point to possibilities for resistance and reformation.

CHAPTER I

RACE AND THE "ILLEGAL ALIEN"

On April 23, 2010, Governor Jan Brewer of Arizona signed into law what was widely considered to be the strictest anti-illegal immigration measure in recent US history.[13] The law, named the "Support Our Law Enforcement and Safe Neighborhoods Act," was passed in the midst of a hyper-proliferation of discourses surrounding immigration in the United States. Even before it was signed into law, the legislation was the subject of discussion both nationally and internationally, especially with regard to numerous critics' claims that it would encourage "racial profiling."[14] A particular focus of widespread controversy in this vein was a provision which stated that law enforcement officials and other "agenc[ies] of the state" should make a "reasonable attempt" to determine the immigration status of any person "where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States."[15] Critics of the legislation, including high-profile religious and political leaders and the Mexican government in addition to immigrants rights and Latino groups, expressed concern that such a provision invited (and, in some sense even required) law enforcement officials to

[13] Randal C. Archibold, "Arizona Enacts Stringent Law on Immigration," *The New York Times*, April 23, 2010, sec. U.S. / Politics, http://www.nytimes.com/2010/04/24/us/politics/24immig.html.
[14] Jonathan Cooper, "Ariz. Immigration Law Target of Protest," *Msnbc.com*, n.d., http://www.msnbc.msn.com/id/36768649/ns/us_news-life/t/ariz-immigration-law-target-protest/.
[15] *Support Our Law Enforcement and Safe Neighborhoods Act*, 2010.

specifically target Latinos in service of the law's stated intent "to discourage and deter the unlawful entry and presence of aliens…" in Arizona.[16] Many opponents of the measure explicitly linked the language of "reasonable suspicion" to racial profiling in this vein, including the American Civil Liberties Union, one of the national organizations that took action against the law, which stated on its website: "By requiring that all law enforcement officials question people they stop about their citizenship or immigration status if they have an undefined 'reasonable suspicion' the person is in this country illegally, SB 1070 is inviting police to rely on appearance and characteristics such as race, ethnicity, and language."[17] Various officials and agencies of the Mexican government expressed conviction that this invitation towards racial profiling would have dangerous consequences for Mexican citizens in particular: Before the bill was signed into law, the Mexican senate unanimously passed a resolution urging the Arizona governor to veto it, and after its signing Mexican President Felipe Calderón stated that "We are going to act, we are acting and we will continue to act. No-one can stand idly by in the face of decisions that so clearly affect Mexican citizens who for generations have contributed to the growth of the US… This legislation paves the way for unacceptable racial discrimination."[18] Thus, many critics claimed that what would cause "reasonable suspicion" of alien-ness in the context of the measure would likely be particular markers of race, ethnicity and culture; according to the law's opponents, this "racial profiling"

[16] Ibid.
[17] "Frequently Asked Questions About the Arizona Racial Profiling Law," *American Civil Liberties Union*, n.d., http://www.aclu.org/immigrants-rights-racial-justice/frequently-asked-questions-about-arizona-racial-profiling-law.
[18] "Federal Government Will Not Remain Indifferent to Passage of Arizona Law: FCH", n.d., http://en.presidencia.gob.mx/2010/04/federal-government-will-not-remain-indifferent-to-passage-of-arizona-law-fch/.

would target Latinos in particular.

At the time of signing, Governor Brewer seemed intent on allaying these kinds of concerns, vowing that she would "not tolerate racial discrimination or racial profiling in Arizona."[19] She further referenced her efforts to amend the state bill, explaining that this led to "new language in the bill, language prohibiting law enforcement officers from 'solely considering race, color, or national origin in implementing the requirements of this section...' "[20] According to Governor Brewer, this addition (which amended the "reasonable suspicion" section quoted above) would "strengthen [the law's] civil rights protections." Brewer's statements suggest, in line with claims made by many of the legislation's supporters, that "reasonable suspicion" of alien-ness can exist by considering factors besides "race, color, or national origin."

It is important to note that the amendment Brewer cites does not mean that a person's race or ethnicity can't contribute to "reasonable suspicion" of their alien-ness, and thus betrays the ways in which the "alien" body is an always-already racialized body— not only does Brewer's tacit admission of the need for such an amendment betray how the "illegal alien" is always-already racialized in the public imagination, but the amendment itself admits race as a legitimate marker (though not the *only* marker) of alien-ness for the purposes of police action. The language of the amendment does, however, suggest that there must be additional factors (besides "race, color, or national origin") to justify targeting an individual under the law. But what could these factors be? What, besides race, characterizes this form of subjectivity such that an "illegal alien" can

[19] Jan Brewer, "Statement By Governer Jan Brewer" (Office of the Governer, April 23, 2010), http://azgovernor.gov/dms/upload/PR_042310_StatementByGovernorOnSB1070.pdf.
[20] Ibid.

be detected before reference to or knowledge of her technical status?

In this chapter, I will show how this controversial legislation and the various discourses and technologies of power which surround it, including attempts to answer the question above, illustrate how "illegal alien" subjectivity is always already racialized. To this end, I will first analyze how the practices and discourses initiated by this measure betray the racialized nature of the "alien" subject. More specifically, my analysis of the factors which count as "reasonable suspicion" of alien-ness in the context of the law will illustrate its reliance on the already racialized nature of the criminalized "illegal alien" subject for its intelligibility. Next, I will show how the legislation and the discourses and technologies which surround it serve to reinforce the racialization of the "illegal alien" as specifically Latino and Spanish-speaking. In particular, I will identify the law as exemplary of what Foucault describes as normalizing or biopolitical racism, showing how even discourses that deny that the Arizona law has anything to do with racial profiling can actually be understood as strategies of racism in this vein. Finally, I will illustrate how "illegal alien" subjects as constituted by mechanisms of disciplinary regulative racism function as what I call a "post-racial race."[21] By refusing to acknowledge the always-already racialized nature of "illegal alien" subjectivity, the mechanisms of "post-racial" racism through which it is constituted continually reinforce themselves. In analyzing the constitution of the "illegal alien" subject within "post-racial"

[21] I discuss in more detail what I mean by the terms "post-racial race" and "post-racial racism" later in this chapter. It is important to note here, however, that my use of the controversial term "post-racial" in this context is not in agreement with the claim that the United States in the 21st century is a "post-racial society." To the contrary, by using this term I mean to illustrate that discourses which conceive of themselves as "post-racial" (or, indeed, conceive of US society itself as "post-racial") are often in the service of racist functions of power.

racist strategies of regulatory disciplinary power, I will explore how these mechanisms of "modern racism" might be open to resistance and transformation.

"Illegal Hair," "Creeping North":
The "Illegal Alien" as an Always-Already Racialized Subject

As I discussed above, a central claim by critics of the state bill, even after it was amended to include what Brewer referred to as "protection" against civil rights violations, was that it would actively encourage racial profiling and the targeting of Latinos in particular. Critics have pointed to one section of the bill, article 2(b) (a section of which I cited above) as particularly problematic in this vein:

> For any lawful contact made by a law enforcement official or agency of this state or a county, city, town or other political subdivision of this state where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person. The person's immigration status shall be verified with the federal government pursuant to the 8 United States code section 1373(c).

This section of the legislation calls for police officers and state agencies to take action to determine the immigration status of any person when "reasonable suspicion exists" that and individual is an "illegal alien." According to precedent, in the context of US juridical discourse "reasonable suspicion" must be based on "specific and articulable facts," "taken together with rational inferences from those facts."[22] According to this section of the Arizona law, then, there exist "specific and articulable facts" from which law enforcement officials or agencies of the state can and should infer that an individual is an "illegal alien." Put differently, in the context of this discourse, it is possible to identify a

[22] "Terry V. Ohio - 392 U.S. 1 (1968)," *Justia US Supreme Court Center*, n.d., http://supreme.justia.com/cases/federal/us/392/1/case.html.

probable "illegal alien" without knowledge of their technical immigration status. Thus, in this instance of juridical discourse, the constitution of "illegal alien" subjectivity as excessive of juridical discourse itself becomes clear; "alien-ness" does not refer only to the characteristic of being in the United States unlawfully, but to a set of other observable "facts."

As I discussed above, most critics of the law have claimed that "suspicious" characteristics in this context would in practice center around race and ethnicity, while many vocal proponents of the law (including Brewer) denied this perceived inevitability. But what, besides race, these observable "facts" which imply "alien-ness" might be remained an open question for the bill's critics, and supporters' attempts to answer it both before and after the bill was signed into law were frequently met with derision and incredulity by the measure's opponents. When Republican congressperson Brian Bilbray of California was asked this question by left-of-center MSNBC talk show host Chris Matthews, he replied:

> I'll give you an example of the—they will look at the kind of dress you wear. There's different type of attire. There's different type of—you—right down to the shoes, right down to the clothes, but mostly by behavior. It's mostly behavior, just as the law enforcement people here in Washington, D.C., does it based on certain criminal activities [sic].[23]

Later that week, fellow MSNBC host Rachel Maddow played a clip of Representative Bilbray's comments before asking incredulously "Did you know that there's illegal hair?" Maddow continued to mock Bilbray's examples of non-race-based factors which could count as "reasonable suspicion":

[23] "Hardball with Chris Matthews for Wednesday, April 21st, 2010" (MSNBC, n.d.), http://www.msnbc.msn.com/id/36717259/ns/msnbc_tv-hardball_with_chris_matthews/#.TkApBK7Iv58 .

> You can be shaken down for illegal-looking shoes? Should I be more paranoid than normal? Congressman Bilbray went on to describe that law enforcement would decide who's in the country illegally mostly by behavior. You know, by people acting illegal-ish. The expert here, Congressman Bilbray, was on "Hardball" with Chris Matthews last night and he's explaining here how law enforcement officials can identify by sight but not by race, people who are worthy of suspicion [sic].[24]

Maddow's derisive criticism is exemplary of many opponents' expressed disbelief that the legislation's implication that a probable illegal alien could be identified by sight had nothing to do with race or ethnicity. But Bilbray's statements on "Hardball," like the amendment championed by Brewer, did not deny the relevance of race as a "fact" about a person which would lead to "reasonable suspicion" on the part of a law enforcement officer. Rather than denying that race and/or ethnicity would play any role in causing "reasonable suspicion" of "alien-ness," Bilbray claimed that the "relevant facts" would "even go beyond the color of your skin, the hair, that looks at the fact—the way you dress."[25] Thus, according to Bilbray, it is not that race and ethnicity play no role in determining who is worthy of suspicion in this context, but instead that there are important markers of "alien-ness" that *even go beyond* the "color of [one's] skin." Though, as I will discuss below, the reduction of race to skin color exhibits a problematic denial of the way in which race and racism operate both phenomenologically and politically, Bilbray's statement reveals its effectiveness in evading questions about the role of race in political and juridical discourses. Thus, an interrogation of the complexity of mechanisms of racialization is crucial to raising key questions about how racism functions even within ideologies of "color blindness."

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[24] "The Rachel Maddow Show for Thursday, April 22nd, 2010" (MSNBC, n.d.), http://www.msnbc.msn.com/id/36735840/ns/msnbc_tv-rachel_maddow_show/#.Tptn5K6yVnE.
[25] "Hardball with Chris Matthews for Wednesday, April 21st, 2010."

Though Maddow mocks as absurd the idea that there might be such a thing as "illegal" hair or shoes or "illegal-ish" behavior, Bilbray's comments are interesting in part because they point to the complexity of the racialization of "illegal alien" subjectivity—his characterization of the "illegal alien" betrays the way in in which the racialization of this subject cannot be reduced to "skin color." In this vein, Bilbray's suggestion that there are clothes, hair, shoes, and behavior that indicate that someone is an "illegal alien" is strikingly reminiscent of Franz Fanon's description of his own identity under the "white gaze" in *Black Skins White Masks*:

> I arrive slowly in the world; sudden emergences are no longer my habit. I crawl along. The white gaze, the only valid one, is already dissecting me. I am fixed. Once their microtomes are sharpened, the Whites objectively cut sections of my reality. I have been betrayed. I sense, I see in this white gaze that it's the arrival not of a new man, but of a new type of man, a new species, A Negro, in fact! I slip into corners, my long antenna encountering the various axioms on the surface of things: the Negro's clothes smell of Negro, the Negro has white teeth; the Negro has big feet; the Negro has a broad chest.[26]

For Fanon, in a racist post-colonial regime, the "Negro" is constituted as not a "new man," but a "new *type* of man." That is to say, just as for Bilbray recognizable alien-ness goes "even beyond" the color of one's skin, for Fanon, the "Negro species" is not marked only by its blackness. Instead, according to Fanon's phenomenological account of the "Negro's emergence," under the white gaze "Negro" subjectivity is marked by a particular size of feet, chest and color of teeth. Like the "illegal alien" in the context of Bilbray's comments, the "Negro" subject can even be detected by observing his clothes—they "smell of Negro." For Fanon, that the "Negro's" emergence as a discrete "species" in this way "goes even beyond" skin color does not mean that the "Negro" is

[26] Frantz Fanon, *Black Skin, White Masks*, trans. Constance Farrington (Grove Press, 1994), 95–96.

not constituted as an always-already raced subject; quite the contrary, it is in the racist white gaze which constitutes "him" as a "new species" with observable characteristics including to but not limited to the color of "his" skin.[27] Article 2(b) of the Arizona law, as well as the discourse surrounding it (including Bilbray's comments), betray the constitution of the "illegal alien" as a similarly always-already racialized subject within dominant regimes of power and knowledge. That there are observable "facts" about a person that can cause "reasonable suspicion" of "alien-ness" suggests that the "alien," like the "Negro," is a "new species"— with "alien" behavior, shoes, and even hair. In this way, the "Support Our Law Enforcement and Safe Neighborhoods Act" depends on the always-already raced nature of the "illegal alien" for its intelligibility.

In the same passage of *Black Skin, White Masks,* Fanon describes his own unsuccessful attempts to escape the white gaze: "I slip into corners; I keep silent; all I want is to be anonymous, to be forgotten. Look, I'll agree to everything, on the condition I go unnoticed!"[28] Because within this racist regime of power-knowledge everything about the "Negro" is permeated with "Negro-ness," the only recourse he sees is to retreat to the shadows in an attempt not to be seen or known at all. In this way, the racialized subject exists in a complex dialectical relation among visibility, hypervisibility, and invisibility. Because in some contexts mechanisms of racism function to make some identities invisible (e.g. Ellison's Invisible Man), the way to resist racism in certain

[27] I use gender-specific language here (with scare quotes) in order to both reflect and call attention to its presence in Fanon's own work. Though a comprehensive feminist critique of *Black Skin, White Masks* is an important project, it is outside the scope of my own. For an insightful and critical feminist reading of Fanon's work, see T. Denean Sharpley-Whiting, *Franz Fanon: Conflicts and Feminisms*, (Oxford: Rowman and Littlefield, 1998)

[28] Fanon, *Black Skin, White Masks*, 96.

contexts may be to achieve visibility. But, as Fanon describes in the passage above, normalizing racism also functions in ways which make certain identities in particular contexts hyper-visible to the extent that the subject seeks invisibility if only to attempt to escape the normalizing gaze. Similarly, the constitution of "illegal alien" as racialized "species" whose hair, clothes and behavior (in addition to skin color) are marked by "alien-ness" means that this "abnormal" subject's position relative to the norms of virtuous white citizenship is a particularly perilous one—because "illegal alien" subjectivity is constituted racially as always-already abnormal and dangerous, is understood as a threat which must be managed with for the well-being of the state. In this sense, the mechanisms of normalizing racism function here through the hypervisibility of the "abnormal" race, while simultaneously allowing "normality" (or whiteness) to go unmarked or enjoy the privilege of invisibility.

In her official statement upon signing the state bill into law, Governor Brewer cited the threat posed by "illegal aliens" as the motivation and justification for the legislation: "The bill I'm about to sign into law – Senate Bill 1070 – represents another tool for our state to use as we work to solve a crisis we did not create and the federal government has refused to fix..."[29] In this way, Brewer reconstitutes the "illegal alien" as dangerous while accusing the federal government of failing to meet its responsibility in managing this threat. And even though, as I discussed above, much of the Governor's statement seemed directed at combating critics' concerns about racial profiling, her own description of this danger constituted "illegal alien" subjectivity as always already racialized. Brewer described the legislation as a response to "the crisis caused by illegal immigration and

[29] Brewer, "Statement By Governer Jan Brewer."

Arizona's porous border," clearly identifying Mexico (though not by name) as the source of the threat to the safety of Arizonan citizens. She articulated the urgency of the danger by warning that ills that might "creep north" across the border:

> There is no higher priority than protecting the citizens of Arizona. We cannot sacrifice our safety to the murderous greed of drug cartels. We cannot stand idly by as drop houses, kidnappings and violence compromise our quality of life…We cannot delay while the destruction happening south of our international border creeps its way north.[30]

In this discourse, the dangerous "illegal aliens" who Arizonans need "protection" from are not characterized as threatening by virtue of their technical immigration status; it is not "illegal immigrants" of all nations, races and ethnicities who pose a threat. Instead, the subjects who threaten to "compromise [the] quality of life" of virtuous citizens are the "illegal aliens" who "creep" north across the Mexican border in particular. Despite Brewer's insistence in this statement that she is "both AGAINST illegal immigration AND against racial profiling,"[31] her description of the human threat to which the legislation responds unmistakably implies the race, ethnicity, and national origin of this threat; in this discourse, the justification for the law, like the law itself, is intelligible because of the "illegal alien's" constitution as an always-already racialized subject.

An "Anti-Citizen" Sub-race:
The "Illegal Alien" and Modern Racism

But the legislation and the mechanisms and discourses surrounding it don't only rely on the always-already racialized nature of the "illegal alien" for their intelligibility;

[30] Ibid.
[31] Ibid., *emphasis hers*.

both the law and the discourses surrounding are themselves mechanisms of racist power. Governor Brewer's statements above are exemplary of the way that even discourses which deny the always-already raced nature of the illegal alien reconstitute the "illegal alien" subject as racially and ethnically Latino. That Governor Brewer seems unable to articulate the "threat" which necessitates the law without expressing the danger in terms of a particular nation of origin (and, along with it, race and ethnicity), illustrates the way in which the legislation as well as discourses surround it function as mechanisms of what normalizing or biopolitical racism.

I draw this terminology from Foucault's 1975-1976 lectures at the College de France, where he describes the emergence of "modern racism" as bound up with the regulatory disciplinary regime of power Foucault calls "biopower":

> The specificity of modern racism, or what gives it its specificity, is not bound up with mentalities, ideologies, or the lies of power. It is bound up with the technique of power, with the technology of power…We are dealing with a mechanism that allows biopower to work. So racism is bound up with the workings of a State that is obliged to use race, the elimination of races and the purification of the race, to exercise its sovereign power.[32]

In Foucault's account, sovereign power, which functions through obedience to the law of the king or a centralized figure of "top-down" authority, gradually retreated in the eighteenth and nineteenth centuries with the emergence and building dominance of disciplinary, and later, regulatory structures of power. Under sovereign regimes of power, "from the point of view of life and death, the subject is neutral, and it is thanks to the sovereign that the subject has the right to be alive or, possibly, the right to be dead."[33] Put differently, before the transformation of functions of power in the eighteenth and

[32] Foucault, *Society Must Be Defended*, 258.
[33] Ibid., 240.

nineteenth centuries, sovereign power functioned in large part in terms of the right to take life or let live. With the rise of normalizing power in the eighteenth and nineteenth century, this right to "take life or let live" was transformed and complemented by a new right which "permeate[s] it": "the power to 'make' live and 'let' die."[34]

Under this new regime of power, bodies are "disciplined"—that is, "made" to live and put to work in various ways. This strategy of power operates in large part on individual bodies, including mechanisms, discourses, and technologies of individualization, surveillance, organization, inspection, and reporting. For Foucault, in the second half of the eighteenth century the new strategy of regulatory power emerged alongside existing disciplinary mechanisms and discourses. This second strategy is operative not primarily at the level of the body, but at the level of "populations" and biological processes—regulatory power manages and regulates groups of humans en masse rather than training individual bodies. According to Foucault, the strategies of regulative power "dovetail into [disciplinary technology], integrate it, modify it to some extent, and above all, use it by sort of infiltrating it, embedding itself in existing disciplinary techniques."[35] These dominant strategies of disciplinary and regulative power, along with remaining functions of sovereign power, function together in what Foucault calls the "normalizing regime."[36] Because these more recent technologies of power take control over the body on one hand and biological processes on the other, power has "taken control over life in general."[37]

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[34] Ibid., 241.
[35] Ibid., 242.
[36] Ibid., 253.
[37] Ibid.

For Foucault, the retreat of sovereign power and the rise of regulatory disciplinary power which define what he calls the "biopolitical" era does not mean that these strategies don't retain the old sovereign right to kill. Instead, this normative regime of power functions through the mechanism of "modern racism" which he describes as the creation of fractures in a population in the constitution of particular "races" as inferior "subraces":

> What in fact is racism? It is primarily a way of introducing a break into the domain of life that is under power's control: the break between what must live and what must die. The appearance within the biological continuum of the human race of races, the distinction among the races, the hierarchy of races, the fact that certain races are described as good and that others, in contrast, are described as inferior: all this is a way of fragmenting the field of the biological that power controls…That is the first function of racism: to fragment, to create caesuras within the biological continuum addressed by biopower.[38]

For Foucault, "modern" racism functions to divide human life into "types," constituting these divided bodies as "good" or "inferior," "degenerate," and "abnormal."[39] In the regime of regulatory disciplinary power, racism is a necessary technology which allows for the exposure of particularly-raced bodies to violence and, ultimately, death. Put differently, even with juridical "power over death" on the retreat and biopolitical "power over life" on the rise, modern racism allows (and indeed, calls for) the state to kill.

In so doing, regulatory disciplinary racism reaffirms the state's sovereignty by making government necessary for the "protection" of society against the "threat" of inferior races:

> Whereas the discourse of races, of the struggle between races, was a weapon to be used against the historico-political discourse…the discourse of race (in the singular) was a way of turning that weapon against those who had forged it, of

[38] Ibid., 254–255.
[39] Ibid., 255.

> using it to preserve the sovereignty of the State, a sovereignty whose luster and vigor were no longer guaranteed by magico-juridical rituals, but by medico-normalizing techniques.[40]

For Foucault, in contradistinction to what he calls the discourse of "race struggle," in which a battle is waged between races, the discourse of race "in the singular" is a "centered, centralized, and centralizing power," where one race is understood as the "true race" and all others are threatening deviations from the norm. As such, whereas before the apparatuses of the state were understood as tools to be used by each race against the other, in the discourse of modern racism, the normalizing techniques of biopower function as both the apparatuses of the State and as its legitimation: "State sovereignty thus becomes the imperative to protect the race."[41]

Brewer's claim that the Arizona legislation is necessary to "protect Arizonans" from the threat which is "creep[ing]" across its southern border is an example of the functioning of disciplinary regulative racist discourse in this vein—by justifying the mechanisms of biopower which the legislation is meant to inaugurate by referencing a human threat which might compromise the "quality of life" of all Arizonans, Brewer's is engaging a central strategy of disciplinary and regulatory racism. Though responding to critics' concerns about racial profiling by citing the "crisis" caused by Arizona's "porous southern border" seems at first a poor rhetorical strategy, Brewers' and others' reliance on the racialized nature of the "illegal alien" subject in defense of the legislation is made intelligible as a function of modern racism. Thus, the always already racialized nature of the illegal alien, betrayed by Brewers' comments as well as the measure itself, is not

[40] Ibid., 81.
[41] Ibid.

accidental relative to the legislation or the discourse surrounding it; instead, the "racialization" of the "illegal alien" subject makes intelligible the "threat" posed by "alien" bodies, and in doing so makes possible the particular mechanisms of biopower inaugurated by the legislation.

The operation of strategies of regulative disciplinary racism surrounding the legislation is evident in the normalizing discourse that Brewer employs in describing the threat posed by "illegal aliens." As I discussed above, under a regime of disciplinary regulative racism, for self-protection society must rid itself of threatening "subraces" through technologies and discourses of normalization.[42] In this way, "modern racism" operates not only through the mechanisms of biopower which defend the "true race" from the "dangerous race," but also in (re)forming this very distinction. In the normalizing discourse Brewer employs, the dangerous "race" of "aliens" poses a threat by its very nature—"illegal aliens" are characterized by their "violence," "destruction," poverty, and national and/or ethnic origin (from "south of the border"), and fully virtuous citizenship is thus constituted in opposition to these characteristics. The stigmatization of some as "alien"—that is, precarious and deviant "anti-citizens," despite their technical citizenship status—indirectly protects the safety and privileges of others as model citizens. Because as a dangerous "sub-race" the "illegal alien" is always-already constituted as an impure threat, those things that characterize this deviant subject also become "social ills" of which the virtuous citizen must be free.

Such discourses of purity function at the center of the operation of normalizing power. As Foucault explained: "State racism [is] a racism that society will direct against

[42] Ibid.

itself, against its own elements and its own products. This is the internal racism of permanent purification, and it will become one of the basic dimensions of social normalization."[43] Thus, "State racism" or "modern racism" operates internally, "purifying" society of elements deemed "degenerate" or "abnormal." In *Borderlands/La Frontera,* Anzaldúa describes the way in which normative structures of power operate in the subjectification of inhabitants of the US/Mexico border in particular, in large part through the functioning of discourses and practices of purity and purification:

> Borders are set up to define the places that are safe and unsafe, to distinguish us from them. A border is a dividing line, a narrow strip along a steep edge. A borderland is a vague and undetermined place created by the emotional residue of an unnatural boundary. It is in a constant state of transition. The prohibited and forbidden are its inhabitants. Los atravesados live here: the squint-eyed, the perverse, the queer, the troublesome, the mongrel, the mulatto, the half-breed, the half-dead; in short, those who cross over, pass over, or go through the confines of the "normal."[44]

In a description which in important ways overlaps with Foucault's analysis of "modern racism," Anzaldúa points to the way that "alien" subjects are constantly (re)constituted as impure, dangerous, and perverse against a confining norm. The "inhabitants of the borderlands" of which Anzaldúa speaks can thus be understood as an "impure subrace," constituted through the fracturing in US society into the "one true race" of virtuous, pure, and healthy citizens and its antipode, a threatening race of dangerous "border-dwellers." She makes explicit that the "impure subrace" who dwells at the Mexico/United States border is constituted as racially impure—by describing this "alien" group as "the mongrel, the mulatto, the half-breed," she illustrates the way in which normalizing discourse of purity/impurity is intimately bound to conceptions of race in this context. In

[43] Ibid., 62.
[44] Anzaldua, *Borderlands/La Frontera, the 1st Edition*, 3.

this way, her analysis affirms the centrality of discourses "purity" in the context of modern racism in general, while illustrating the important role it plays in the constitution of the "illegal alien" subject in particular.

Anzaldúa's description of normalizing strategies of subjectification in terms of setting up borders which are "tense," "vague and undetermined" and "in a constant state of transition" beautifully captures the tenuous and ever-changing nature of these formations of regulative disciplinary power, while her account of "unsafe," "steep," and "unnatural" nature of this fracture illustrates the violence and pain indicative of the constitution of "abnormal" subjects. In this way, Anzaldúa's description of "borders" and "bordering" illustrates the way in which the constitution of the "alien" subjectivity is both particular/local and connected to other practices, strategies and patterns of normalization. By focusing her analysis specifically on the inhabitants of the US/Mexico border, she also makes clear how the violent fracture between "alien" and "virtuous citizen" functions along already racialized lines:

> Gringos in the U.S. Southwest consider the inhabitants of the borderlands transgressors, aliens—whether they possess documents or not, whether they're Chicanos, Indians, or Blacks. Do not enter, trespassers will be raped, maimed, strangled, gassed, shot. The only "legitimate" inhabitants are those in power, the whites and those who align themselves with whites.[45]

Anzaldúa explains how the constitution of certain bodies as "alien" occurs through strategies of normalizing racism which are both historically and phenomenologically situated in terms of always-already raced bodies—put differently, Anzaldúa makes clear that the constitution of the "alien" "subrace" does not and cannot occur without relation to the historical and continuing patterns of racialization of bodies in the United States. As

[45] Ibid., 3–4.

the above passage illustrates, for Anzaldúa what I call "illegal alien subjectivity" maps onto bodies which have already been racialized as "Chicanos, Indians or Blacks." In fact, the phenomenological and historical racialization of bodies determines their "alienness" to a greater extent than their technical immigration status—regardless of whether they "possess documents or not," those who aren't white or "align[ed]…with whites" are constituted as threatening tresspassers. The "illegal alien" subject is thus constituted as always-already racialized and impure.

Anzaldúa's description of the inhabitants of the borderland as "los atravesados...the squint-eyed, the perverse, the queer, the troublesome" also brings to the fore the intersectionality of racialized "alien" identity—the "illegal alien" subject, as an "inhabitant of the borderlands," is impure and abnormal not only in terms of race and ethnicity, but also in terms of gender, sexuality and class. Reactions to the Arizona legislation brought to the fore the ways in which regulative disciplinary mechanisms of power surrounding race and gender intersect in this context. Despite the fact that some of its most controversial provisions were blocked by a preliminary court injunction, after the law was passed there were numerous reports suggesting that women with "questionable immigration status" had been avoiding domestic abuse hotlines and shelters for fear of deportation.[46] The law thus operated as a mechanism of regulative disciplinary power in exposing differently gendered racialized "illegal alien" subjects to violence in different ways. Afraid of being identified as "illegal aliens" because of their racialized bodies, many "alien" women, according to reports, declined to seek protection or support in

[46] "Immigration Issue Hurting Domestic Violence Victims," *Knxv*, n.d., http://www.abc15.com//dpp/news/region_phoenix_metro/central_phoenix/immigration-issue-hurting-domestic-violence-victims.

situations of domestic violence; the legislation intensified the "tension that grips the inhabitants of the borderlands like a virus" in a unique way for these particularly racialized and gendered subjects.[47] In this way, the law's functioning as a mechanism of regulative disciplinary power can be understood not only as the operation of racializing norms, but also as indicative of what Norma Alarcón calls the "multiple interpellation" of women of color.[48] The subjectification and exposure to violence of "alien women" cannot be accounted for by racializing norms alone. Instead, because "alien women" are "multiply interpellated" and thus uniquely and multiply exposed to violence and exploitation. I engage in a more sustained discussion this functioning of mechanisms and discourses of power surrounding gender and sexuality in the constitution of the "alien" subject in chapter three of this dissertation when I analyze discourse surrounding so-called "anchor babies," but the Arizona legislation can also be understood as an example of the way in which norms surrounding race and gender work operate with and through one another in the constitution of "illegal alien" subjects as dangerous transgressors.

In *Targeting Immigrants: Government, Technology, and Ethics*, Jonathan Xavier Inda explains the way that the virtuous citizen is constituted racially by the same normative structures of power which constitute specific racialized bodies as dangerous and impure subjects:

> Post-social regimes of rule… have produced a division between active citizens and anti-prudential, unethical subjects… And this is very much a racialized division, the subjects most often deemed irresponsible—African Americans,

[47] In the fourth chapter of this dissertation, I analyze in greater detail the complex situation of the "illegal alien" women and her subjectification under regulatory disciplinary regimes of power.

[48] Norma Alarcón, "The Theoretical Subject(s) of This Bridge Called My Back and Anglo-American Feminism," in Gloria Anzaldúa, ed., Making Face, Making Soul: Haciendo Caras (San Francisco: Aunt Lute, 1990), p. 174.

> Latinos, Native Americans, Asian Americans—are those whose phenomenal/cultural characteristics serve to distinguish them from the dominant "white" population…The figure of the prudential subject needs to be understood in relation to its antipode: the oft-racialized anti-citizen unable or reluctant to exercise responsible self-government.[49]

Thus, in a way consistant with Anzaldúa's analysis above, Inda describes the mechanisms which attach "alienness" to some bodies and "proper belonging to others as racialized practices. Through discourses and technologies of power, the virtuous, prudent and ethical white citizen is constituted and made intelligible in relation to an impure racialized "anti-citizen." These historical processes of the formation of the threatening "anti-citizen" as "African American, Latino, Native American, Asian American" persist in contemporary constitutions of always-already racialized "illegal alien," and this racialization of the "alien" subject as non-white (and frequently Latino) serves the purpose of reinscribing the whiteness of the virtuous citizen in contradistinction to the brown anti-citizen.[50]

Anzaldúa's account of the normative "bordering" which constitutes the "illegal alien" as always-already racialized, and Inda's description of the virtuous citizen's "need to be understood in relation to its antipode" are reflected in the "Support Our Law

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[49] Jonathan Xavier Inda, *Targeting Immigrants: Government, Technology, and Ethics*, 1st ed. (Wiley-Blackwell, 2005), 18.

[50] In *The Browning of America and the Evasion of Social Justice*, Ronald Sundstrom helpfully discusses debates in critical race theory and ethnic studies about the role played by "the brown" and "browning" in contemporary functions of racial oppression, particularly as they relate to the black/white binary. Sundstrom explicates these tensions while arguing both against the uncritical preservation of this conceptual binary and against accounts which romanticize this "browning" as a move towards the dissolution of both race and racism. My reference here to the "brown anticitizen" is consistent with Sunstrom's project of examining the role that "the brown" plays in contemporary formations of racism without "evading" the ways in which diverse racialized bodies are exposed to racial violence in the new so-called "brown America."

Enforcement and Safe Neighborhoods Act" and the discourse which surrounds it.[51] Not only do these discourses rely upon an always-already racialized body for their intelligibility, but both the law and the non-juridical discourses which surround it are themselves mechanisms of normalizing power which reconstitute the "illegal alien" as an always-already racialized subject. At the same time, by attaching impurity, deviancy, and danger to already historically and phenomenologically racialized bodies in their constitution as "anti-citizen" aliens, these mechanisms of power also reinscribe the whiteness of the virtuous citizen; the citizen is inscribed with cultured and racialized norms and the anti-citizen "illegal alien" is defined by virtue of her/his failure to assimilate to this paradigm.

Double Consciousness and Mestiza Identity: The "Illegal Alien" and "Post-racial" Racism

As I discussed above, though the discourse and mechanisms of power instantiated by the Arizona law and the debate surrounding it both rely on and perpetuate the racialization of the "illegal alien" subject as the antipode to the white citizen-subject, its supporters vehemently disagree with critics' claims that the law would encourage racial profiling, and even that concerns of the "threat" of "illegal aliens" in general has anything to do with race. In his on-screen interview, Brewer emphasized that the bill was foremost about the "rule of law" and after the United States Department of Justice filed a brief to challenge the law in court, Brewer stated that "It is wrong that our own federal government is suing the people of Arizona for helping to enforce federal immigration

[51] Inda, *Targeting Immigrants,* 18.

law."[52] According both Bilbray and Brewer, as well as many other "mainstream" vocal supporters of the law, worries about an "illegal alien invasion" have nothing to do with race or racism. These and other proponents of the legislation insist that its motivation and operation is rooted in the enforcement of already-existing and justified juridical discourse rather than racism.

As the above discussion illustrates how discourses and technologies of racism operate at the center of the constitution of the "illegal alien" as a threatening invader, then, it also points to the development of a new strategy of this mechanism of regulative disciplinary power. In reconstituting already historically and phenomenologically racialized bodies as impure and threatening "illegal aliens," these strategies of regulative disciplinary power are able to cover over the way in which they operate as functions of "modern racism." In *Black Sexual Politics: African Americans, Gender and the New Racism*, Patricia Hill Collins describes a similar widespread failure to recognize the existence of racism against African Americans in the contemporary US:

> Recognizing that racism even exists remains a challenge for most White Americans and, increasingly, for many African Americans as well. They believe that the passage of civil rights legislation eliminated racially discriminatory practices and that any problems that Blacks may experience are now of their own doing.[53]

Hill Collins' analysis in points to the way in which the intertwining of juridical and normalizing power is covered over in attempts to deny the existence of racism in the US. This failure of recognition is also evident in the discourse surrounding the Arizona legislation—by assuming that juridical power is the only form operative, Brewer and

[52] Brewer, "Statement By Governer Jan Brewer."
[53] Patricia Hill Collins, *Black Sexual Politics: African Americans, Gender, and the New Racism*, First ed. (Routledge, 2004), 5.

other proponents of the law insist that its intent is a matter of legality and illegality (juridical power) rather than normalizing racism. At the same time, my analysis shows how the legislation and the discourse surrounding it are always-already intertwined with normalizing racism and, in fact, that the operation of normalizing racism is necessary for the law's enforcement. In this way, discourses *about* the sovereignty of juridical power function in covering over the function of normalizing racism in tandem with sovereign power.

Hill Collins' analysis in this text also illuminates the ways in which gender and sexuality-based oppression function to perpetuate while covering over the continued operations of racism in the United States. She warns that either denying the existence of sexism or seeing it as a concern secondary to racism perpetuates what some call the "new racism." According to Hill Collins, because racism and sexism are deeply intertwined, "racism can never be solved without seeing and challenging sexism."[54] In Visible Identities, Linda Alcoff similarly notes the ways that denials of the contemporary functioning of racism fuel its perpetuation, citing the work of Bernita Berry and Patricia Williams in noting that often claims of "color blindness" deny the lived realities and experiences of people of color while preserving white privilege.[55]

My analysis of the "alien subject" similarly suggests that failures to recognize how racism operates in ways intertwined with other strategies of normalizing power, including those around gender and sexuality, obscures the functioning of racist power. By constituting "illegal alien" subjects as always-already criminal and threatening to the

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[54] Ibid.
[55] Linda Martin Alcoff, *Visible Identities: Race, Gender, and the Self* (Oxford University Press, USA, 2005), 199–201.

"safety" of society as a whole, these formations of power, including the Arizona law and the discourse surrounding it, cover over the racialization of the "alien subject" while engaging the central strategies of regulative disciplinary racism which I outlined above. In this way, the discourses and technologies of regulative disciplinary power which constitute "illegal alien" subjectivity operate as a sort of "post-racial" racism, which constitutes the "post-racial" "sub-race" of "illegal aliens" which by its very existence poses a threat to the "one true race" of virtuous white citizens.

This strategy of "post-racial" racism is evidence of the way in which, even in discourses where more colloquial or traditional language of race or racism isn't employed, the coupling of juridical power and regulative disciplinary power does not mark the "end" of either racism or races; instead, that "post-racial" racism and "post-racial" races persist even when their existence is explicitly denied (although, as we have seen, it isn't always—explicitly racist discourse is far from extinct), illustrates the strategic reformation of racist formations of power. Rather than a move "forward" away from racism, "post racial" racism means the employment of new, more effective strategies in the constitution of racialized subjects.

In this "post-racial" racist regime, "illegal alien" subjects live, as Anzaldúa writes on "this thin edge of barbwire."[56] The constitution of "illegal alien" subjects as the anti-citizen "sub-race," "alien" by the "bordering" of normalization is physically and psychologically violent:

> 1,950 mile-long open wound
> dividing a pueblo, a culture,
> running down the length of my body,
> staking fence rods in my flesh,

[56] Anzaldua, *Borderlands/La Frontera, the 1st Edition*, 3.

splits me splits me
me raja *me raja*[57]

Anzaldúa describes the subjectification of the "alien" as a violent and "unnatural "splitting"—the inhabitant of the borderlands is caught in between two cultures and two worlds, "una herida abierta where the Third World grates against the first and bleeds."[58] The experience of "illegal alien" subjects constituted at the center of structures of regulative disciplinary "post-racist" racism in this vein is in significant ways consistant with W. E. B. Du Bois' conception of "double consciousness":

> It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness,--an American, a Negro; two warring souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.[59]

For Du Bois, "double consciousness" is experienced by the "American Negro" as the result of "his" historical, political and cultural situation—the painful ambivalence which is constitutive of Black identity in the United States comes from warring "American" and "Negro" identities. The "post-racial" racism which constitutes the "illegal alien" enacts a similar sort of struggle for this subject. As an "impure half-breed," the always-already racialized "alien" exists at the center of "two worlds."

In the year after the Arizona legislation was signed into law by Governer Brewer, legislators for several states introduced similar legislation. In the midst of continuing public controversy surrounding these laws, as well as the reintroduction and failure of the "DREAM" act in the United States Senate, Pulitzer Prize winning journalist Jose Antonio

[57] Ibid., 2.
[58] Ibid., 3.
[59] W.E.B. Du Bois, *The Souls of Black Folk* (CreateSpace, 2012).

Vargas publicly "came out" as an "undocumented immigrant" in a June 2011 *New York Times Magazine* essay, where he described his own struggles with the conflicts of "alien" identity:

> I decided then that I could never give anyone reason to doubt I was an American. I convinced myself that if I worked enough, if I achieved enough, I would be rewarded with citizenship. I felt I could earn it. I've tried. Over the past 14 years, I've graduated from high school and college and built a career as a journalist, interviewing some of the most famous people in the country. On the surface, I've created a good life. I've lived the American dream. But I am still an undocumented immigrant. And that means living a different kind of reality.[60]

The "different kind of reality" that Vargas describes living in is a result of being caught between identifying as an American (as he had lived in the United States since early childhood) and knowing his secret "alien" identity. Much like Du Bois' description of "double consciousness," Vargas' experience of warring identities as an "illegal alien" attempting to "pass" as a citizen is filled with strife because of the warring of these two modes of self-understanding. He describes the constitution of his conflicting sense of self through fear and guilt, and constant danger:

> It means going about my day in fear of being found out. It means rarely trusting people, even those closest to me, with who I really am. It means keeping my family photos in a shoebox rather than displaying them on shelves in my home, so friends don't ask about them. It means reluctantly, even painfully, doing things I know are wrong and unlawful.[61]

As an "illegal alien," Vargas lives in constant fear—because he can see himself through the eyes of a "virtuous" US citizen, he is painfully aware of his own impure and criminal "alienness." Though he was brought to the US as a young child, and had no knowledge of

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[60] Jose Antonio Vargas, "My Life as an Undocumented Immigrant," *The New York Times*, June 22, 2011, sec. Magazine, http://www.nytimes.com/2011/06/26/magazine/my-life-as-an-undocumented-immigrant.html.
[61] Ibid.

his immigration status until years later, Vargas repeatedly expressed remorse in this essay and in radio and television interviews about his "illegal" existence. In his "two-ness" as an "alien" and a "hard-working, achieving American," Vargas is racked with guilt and fear.

For Du Bois, the "doubled" nature of "Negro consciousness" is not something which is to be avoided through the rejection of either of his "warring souls," but rather by material changes which make his "double" existence livable:

> The history of the American Negro is the history of this strife — this longing to attain self-conscious manhood, to merge his double self into a better and truer self. In this merging he wishes neither of the older selves to be lost. He does not wish to Africanize America, for America has too much to teach the world and Africa. He wouldn't bleach his Negro blood in a flood of white Americanism, for he knows that Negro blood has a message for the world. He simply wishes to make it possible for a man to be both a Negro and an American without being cursed and spit upon by his fellows, without having the doors of opportunity closed roughly in his face.[62]

For Du Bois, the "wish" of the "doubly conscious" "Negro" is not a wish for purity—he doesn't seek either an "Africanized" America or his own whitening. Instead of succumbing to the structures of racist power which constitute the mixed or hybridized as impure and threatening, Du Bois' account calls for resisting these forces of normalization. Anzaldúa similarly holds that the "alien" subject must develop "a tolerance for contradictions, a tolerance for ambiguity" in her discussion of mestiza identity:

> The mestiza copes by developing a tolerance for contradictions, a tolerance for ambiguity. She learns to be an Indian in Mexican culture, to be Mexican from an Anglo point of view. She learns to juggle cultures. She has a plural personality, she operates in a pluralistic mode—nothing is thrust out, the good the bad and the

[62] Bois, *The Souls of Black Folk.*

> ugly, nothing rejected, nothing abandoned. Not only does she sustain contradictions, she turns the ambivalence into something else.[63]

For Anzaldúa, mestiza identity presents the possibility for transformation from within the "alien" subjectivity constituted by racist structures of power. By embracing the "doubled" nature of this always-already racialized identity formed by "post-racial" racism, the "new mestiza" resists and reforms the mechanisms of disciplinary regulative strategies of power which are constitutive of "alienness" itself.

[63] Anzaldua, *Borderlands/La Frontera, the 1st Edition*, 79.

CHAPTER II

CRIMINALITY AND THE "ILLEGAL ALIEN"

Under "Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens," piloted in Harris County, Texas in 2008, before extending to districts across the US Southwest and later the nation, anyone who is booked into jail is immediately subjected to a process of "biometric identification"— from 18-year-olds suspected of drinking under-age to "convicted felons," each person's fingerprints are not only entered into FBI databanks, but are also immediately entered into a biometric databank at the Department of Homeland Security. In the process each person's "biometric identity" is checked against Homeland Security's own biometric records; if there is a "hit"—that is, a match between any individual's "biometric" information and Homeland Security's biometric records such as those routinely collected from immigration applicants— an agency of Homeland Security is automatically notified. If someone's "biometric identity" matches that of any non U.S. Citizen (including legal residents), this agency, "Immigration and Customs Enforcement" (ICE), then notifies and mobilizes its Law Enforcement Support Center through an automated system. The Center may in turn place a "detainer" on the "matched" person. If detained, any "matched" individual, regardless of whether or not they have been charged with a crime or are classified by juridical discourse as a "legal" or "illegal" immigrant, is held by the local law enforcement agency until ICE "takes custody" of them—which may be up to 48 hours beyond their scheduled release date.

"Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens," often simply referred to as the "Secure Communities," is the ICE program which coordinates this complex web of measurement, surveillance and imprisonment. Its name reflects its purpose and justification as described by the institutional and political discourses that support it— the plan is described by the agency's Assistant Secretary John Morton as a "program to enhance collaboration among U.S. law enforcement agencies to protect the people of the United States from criminal aliens that pose the greatest threat to our communities."[64] According to Morton's statements on behalf of the Homeland Security Agency, "Secure Communities" is a reflection of ICE's commitment to "protecting national security and upholding public safety," by eliminating the "great threat" posed by to "the people of the United States," "our communities," and "national security" by these "dangerous criminal aliens." President Obama spoke similarly of an urgent need to "secure our borders" in his high-profile immigration speech delivered in the year after the signing of the controversial 2010 Arizona Immigration law. In the speech, President Obama, whose administration opposed the law, called for federal immigration reform while at the same time referring to his direction to the "secretary of homeland security, Janet Napolitano—a former border governor—to improve our enforcement policy without having to change the law."[65] One of these "improvements" to "border security," was the dramatic expansion of "Secure Communities," which by

[64] *Strategic Plan*, Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens (U.S. Department of Homeland Security - U.S. Immigration and Customs Enforcement, July 21, 2009), 1.
[65] Obama, *Remarks by the President*.

March of 2011 had been expanded from 14 jurisdictions under President Bush to over 1,200.[66]

In this chapter, I will show how the discourses and technologies which make up and surround the "Secure Communities" program, described as the "solution" to the dangerous "threat" presented by the "criminal alien" and "insecure borders," are exemplary of the normalizing power which constitutes "alien" as always already "criminal." By this, I mean not only that "alien" subjects, regardless of legal status, are constituted as dangerous and criminal through these strategies of power, but also that "alien-ness" and "criminality" are themselves constitutively intertwined in this domain of normalizing power. As I will discuss in the case of discourses surrounding "alien sexuality," juridical citizens who are constituted as deviant, abnormal and thus criminal in this regime of normalizing power are constituted as anti-citizens. In this sense, "virtuous citizenship" and its antithesis, "dangerous alien" are made meaningful through discourses and mechanisms of power surrounding criminality and sexuality, while delinquency and sexual deviance are also reconstituted in this interrelation. I will draw on the work of both Foucault and Anzaldúa to show how the "illegal alien" is constituted as an abnormal criminal subject through an analysis of "Secure Communities" as an apparatus of normalization at the center of disciplinary and regulatory structures of power in the borderlands. To this end, I will first analyze how the "Secure Communities" functions as an example of the interaction of strategies of disciplinary and regulative power in constituting "alien" subjects as "dangerous criminals" who pose a threat to the

[66] *Projected Development by Fiscal Year of Secure Communities Program,* Secure Communities (U.S. Department of Homeland Security - U.S. Immigration and Customs Enforcement, n.d.).

well-being of the state. I will explore how the program, which operates at various levels and by diverse means (including local law enforcement agencies, private institutions as well as the federal government), deploys strategies operative at both at the level of biological processes and individual bodies, and in doing so includes the development and implementation of new technologies and discourses directed towards the simultaneous management of the "threat of criminality" and disciplining of "criminal alien bodies." Next, I will discuss the ways in which the "success" and "utility" of "Secure Communities" has been measured and critiqued. Drawing a parallel between Foucault's analysis of calls for "prison reform" and the functioning of the carceral system, I will provide an analysis of the way that the functioning of these mechanisms of normalization is reinforced by much of the criticism leveled against them. I will suggest, in light of this analysis, that the purpose served by the criminalization of the "alien" subject through the mechanisms of "Secure Communities" is not to protect "communities" of citizens from the crimes committed by "alien" subjects, but instead to reinforce and reform the very distinction between "alien criminality" and "virtuous citizenship." In this chapter, as well as the chapter on gender and sexuality which follows, I will analyze the functioning of this constitutive interrelation of the "dangerous alien" and the "virtuous citizen" in regimes of normalizing power.

The Dangerous Criminal Alien: "Secure Communities" and The Normalizing Regime

In a way exemplary of the functioning of what Foucault calls "regulatory disciplinary power," the mechanisms of "Secure Communities" cast immigration as a large and looming threat while constituting "alien" subjects (despite their technical legal

status) as always-already "illegal"—that is, criminal and threatening to our "communities" merely by virtue of their failure to be removed. In the introduction to the plan cited above, "Secure Communities" is presented as a "strategic approach" to what is described as the long-standing and complex "challenge" presented by "criminal aliens":

> The use of aliases and other false biographic data by a number of criminal aliens has made reliance on traditional processes insufficient for identifying the elusive population. Continued use of biographic processes will ultimately result in missed identification of some criminal aliens subject to removal. Incomplete identification puts our communities at unnecessary risk, given the biometric technology available today.[67]

Thus, according to "Strategic Plan," "criminal aliens" form a "dangerous" group and pose a double threat by virtue of their "elusiveness." Failing to identify (and, ultimately, remove) members of this "dangerous population" puts the general population of non-"criminal aliens" at risk. But who are the "dangerous" members who must be identified for the security of our communities? In the context of this discourse which directly relates "criminal aliens" to risk, as well as the other technologies and practices initiated by "Secure Communities," the term "criminal alien" isn't explicitly defined. It is instead deployed as if it exists as a stable, non-normative and self-evident category. While the mechanisms of "Secure Communities" put this term to use in various ways, the ambiguity of the "criminal" as well as the "danger(s)" associated with it persist in the mechanisms of the program as well as the discourses surrounding it.

I will argue in this chapter that this ambiguity is doing particular work in the existing regime of normalizing power which constitutes the "alien" as always already "dangerous" and "criminal." Because the "danger" of "criminality" which these

[67] *Strategic Plan*, 2.

mechanisms are supposed to present is left open, no one is absolutely exempt from the stigmatization they inflict. In this sense, the amorphous dangerous criminality of the "alien" is symptomatic an "alien panic" analogous to the "homosexual panic" Eve Sedgwick describes in *Between Men: English Literature and Male Homosocial Desire*:

> So-called "homosexual panic" is the most private, psychologized form in which many twentieth-century western men experience their vulnerability to the social pressure of homophobic blackmail; even for them, however, that is only one path of control, complementary to public sanctions through the institutions described by Foucault and others as defining and regulating the amorphous territory of "the sexual." (As we have seen…the exact amorphousness of the body of "the sexual" is where its political power resides…)[68]

Sedgwick uses the term "homosexual panic," which she derived from psychiatric discourse (and which she later discovered had been used as a defense by people accused of sexuality-based hate crimes), to refer to the constant state of anxiety that has accompanied privileged male heterosexual identity from the late 19th century.[69] For Sedgwick, in large part due to the "amorphousness of the body and of 'the sexual,'" and the threat of homophobia, male heterosexuality is particularly vulnerable to the this volatile "panic" state. Put differently, because of this "amorphousness" the distinctions between homosocial and homosexual desires are always tenuous, and male heterosexual identity is therefore frighteningly unsettled. In this way, the amorphous nature of "the body and of 'the sexual,'" calls for its intense regulation and disciplining in part through the inauguration of the "homosexual panic" through which male heterosexuality polices itself—this "is where its political power resides." Much in the same way that the "amorphousness of the body and of 'the sexual'" serves a particular purpose with regard

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[68] Eve Kosofsky Sedgwick, *Between Men: English Literature and Male Homosocial Desire* (Columbia University Press, 1992).
[69] Eve Kosofsky Sedgwick, *Epistemology of the Closet*

to the deployment of mechanisms of power surrounding sexuality, the ambiguity of "danger" and "criminality" in the context of the "Secure Communities" program both produces and requires a sort of "alien panic." Because the danger and risk posed by the alien is ill-defined and amorphous, "alienness" becomes an ever-present threat—any subject could embody elements of "alienness."

One of the ways that the "criminal alien" is reconstituted by "Security Communities" is as an always-already "dangerous" and threatening subject in this sense. In the passage from ICE's "Strategic Plan" which I cited above, the "challenge" which the program is purported to address is the difficulty of identifying "criminal aliens." According to the ICE, this failure presents a problem because, when "criminal aliens" are not identified, incarcerated and/or deported, "our communities are put at...risk."[70] This way, the very justification the program's existence relies on the "criminal alien's" status as a dangerous individual—the program and the discourses that support it must reconstitute the "criminal alien" as dangerous and in casting "Secure Communities" as "necessary" in its prevention "unnecessary risk." This constitution of the "criminal alien" as always-already dangerous echoes Foucault's discussion of the emergence of the concept of the "dangerous individual":

> Only an act, defined by law as an infraction, can result in a sanction, modifiable of course according to the circumstances of the intentions. But by bringing increasingly to the fore not only the criminal as author of the act, but also the dangerous individual as potential source of acts, does not one give society rights over the individual based on what he is?[71]

[70] *Strategic Plan*, 2.
[71] Foucault, 227.

According to Foucault, the emergence of the criminal as a type of "dangerous individual" made it possible to divorce criminality from the commission of acts. As in the discourse of "Secure Communities," for Foucault this "type" of subject is dangerous insofar as it is understood to pose a general and amorphous "risk" to the well-being of the community at large. This concept of "risk" made possible the category of the criminal as a type of deviant who is

> responsible since, by his very existence, he is the creator of risk, even if he is not at fault…Thus, the purpose of the sanction will not be to punish a legal subject who has voluntarily broken the law; its role will be to reduce as much as possible—either by elimination, or by exclusion or by various restrictions or therapeutic measures—the risk of criminality represented by the individual in question.[72]

Mechanisms of management of risk take as their target individuals who are deemed dangerous or risky by virtue of their membership in specific groups and their constitution as distinct "types" of persons. This constitution of "criminal aliens" as "creators of risk" is evident in the description of the "challenge" discussed above; the stated purpose of the program is not to punish all individuals who have committed crime, but instead to eliminate the "risk" posed by "criminal aliens" as dangerous individuals.

But it is not only discourse surrounding and justifying the program which operates in constituting the "criminal alien" as a type of "dangerous individual"—the mechanisms of the program also operate in this constitution of the "criminal alien" as always-already dangerous. In the context of the practices of surveillance and information-production and sharing initiated and mandated by "Secure Communities," the "criminal alien" is identified as not only a type of individual who has committed crimes, but as a "type" of individual who poses a future threat. In fact, in the context of the technologies and

[72] Foucault, 225.

procedures initiated by the program, the past commission of a crime is not a necessary prerequisite for an individual to be classified as a "criminal alien"—under "Secure Communities," all individuals booked into jail, regardless of whether they have been convicted of or even charged with a crime, are subjected to the process of "biometric identification" and "information sharing" which can then result in detainment, detention and deportation. This functioning of "Secure Communities" thus not only constitutes the "criminal alien" as a type of "dangerous individual," but also operates in the process of "criminalization" itself— instead of being defined simply as a "person who has committed a crime," in the context of these mechanisms of power the "criminal" is understood as an individual who "creates risk" by virtue of their very existence, whether or not they have ever been convicted of or charged with a specific crime.

In this way, by virtue of mechanisms like those initiated by "Secure Communities," criminality is attached to alien-ness as such—regardless of whether or not any subject who is identified as "alien" has committed a crime, they pose a risk of criminality, and thus must be identified and potentially detained and deported. Similarly, for the purposes of this risk management, the terms "alien" and the "illegal alien" become interchangeable in important ways. The "alien," whether legal or illegally present in the United States, is subjected to the practices control, discipline, and management initiated by the program. In fact, in some ways, "legal alien" subjects are particularly likely to be identified by the biometric "matching" system put into place by "Secure Communities," as all applicants for legal residency are automatically entered into Homeland Security's biometric database. In this example, as well as in the case of "aliens" brought as minors

to the United States illegally, the "alien" subject is always-already criminal, even when there is no evidence of the commission of civil infraction or criminal act.[73]

In this way, "Secure Communities" serves as an example of the mechanisms of regulative and disciplinary management that constitute the "alien" subject in ways excessive to the juridical category which purports to define it. For the purposes of contemporary juridical discourse, the definition of the term "alien" is consistent with that found in the 1965 Immigration and Nationality Act, which states that "the term 'alien' means any person not a citizen or national of the United States."[74] But the mechanisms of normalizing power employed by strategies such as those which make up the "Secure Communities" program go further in constituting the "alien" as an always-already dangerous criminal subject, imbuing the category "alien" with criminality, not only by explicitly reinforcing the criminality of the presence of "aliens" who are in the US except under particular situations, but also by attaching danger and criminality to the category of "alien" in a comprehensive way. The type of subject "alien," not acting or having acted in a way that is deemed illegal or criminal by juridical discourse, is nonetheless attached in a meaningful way to "danger" and "criminality." "Aliens" as such, and not only for reasons resulting from specific acts or contexts, are suspected of posing a threat to lawfulness and safety.

These mechanisms of power operate strategically both in terms of the regulative management of populations and the disciplining of individual bodies. In *Discipline and Punish*, Foucault describes the way that the constitution of the "criminal" subject is rooted in mechanisms of individualization:

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[73] *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, 1996.
[74] *Immigration and Nationality Act*, 1965.

> The examination, surrounded by all its documentary techniques, makes each individual a 'case': a case which at one and the same time constitutes an object for a branch of knowledge and a hold for a branch of power. The case is no longer, as in casuistry or jurisprudence, a set of circumstances defining an act and capable of modifying the application of a rule; it is the individual as he may be described, judged, measured, compared with others, in his very individuality; and it is also the individual who has to be trained or corrected, classified, normalized, excluded, etc."[75]

For Foucault, in this process of individualization each individual is constituted as a "case" and therefore an object of knowledge and power. In what Foucault calls the regime of "normalizing power," individuals are subjected to the technologies of measurement, examination and documentation in the assessment of to what extent they are "creators of risk." This makes possible the emergence of the "dangerous" or "criminal" individual—the individual who "creates risk" and must therefore be "classified, corrected or removed."

The "Secure Communities" program, as a mechanism of normalizing power, engages in this strategic practice of "individualization"—describing, measuring and documenting potential "criminal aliens" in order to identify members of this "elusive population." The "Strategic Plan" lists as its first objective "identifying criminal aliens through modernized information sharing."[76] The plan identifies the aforementioned practice of "biometric identification" as well as "integrated record check[s]" and "timely response[s]" as the primary strategies for identifying "criminal aliens." These technologies and practices target individuals rather than any specific crimes as the target of knowledge. As a "case," it is the individual "subject" who is at the center of these mechanisms of power— this physical measurement and technological documentation of

[75] Foucault, *Discipline & Punish*, 191.
[76] *Strategic Plan*, 3.

individual bodies allows them to be "described, judged, measured [and] compared" with others. It is only through the emergence of the "individual" as an object of these documentary techniques that it is possible to identify particular subjects as "dangerous criminal aliens," and in doing so to mark them for potential elimination through deportation.

But as a manifestation of normalizing strategies of power, the "Secure Communities" program is caught up in more than just disciplinary individualization of particular subjects—"criminal aliens" are also constituted by these mechanisms as a "threatening population." In fact, the program is exemplary of the way that strategies of disciplinary and regulatory power interact in the constitution of the "dangerous criminal alien." In his 1975/1976 Lectures at the Collège de France, Foucault makes explicit the possibility of the strategic interaction of institutional disciplinary and Statist regulative strategies, pointing to police as an example of disciplinary Statist power:

> So we have two series: the body-organism-disciplinary-institutions series, and the population-biological processes-regulatory mechanisms-State. An organic institutional set, or the organo-discipline of the institution, if you like, and, on the other hand, a biological and Statist set, or bioregulation by the State. I am not trying to introduce a complete dichotomy between State and institution, because disciplines in fact always tend to escape the institutional or local framework in which they are trapped. What is more, they easily take on a Statist dimension in apparatuses such as the police, for example, which is both a disciplinary apparatus and a State apparatus (which just goes to prove that discipline is not always institutional)."[77]

For Foucault, though the development of disciplinary power historically precedes that of regulative power, these two sets of mechanisms "are not mutually exclusive."[78] Moreover, police, as an apparatus simultaneously involved in both "series" of

[77] Foucault, *Society Must Be Defended*, 250.
[78] Ibid.

mechanisms, occupies a central position in regimes of disciplinary regulative power. For instance, the procedure put to work by the "Secure Communities" program through which any person is "booked" into jail employs disciplinary techniques by which bodies are examined, measured, and documented. But at the same time that this strategy of disciplinary power employs measurement and surveillance in the production of individualizing effects, it also operates in and through strategies of regulative power—power that operates at the level of the "population." As a "Statist" mechanism, police operate through the regulative strategy of "protect[ing] the security of the whole from internal dangers." In the case of "Secure Communities," this "superimpos[ing]" of disciplinary and regulative strategies of power is particularly evident: the mechanisms of this program are aimed simultaneously at the level of "identifying" individual "criminal aliens" and at protecting whole communities from an "elusive" and threatening population.[79]

Foucault identifies this coincidence of disciplinary and regulative power as the regime of "normalizing power":

> The normalizing society is a society in which the norm of discipline and the norm of regulation intersect along an orthogonal articulation. To say that power took possession of life in the nineteenth century, or to say that power at least takes life under its care in the nineteenth century, is to say that it has, thanks to the play of technologies of discipline on the one hand and technologies of regulation on the other, succeeded in covering the whole surface that lies between the organic and the biological, between body and population.[80]

For Foucault, under regimes of normalizing power, both individual bodies on one hand and populations on the other are constituted as dangerous and threatening and—in the

[79] Ibid., 249.
[80] Ibid., 253.

case of “Secure Communities” as a mechanism of normalizing power—always-already criminal.

Thus, as a mechanism of normalizing power, “Secure Communities” does not only discipline the individual “dangerous criminal aliens” which its strategies measure, document and manage; it also acts in the regulation of entire “populations.” Subjects who are never booked into jail by local law enforcement agencies and/or are never taken into custody by the ICE are also subjugated by this set of normalizing strategies. Under a normalizing regime “the judges of normality are present everywhere… the universal reign of the normative is based; and each individual, wherever he may find himself, subjects his body, his behavior, his aptitude, his achievements.”[81] The mechanisms and technologies of “Secure Communities” are particularly effective in leading to this internalization of the “norm”; because of the practices and technologies it employs for “information sharing” in service of its stated goal of identifying and removing “dangerous criminal aliens,” the ICE has a much greater regulative reach on the population at large. The program institutionalizes a link between local law enforcement officials and the department of Homeland Security in such a way that all police officers (who are in once sense most straightforwardly involved in disciplining individual bodies) function as immigration enforcement officials in the management of populations. In addition to joining its biometric database with already-existing mechanisms of individualization enacted through local police, the ICE goes even further to assert its presence into local law enforcement agencies: the strategic plan states that

> Where the biometric-based identification system is unavailable or insufficient, interviews of suspected aliens charged with or convicted of a crime will be

[81] Foucault, *Discipline & Punish*, 304.

> necessary…to maximize ICE's ability to conduct these interviews when and where needed, Secure Communities is supporting deployment of video teleconferencing (VTC) to connect ICE personnel with selected state and local LEA sites, based on traffic volumes.[82]

In this way, the disciplinary space of the local jail or prison is simultaneously a space of the State's regulation of entire populations. Disciplinary strategies of individualization are at once strategies of the management of threats to the State—the regulative judges of normality are in this sense "everywhere." Thus, the program as well as the "dangerous criminal alien" subject to it both function at the intersection of and actively blur the distinction between disciplinary and regulatory power— the mechanisms of "Secure Communities" simultaneously individualize "alien" subjects as always-already criminal and constitute "criminal aliens" as a "dangerous element" which, because of the threat it poses to the population as a whole, must be managed.

Racialization, Criminalization and the "Dangerous Alien Subject"

The "dangerous criminal alien" subject is constituted at the center of this confluence of disciplinary and regulative strategies in normalizing power. As I discussed above, for the purposes of the normalizing strategies of "Secure Communities," bodies can be constituted as "dangerous," "criminal" and "alien" regardless of citizenship or immigration status. This is made clear by the above provision of the strategic plan which calls for interviews of "suspected aliens" even if there has been no "match" in coordinated biometric identification systems. Unsurprisingly, then, it is not only technically "illegal" immigrants who have committed a crime who internalize the norms that are reinforced by "Secure Communities." In *Borderlands/La Frontera,* Anzaldúa

[82] *Strategic Plan,* 3.

illustrates how these normalizing "arts of government" operate in terms not only of the constitution of the "alien" as a type of "dangerous individual," but also of the self-discipline and management of those constituted as "citizens" as well as those constituted as "aliens" by juridical discourse:

> In the fields, *la migra*. My aunt saying, *"No corran, don't run. They'll think you're del otro la[d]o."* In the confusion, Pedro ran, terrified of being caught. He couldn't speak English, couldn't tell them he was fifth generation American. *Sin papeles*—he did not carry his birth certificate to work in the fields. *La migra* took him away while we watched. *Se lo llevaron*. He tried to smile when he looked back at us, to raise his fist. But I saw the shame pushing his head down, I saw the terrible weight of shame hunch his shoulders. They deported him to Guadalajara by plane. The furthest he'd ever been to Mexico was Reynosa, a small border town opposite Hidalgo, Texas, not far from McAllen. Pedro walked all the way to the Valley. *Se lo llevaron sin un centavo al pobre. Se vino andando desde Guadalajara.*[83]

Here Anzaldúa's account points to the way in which subjects internalize particular norms relative to "alienness," criminality and citizenship. In this passage she illustrates the way that anxiety and fear of potential interaction with immigration authorities (and the eventualities of detention or deportment that such interaction leads to) leads particularly raced and classed subjects to regulate their own behavior—Pedro's aunt, having internalized these norms, tells him not to run in the hope that warning him against acting like a "dangerous alien" might shield him from suspicion. But in his terror, he fails to heed her warning. And because he "acts like" an "illegal" or "dangerous criminal alien," (not, it is important to note, because he committed any criminal act) he is vulnerable to be directly exposed to the strategies of disciplinary and regulative power employed in the service of "immigration enforcement."

[83] Anzaldua, *Borderlands/La Frontera, the 1st Edition*, 4.

This passage also points to the roles played by race and class in the constitution of the "dangerous criminal alien" subject. Pedro, though according to United States legal statutes not either a legal or illegal immigrant (he, as well as four generations of his family before him, was born in the United States), is constituted by his status as a fieldworker and by his visible non-whiteness and Spanish-speaking as a dangerous trespasser. It is because of the classism and racism at the center of immigration policies and practices of biopower that Pedro is identified as an "illegal alien" by the border patrol and is exposed to deportation. Even though he constituted as a "citizen" by juridical discourse, he is constituted by normalizing "arts of government" as an "illegal alien" subject—as a dangerous individual who must be removed. In this way, mechanisms of normalizing power not only constitute the "criminal alien" as a type of "dangerous individual," but also induce the self-disciplining and management of both "aliens" and "citizens" in accordance with these normative categories. Put differently, in this regime of normalizing power, "citizen" identity is itself anxiously unsettled— in larger part because of the "dangerous alien threat" which is constantly (re)constituted by regulative disciplinary power, even citizens exist in this constant state of "alien panic."

In this sense, Pedro's deportation to Mexico does not move him beyond the reach of these norms. Instead, his expulsion functions as a mechanism of normative power—through his deportation he is exposed to strategies of disciplinary and regulative power which reform him, "..shame pushing his head down…the terrible weight of shame hunch[ing] his shoulders." Foucault describes the central role of racism in making possible this sort of expulsion of members of a population deemed "threatening" to the whole:

> If the power of normalization wished to exercise the old sovereign right to kill, it must become racist. And if, conversely, a power of sovereignty, or in other words, a power that has the right of life and death, wishes to work with the instruments, mechanisms, and technology of normalization, it too must become racist. When I say "killing," I obviously do not mean simply murder as such, 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.[84]

As I discussed in the preceding chapter, racism serves an important purpose in the functioning of regulative disciplinary power under a normalizing regime—it introduces a break within a population, dividing a population into "subraces" and thus constituting certain individuals and populations as threatening and therefore allowing for normative strategies to employ the "old sovereign right to kill." But this racist "right to kill" does not only consist of the literal right to murder, but also the right of political death or expulsion. In fact, normalizing "power over death" not only permits but in many cases requires the elimination of the "threat" it has constituted.

The mechanisms of disciplinary regulative power put to work by the "Secure Communities" program act out this normalizing "right to kill" by constituting the "dangerous criminal alien" as a threat which must be eliminated for the "security" of our "communities." In this vein, Foucault discusses the important interaction of criminalization and racism in the normalizing society:

> At the end of the nineteenth century, we have then a new racism modeled on war. It was, I think, required because a biopower that wished to wage war had to articulate the will to destroy the adversary with the risk that it might kill those whose lives it had, by definition, to protect, manage, and multiply. The same could be said of criminality. Once the mechanism of biopower was called upon to make it possible to execute or isolate criminals, criminality was conceptualized in racist terms.[85]

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[84] Foucault, *Society Must Be Defended*, 256.
[85] Ibid., 258.

For Foucault, the biopolitical strategy of identifying within a population a "subrace" which poses a threat to the whole is enacted both in processes of criminalization and racialization. Similarly, critical theorists of race have often described the ways that normalizing functions of power surrounding racialization and criminalization are constitutively intertwined, particularly in the US context.[86] In a way consistent with this work, as well as my own discussion in the preceding chapter, in the context of the "dangerous criminal alien" subject, the functioning of normalizing power occurs in relation to continuing patterns of racialization. Put differently, the functioning of normative racism is central to the criminalization of the "alien" subject. This is evidenced in elements of the implementation and strategies of the program. It was piloted in a Texas district bordering Mexico, and by the end of June 2011, the program had expanded to 47% of jurisdictions in the United States, including all of California, Arizona, New Mexico, and Texas, the five states which share a border with Mexico. Only a handful of the districts which had been activated bordered Canada, with states on the US northern border such as Minnesota, North Dakota, and Maine not participating in the program at all.[87]

In this way, the mechanisms of "Secure Communities" were deployed strategically—the technologies initiated by this program were not mobilized for the regulation of US border activity in general, but instead this set of tools of normalization were directed towards particularly-raced and ethnicized bodies. Moreover, the mechanisms of the program are structurally racist regardless of the district of their

[86] For a helpful introduction, see "Race and Criminalization: Black Americans and the Punishment Industry," in The Angela Y Davis Reader.
[87] *ICE Activated Jurisdictions, as of September, 2011*, Secure Communities (U.S. Department of Homeland Security - U.S. Immigration and Customs Enforcement, n.d.),

implementation because of their reliance on already-existing carceral mechanisms. In *Are Prisons Obsolete?* Angela Davis describes the way that sentencing laws are structurally racist because of the disproportionate number of arrests of persons of color; because persons of color are more likely to enter the carceral system (in large part because they are subject to tighter networks of surveillance), mandatory sentencing laws perpetuate the continuance of this State racism.[88] The "Secure Communities" program is also structurally racist in this sense—because, as a result of other disciplinary regulative structures of racist power, particularly-raced bodies are more likely to come into contact with local police, they are also more likely to be exposed to the normalizing strategies of "Secure Communities." In this way, not only are the majority of "dangerous criminal aliens" always-already racialized in this sense, but normative racism itself serves in their constitution as "dangerous" and "criminal."

The Failure of "Secure Communities": "Criminal Aliens" and "Virtuous Subjects"

Although between 2008 (when the program was piloted) and March 2011 140,396 "criminal aliens" were booked into ICE custody resulting in 72,445 deportations, "Secure Communities" was widely criticized for failing to meet its goal of "protecting our communities from the most dangerous criminal aliens."[89] Latino and Immigration advocacy groups in particular pointed to ICE's own statistics, claiming that a large number of individuals detained and deported under the program weren't "dangerous criminals." For the purposes of "Secure Communities," the ICE divided "immigrant prisoners" into three risk levels: level 1, consisting of "those convicted of serious crimes"

[88] Angela Y. Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2003).
[89] *ICE Activated Jurisdictions, as of March 22, 2011*.

such as homicide, kidnapping, sexual assault, robbery, and drug offences with sentences greater than one year; level 2, "aliens" charged with all other felonies, such as fraud, embezzlement, stolen property, and drug offenses with sentences less than one year; and level 3, "aliens" who have been charged with misdemeanors and lesser crimes, including immigration-related misdemeanors, obstructing the police, and public order crimes.[90] According to ICE's statistics, during the first two and a half years of the operation of "Secure Communities," around half of the "aliens" who were "administratively arrested or booked into ICE custody" were classified as "level 3" (the least "dangerous" class) or "non-criminal." This pattern also held for individuals deported during this time period—around half of the "aliens removed and returned" by the ICE during this time period were classified as "level 3" or "non-criminal," the latter making up over one fourth of the aliens expelled during the program's operation. In this way, according the ICE's own stated goals and justifications for the program's existence, "reduc[ing] the risk" of "releasing dangerous and removable criminal alien[s] into the community" by targeting the "most dangerous criminal aliens," "Secure Communities" in large part missed its mark.

Even supporters of "Secure Communities" including the Obama administration implicitly agreed that these statistics belied a sort of failure or shortcoming of the program. On August 18, 2011, the administration announced a partial change in its deportation policy, with Homeland Security Secretary Janet Napolitano stating that about 300,000 deportation subjects would have their cases reviewed in order to renew focus on

[90] *Immigration and Customs Enforcement: Secure Communities Standard Operating Procedures- Appendix A*, Secure Communities (U.S. Department of Homeland Security - U.S. Immigration and Customs Enforcement, 2009).

individuals who have committed "flagrant violations." According to Napolitano's statement, many "low priority cases"—that is, "aliens" classified as less dangerous or "non-criminal"—would be suspended, and that "prosecutorial discretion" reviews of such cases would be done on a "case-by-case" basis, with Napolitano providing "possible relief for the accused."[91]

Without having produced any evidence for (or made any claims about) the prevention of crime, and with the implicit admission that the program had failed to isolate "the most dangerous criminal aliens" for removal, it is clear that its actual strategic functioning of the program was not in line with its professed goals of "securing communities." In *Discipline and Punish*, Foucault describes a similar situation relative to the modern prison—recounting the ways that movements for "prison reform" in the face of the persistent "failure" of the prison to meet its goal of reducing crime actually help perpetuate the prison system. For Foucault, the failure of the prison serves important purposes towards this perpetuation:

> …perhaps one should reverse the problem and ask oneself what is served by the failure of the prison; what is the use of these different phenomena that are continually being criticized; the maintenance of delinquency, the encouragement of recidivism, the transformation of the occasional offender into a habitual delinquent, the organization of a closed milieu of delinquency…the prison, and no doubt punishment in general, is not intended to eliminate offences, but rather to distinguish them, to distribute them, to use them; that is not so much that they render docile those who are liable to transgress the law, but that they tend to assimilate the transgression of the laws and general tactics of subjection.[92]

[91] Robert Pear, "Fewer Youths to Be Deported in New Policy," *The New York Times*, August 18, 2011, sec. U.S., http://www.nytimes.com/2011/08/19/us/19immig.html; "US in Mass Review of Deportation," *BBC*, August 19, 2011, sec. US & Canada, http://www.bbc.co.uk/news/world-us-canada-14585238.
[92] Foucault, *Discipline & Punish*, 272.

For Foucault, the prison's "failure" is an importantly useful element of the operations of normalizing power. This is because the prison's function in this vein is not to eliminate crime—to the contrary, it depends on the production of criminality for its very existence, and itself functions in the constitution of "criminal" subjects. Instead, the existence of the prison is in the service of the "tactics of subjection"; the prison, as well as the moves for reform which help perpetuate it, serves to enact normalizing strategies of power in the constitution of the "subjects" it purports to reform:

> The individual is no doubt the fictitious atom of an 'ideological' representation of society; but he is also a reality fabricated by this specific technology of power that I have called 'discipline'. We must cease once and for all to describe the effects of power in negative terms: it 'excludes,' it 'represses,' it 'censors,' it 'masks,' it 'conceals.' In fact, power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production.[93]

Much like normative power functions through the mechanisms of the "prison" in producing the "criminal" subject, the "Secure Communities" program functions in the constitution of the "dangerous criminal alien." Moreover, because the "Secure Communities" program functions along and within the carceral system, it serves to link "alienness" and "criminality" themselves—in the context of this normative regime, every "criminal" is a potential "alien" (and must therefore be exposed to the mechanisms of measurement and documentation directed at "alien" subjects) while every "alien" is also always-already a "dangerous criminal subject" (even "aliens" who have committed no crime are eligible for detention and eventual deportation). In this regime of regulative disciplinary power where citizen identity is in a state of "alien panic," criminality comes to signify (and be signified by) a type of non-American subjectivity. The criminalized

[93] Ibid., 194.

subject is not "truly American" and is not deserving of citizenship, even if, as I will discuss in the next chapter, they were born a citizen. "Secure Communities" serves as an example of the way in which normative mechanisms of "criminalization" and "alienization" are mutually constitutive and reinforcing.

The always-already dangerous and criminal nature of the "alien" subject also serves the useful purpose of (re)exposing particular bodies to exploitation. Foucault describes the function of the solidification of criminal delinquency by the penal system for "the profit and power of the dominant class." In *Borderlands/La Frontera*, Anzaldúa describes the similar function of the criminalization of the "alien" subject:

> Living in a no-man's-borderland, caught between being treated as criminals and being able to eat, between resistance and deportation, the illegal refugees are some of the poorest and most exploited of any people in the U.S. It is illegal for Mexicans to work without green cards. But big farming combines, farm bosses and smugglers who bring them in to make money off the "wetbacks" labor—they don't have to pay federal minimum wages, or ensure adequate housing or sanitary conditions.[94]

In this passage, Anzaldúa gives an account of how the deployment of normative mechanisms of normalization in the constitution of the "dangerous criminal alien" results in violent economic exploitation. Because dwellers of the "borderlands" are constituted by these mechanisms of disciplinary regulative power as always-already criminal, they are excluded from protections afforded by labor regulations and union membership, and feel forced by their fear of interaction with law enforcement officials to accept deplorable conditions and treatment. These subjects who resist the confines of the "normal" are thus made vulnerable to physical violence and economic exploitation. In this way, the mechanisms of normalizing power that constitute the "dangerous criminal alien"

[94] Anzaldua, *Borderlands/La Frontera, the 1st Edition*, 12.

concretely benefit the "ruling class" through providing a constant stream of docile bodies for labor.

The disciplinary regulative mechanisms of "Secure Communities" serve an additional purpose besides the constitution of the "dangerous criminal alien" as a "type" of subject; through their constitutive linking of "criminality" and "alienness," these strategies of normative power also serve to manage, regulate and discipline "citizen" subjects. Just as, for Foucault, the carceral system functions in "individualiz[ing] the healthy normal and law-abiding adult" by "asking him how much of the child he has in him, what secret madness lies within him, what fundamental crime he has dreamt of committing," the normative system which constitutes the "dangerous criminal alien" serves to simultaneously individualize the "normal citizen."[95] The always-already "dangerous" and "criminal" (as well as "perverse," "impure" and "racialized") nature of the "alien" subject means that the "normal" citizen-subject must also be subjected to State and institutional surveillance (as well as "self-reflection") for the "detection" of these traits. In this process, the "perfectly normal citizen" is constituted as "non-threatening," "non-criminal," "sexually normal," "pure," and "white," and the dangerous criminality of the "alien" subject calls for and justifies the monitoring of the entire population of "citizens."

This constitutive linking of "criminality" and "alienness" in the constitution of both the racialized "criminal alien" subject and the white "virtuous citizen" subject casts in a critical light attempts to advocate on behalf of immigrants by calling for "reform" of

[95] Foucault, *Discipline & Punish*, 193.

strategies like the "Secure Communities" program. In the last few pages of *Discipline and Punish*, Foucault describes the "political issue around the prison":

> … it is not therefore whether it is to be corrective or not; whether the judges, the psychiatrists or sociologists are to exercise more power in it than the administrators or supervisors; it is not even whether we should have prison or something other than prison. At present, the problem lies rather in the steep rise in the use of these mechanisms of normalization and the wide-ranging powers which, through the proliferation of new disciplines, they bring with them.[96]

For Foucault, the modes of so-called "resistance" to the prison which call for its reform perpetuate its functioning, and even discussions of whether the institution itself should exist don't address the functioning of normative power which produces criminality. Instead, the "problem" lies in the modes of normalizing power which have proliferated with and through the carceral system. Similarly, critiques of programs such as "Secure Communities" fail meaningfully to resist the functions of normalizing power when they are based in calls for sparing "low-risk" or "low priority" "cases," or when they articulate pleas for immigration reform by suggesting the virtuous and non-threatening nature of particular "alien" subjects. These attempts at political change actively reinforce the constitutive dichotomy between the "dangerous criminal alien" subjects and "virtuous citizen subjects" by justifying certain individuals' movement toward citizenship because of their resemblance to the latter category. Instead, as I will discuss later in this dissertation, in the face of the regime of normalizing power which constitutes the "dangerous, perverse and criminal alien" and the "virtuous citizen," resistance must be levied at the level of this dichotomy itself. Anzaldúa suggests that in the blurring of the lines between dichotomies of identity such as "alien/citizen" a hybrid identity must be

[96] Ibid., 306.

fashioned: “At some point, on our way to a new consciousness, we will have to leave the opposite bank, the split between two mortal combatants somehow healed so that we are on both shores at once, and, at once, see through serpent and eagle eyes.”[97]

[97] Anzaldua, *Borderlands/La Frontera, the 1st Edition*, 79.

CHAPTER III

GENDER, SEXUALITY, AND THE "ILLEGAL ALIEN"

In November of 2010, Tennessee state lawmaker Todd Curry made national news when he referred to pregnant illegal immigrants as "rats" that "multiply." His comment was in line with a recent intensification of political discourse calling into question the so-called "birthright citizenship" clause in the 14th amendment; during the last two legislative sessions, lawmakers at both the state and national level had publicly identified the automatic granting of United States citizenship to children born in the US as the source of what one state representative called "the illegal alien invasion."[98] The immediate context of Representative Todd's comparison was a Joint Fiscal Review Committee meeting in Nashville, Tennessee. Todd asked the directors of the state-funded healthcare program "Cover Kids" whether procedures were in place to assure that participants "show proof in our system that [they're] here legally before [they] get assistance." The exchange that followed touched explicitly on themes of citizenship, maternity, and reproduction:

> Program Administrator: [We] do not provide pregnant women coverage. We provide unborn coverage. According to the federal government we cannot ask for immigration documents or verify that information because we are providing coverage to the unborn. The unborn child will be classified as [a] US citizen.
> Rep. Todd: I understand unborn child. I understand that provision. I'm talking about others. Adults. These are pregnant women.

[98] Daryl Metcalfe, a Republican state representative from Pennsylvania as quoted in Julia Preston, "State Lawmakers Outline Plans to End Birthright Citizenship, Drawing Outcry," New York Times, January 5, 2011, A16.

> Program Administrator:.…under guidance that was provided to states under the previous administration…for covering the unborn child we are not permitted to determine citizenship because the child, once born, is a US citizen.
> Rep. Todd: Well they can go out there like rats and multiply then, I guess. [99]

In this exchange, Representative Todd's disgust at the possibility of illegal immigrants "multiplying" through reproduction is palpable, and his "rats" comparison attracted national attention, protests by local Latino community groups and comparisons to Nazi propaganda.[100] His comparison of pregnant immigrant women to "multiplying rats" is frighteningly problematic, and as I will discuss in this chapter, importantly telling in regard to my discussion of "illegal alien" subjectivity. But this exchange is also illuminative of a larger pattern in discourse surrounding "illegal aliens," sexuality, and gender. Todd made this clear when, in response to local and national backlash, he stated that he wished he had used the "more palatable" term "anchor babies," noting that it was his choice of words rather than the sentiment that they conveyed which was regrettable, insisting that "something [still] needs to be done."[101]

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[99] "Joint Fiscal Review November 9, 2010," Archived Video, Tennessee General Assembly: Streaming Video- Fiscal Review. Retrieved from: http://wapp.legislature.state.tn.us/apps/videowrapper/default.aspx?CommID=53

[100] CNN Wire Staff, "Tennessee lawmaker calls some illegal immigrants 'rats,'" CNN, accessed May 31, 2011, http://articles.cnn.com/2010-11-12/us/tennessee.lawmaker.remark_1_illegal-immigrants-tennessee-lawmaker-rats?_s=PM:US
Administrator, Media Advisory, "Response to GOP State Senate Charlie Janssen and his continued Insult to Hispanics," ¡Somos Republicans!, January 5, 2011, http://somosrepublicans.com/2011/01/response-to-gop-state-senator-charlie-janssen-and-his-continued-insult-hispanics/
Jill Monier, "Local Hispanics Protest Tennessee Lawmaker Curry Todd," My Fox Memphis, accessed May 31, 2011, http://www.myfoxmemphis.com/dpp/news/local/111110-local-hispanics-protest-tennessee-lawmaker-curry-todd

[101] Erik Schelzig, "State Rep. Curry Todd likens illegal immigrant births to multiplying rats," Associated Press Archive, November 16, 2010.

By explaining that his comments were at bottom a less "palatable" way of pointing to what is more commonly referred to as the problematic posed by "anchor babies," the state representative suggested that his sentiments were continuous with rather than a break from already pervasive discourses surrounding the "illegal alien" and sexual reproduction—discourses which constitute "illegal alien" sexuality as dangerous, threatening and perverse. In particular, the fairly recent "problematic" of "illegal aliens" and sexual reproduction can be understood as one important example of the confluence of discourses about gender and sexuality which are constitutive of "illegal alien" subjects. Put differently, far from being an anomaly, Representative Todd's comparison of pregnant immigrant women to "rats," is indicative of the rhetoric of danger, infection and perversion which constitute the "illegal alien" as sexually deviant and as a threat to the well-being of the nation.

In this chapter I will discuss the ways that the "illegal alien" has emerged as a sexually deviant and threatening subject. I will center my analysis on the emergence of what I call the "problematic of alien sexuality" in US political discourse surrounding the "illegal alien" and reproduction. In particular, I will investigate how the expression "anchor babies," which is often used to refer to the children and/or fetuses of "illegal aliens," functions in concert with norms surrounding sexuality, maternity, citizenship and criminality. The interweaving of these normative discourses is particularly evident in the above exchange—the program administrator's statement that "unborn children will be classified as US citizen[s]" according to federal law (and are thus is deserving of state-funded pre-natal healthcare) and Todd's resistant attempt to recast the discussion in terms of "Adults…pregnant women," poses complex questions about citizenship and

maternity. Given the reality of "birthright citizenship" in the United States, is the "maternal alien body" merely a non-threatening producer of future legitimate citizen-subjects, as the program administrator (perhaps strategically) claims? Or, as Todd suggests, is the "pregnant alien subject" a contaminating and criminal threat to the national well-being, who, if left unchecked, will "go out there like [a] rat and multiply"? In the management of the "problematic of alien sexuality," how are concerns for the well-being of the fetus as an "unborn child" (which Todd admits to "understand[ing]") reconciled with concerns about the reproduction of alien-ness?

In order to work through these and other questions posed by discourses which produce the "problematic of alien sexuality," I will first locate discourses about "alien sexuality," and the "anchor baby" in particular, within other national discourses surrounding maternity, the fetus, and citizenship. In doing so, I will draw on the large body of feminist work which analyzes the ways in which the maternal body has been represented and deployed in a variety of technologies and practices. In particular, I will draw on Lauren Berlant's work on sexuality, maternity and citizenship, and Angela Davis' analyses of race and maternity to foreground my discussion, pointing to the roles that the "illegal alien" already plays in these discourses. Next, I will explore the ways that national political discourses surrounding "anchor babies" and "alien maternity" construct the "problematic of alien sexuality," thus constituting the "alien" subject as always-already perverse. Finally, I will suggest that this production of a sexually deviant and threatening "alien" subject functions in the normative dichotomy which places the sexually pure citizen on the one hand and the perverse anti-citizen on the other in what I call "backwards un-citizening"—my analysis of this process will show that the perverse

"alien" subject, as constituted in significant part by non-juridical normalizing mechanisms of power, resists the juridical discourse which is supposed to determine it.

Citizenship, Sexuality and The Maternal Body: The Fetus-as-Citizen

The history of Western Feminism can in large part be told as a history of uncovering, deconstructing and (re)conceiving differing thematizations of maternity and citizenship. In line with the way that women have historically been denied the political relevance, rights, and participation of the male citizen, the desubjectification of "woman" has functioned through conceptions of maternity which reify her instrumental Otherness relative to the male subject in this vein. Thus, many feminist projects have identified these elements of subjectivity against and by which the oppressed status of "woman" in cultural/political discourse has been determined. In a 1980 address entitled "Body Against Body: In Relation to the Mother," later published in *Sexes and Genealogies*, Luce Irigaray reflected on the relationship between maternity, sexuality, and subjectivity, describing men's power over defining women's functions, social roles and sexual identities. Irigaray urges resistance against these male-centered "truths" and, in particular, against the restriction of female possibilities to the maternal function:

> Our urgent task is to refuse to submit to a desubjectivized social role, the role of mother, which is dictated by an order subject to the division of labor—he produces, she reproduces—that walls us up in the ghetto of a single function. When did society ever ask fathers to choose between being men or citizens?[102]

In this passage, Irigaray joins many other feminist philosophers and theorists in critically interrogating the relationship between understandings of maternity and questions of

[102] Luce Irigaray, *Sexes and Genealogies* (New York: Columbia University Press, 1993) 18.

citizenship. The maternal function, she claims, has operated in both defining female identity and in divorcing it from the possibility of citizenship.

Feminist works which have operated to shed light on this historical linkage have pointed to the ways that discourses around conceptions of maternity and citizenship have evolved and changed, describing the important and variant implications of these changes for conceptions of privacy, nationalism, identity and subjectivity. In *The Second Sex*, Simone de Beauvoir traces the historical relationship between citizenship and maternity, describing what she claims has been a troubling and persistent opposition. She finds an example of this in the figure of women's symbolic status as "soul of the city," noting that "Jung remarks that cities have always been likened to the Mother, because they contain the citizens in their bosom."[103] While men are "citizens first" and husbands and fathers only secondarily, according to Beauvoir, women have been frequently conceived of as solely mothers and wives—as maternal producers and containers of citizens rather than as citizens in their own right. Beauvoir warns that, though women may now be constituted as citizens by juridical discourse, this citizenship "remain(s) theoretical" as long as it is not accompanied by material freedoms that women have historically been denied.[104]

But how are these discursive constructions of maternity and citizenship operative in the United States context today? In *America, 'Fat,' the Fetus*, Lauren Berlant traces what she takes to be a recent reformation of this historical link between maternity and citizenship around a national conception of the fetus as the new paradigm for citizenship. According to Berlant, in its move towards increased visibility and representation for the fetus, political and cultural discourse, and specifically anti-abortion discourse in the

[103] Simone de Beauvoir, *The Second Sex*…, 177.
[104] Beauvoir, *The Second Sex*, 679.

United States, has reiterated in a new way the thematic which Beauvoir cites above, whereby the maternal body is cast as the "contain[er] of citizen[s]." This transition toward "fetality," Berlant claims, has had dramatic and unsettling implications for conceptions of identity and subjectivity. Through analysis of a variety of contemporary discourses, practices and technologies, from anti-abortion film and literature to Hollywood cinema and even her own nephew's sonogram and home videos, she analyzes the pregnant women's multidimensional form in "its fat, its femaleness, its fetus—to explicate its status as a national stereotype and as a vehicle for the production of national culture."[105] In this national discourse, according to Berlant, woman are turned into children and babies are turned into persons; because the corporeal excesses of the pregnant body are flattened out in favor of a renewed focus on the fetus as paradigmatic citizen, the female body's dignity and value follows the condition of the fetus in public discourse and representation. Berlant analyzes the ways that not only the maternal body, but various other kinds of bodies have been subject to disciplinary marginalization in the wake of this reconception of the fetus as citizen. In this context, the quasi-embodied fetus as super-citizen emerges as the "solution" to problems presented by difference and corporeal violence, and bodies which resist this paradigm have been annihilated in its wake.

This tradition of feminist criticism which examines the interrelationality between discourses on citizenship and discourses on maternity in the production of identities and subjectivities, and Berlant's work on nationalism, citizenship, and the fetus in particular,

[105] Lauren Berlant, "America, 'Fat,' the Fetus," boundary 2, vol. 21, no. 3 (Fall 1994), 148.

importantly foreground my analysis of the emergence of the "anchor baby" as a subject of national political discourse. The above exchange between Representative Todd and the directors of a state-funded healthcare program illustrates the convergence of discourses surrounding maternity, natality in the constitution of the "problematic of alien sexuality." When the program administrators insisted that their organization offer healthcare to unborn future citizens, not to the pregnant women who "contain" them, they seemed to rely on the conceptions of maternity and citizenship explicated by Berlant's description of the "age of fetality." Todd, a self-proclaimed "pro-life conservative," at first expressed agreement with the admissibility of caring for these "unborn children" in this context. This depiction of the fetus as a person, and, more specifically, as a citizen who deserves state-funded medical care, is consistent with Berlant's account of the concept of fetal personhood in contemporary US discourse, and in anti-abortion discourse in particular. According to Berlant, the success of the anti-abortion movement has been dependant on "establishing a mode of 'representation' that merges the word's political and aesthetic senses, imputing a voice, a consciousness, and a self-identity to the fetus that can neither speak its name nor vote."[106] In this way, the increased visibility of the fetus in the United States in the second half of the 20th century has been influential to the development of the concept of the fetus as a person deserving protection. Anti-abortion discourses which constitute the fetus as a citizen operate in large part by simultaneously establishing its the autonomy and its extreme contingency/vulnerability.[107] According to Berlant, it is

[106] Berlant, 151.

[107] In *A Cultural History of Pregnancy*, Clare Hanson discusses what she understands as one mark of the beginning of a new era of fetal visibility with the appearance of Lennart Nilsson's photography on the cover of *Life* magazine in 1965. Berlant also speaks to the importance of these images, describing the way in which new regimes of textuality in

through this functioning that, as the presence and visibility of the fetus in terms of discourse and representation increases thereby establishing the status of the fetus as citizen, other, more "immediately visibile," bodies, and particularly maternal bodies, are "pushed out of the frame of representation."[108]

I agree with Berlant that the agency of the maternal body is in important ways foreclosed by a recent movement towards the increase of discourses surrounding the fetus-as-citizen—in fact, I see the coalescing of national discourse about "alien sexuality" around the "anchor baby" as a sign of this trend. Representative Todd also suggested the prominence of fetus-centered discourse when he responded to criticism by saying that he should have spoken of "anchor *babies*," presumably instead of "rat *mothers*." In contradistinction to Berlant's claim that the maternal body has been rendered "invisible" by the increased visibility of the fetus, however, I contend that this move towards "fetality," has in turn increased discourse surrounding the "maternal body," rendering it visible in new and insidious ways. As I will discuss, this is particularly evident in the case of discourses which question and critique "birthright citizenship"— the assumption of such discourses is that the maternal body contaminates the fetus so that its citizenship status when it becomes a born baby is questionable. Because the fetus-as-person emerges in terms of its visibility in the paradox of simultaneous autonomy and vulnerability, maternal bodies are constituted as both unnecessary to the completeness of the fetus/person and to blame for any corporeal vulnerability that it might exhibit. Put

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terms of the examination of "life" emerged with the innaugeration of the magazine of "America's family photos" in 1936 and in many ways culminated with the publication of Nilsson's images.

[108] Berlant, 152.

differently, the maternal body becomes both marginal next to the extreme visibility of the fetus, as well as dangerous to its flourishing.

In *The History of Sexuality Volume I,* Foucault describes one trend in the increase of discourses and practices aimed at the disciplining and management of sexuality as

> A hysterization of women's bodies: a threefold process whereby the feminine body was analyzed—qualified and disqualified—as being thoroughly saturated with sexuality; whereby it was integrated into the sphere of medical practices, by reason of a pathology intrinsic to it; whereby, finally, it was placed in organic communication with the social body (whose regulated fecundity it was supposed to ensure)…and the life of children (which it produced and had to guarantee, by virtue of biologico-moral responsibility lasting through the entire period of the children's education): The Mother, with her negative image of "nervous woman," constituted the most visible form of this hysterization.[109]

For Foucault, the hysterization of women's bodies, beginning in the eighteenth century, was part of a larger development of strategies aimed at the production of specific mechanisms of power/knowledge centering on sex. These strategies revolved in significant part around maternity, and were specifically focused on disciplining women's bodies to ensure the regulation of fecundity. Foucault's description of women's "biologico-moral" responsibility for ensuring the well-being of her offspring is importantly consistent with the paradox of simultaneous autonomy and vulnerability posed by conceptions of fetal personhood. According to Berlant, discourses which characterize the fetus in this way are reinforcing of and reinforced by regulatory and disciplinary practices surrounding pregnancy and abortion. The increased visibility of the fetus

> has framed womanhood in a natural narrative movement of the body, starting at the moment a child is sexed female and moving to her inscription in public heterosexuality, her ascension to reproduction, and her commitment to performing

[109] HOS, 104.

> the abstract values of instrumental empathy and service that have characterized norms of female fulfillment.[110]

In this context, women are cast as productive or virtuous citizens only insofar as they participate in the creation and protection of fetal life. Any occupations which interrupt this essentially virtuous contribution to the well-being of the future of the nation, including creative agency or non-heterosexual identities or behaviors, become an obstacle to national reproduction. But the example of "alien maternity" makes intelligible a break in this set of discourses surrounding "virtuous motherhood"—women must already be full and unquestionable citizens to display these civic virtues. Women whose citizenship status is in question (whether because of juridical discourse or other functions of normative power) would not only lack these civic virtues when giving birth on United States soil, but also "contaminate" the social body and render vulnerable the boundaries of citizenship. Thus, in discourses which posit fetuses as a citizens deserving of the state's protection, women's bodies are constituted both as instrumental (for the production of citizens) and responsible (for their "health" or "contamination"). In this way, the increase in discourses surrounding the visibility of the fetus in the second half of the last century can be understood as a new example of the hysterization of women's bodies in the domain of disciplinary-regulatory mechanisms of sexuality. The operation of these functions of power is evident in the "Cover Kids" program's claim that the pre-natal care they provide, which involves the examination, monitoring and manipulation of the maternal body, is actually directed towards preserving the health of the "unborn child," and is thus in the state's interest. Medical treatment for pregnant women in this context is always-already aimed towards disciplining the "maternal subject" for the sake

[110] Berlant, 152.

of the "fetal citizen." Though different maternal bodies enter into the sphere of medicalization in communication with the "entire social body" in different ways, and the "alien" maternal body is no less exposed to the mechanisms of power which instramentalize and render responsible women as instruments of reproduction— the healthcare services offered by "Cover Kids" to pregnant women discipline women's bodies for the purpose of regulating fecundity and ensuring the well-being of the "population" in general.

But this analysis, while accounting for elements of the exchange which preceded Representative Curry Todd's comparison of pregnant immigrant women to "rats," doesn't explain the comment itself—nor does it seem to account for the emergence of the "anchor baby" as a topic of national political discourse. If, as I claim, following Foucault and Berlant, the discourses and practices aimed at the disciplining and regulation of women's bodies are reinforced by and reinforcing of a conception of the fetus as a citizen deserving of protection, how is it possible to make sense of discourses in which the fetus figures as an element of infestation (the offspring of multiplying rats) or a tool for an "alien invasion" (an "anchor baby")?

Race, Gender and Reproduction: "Alien" Women

These discourses surrounding the "alien maternal body" and its fetus complicate understandings of the deployment of regulatory disciplinary mechanisms of power relative to sexuality in general and women's sexuality in particular. But this complication does not constitute a break with discourses surrounding fetal citizenship. To the contrary,

the construction of the fetus as a virtuous citizen makes possible (and is made possible by) the discourse which refers to some fetuses as "anchor babies" and "multiplying rats."

Just as for Foucault the hysterization of women's bodies is not the only strategy through which fecundity is regulated, maternal bodies are not the only bodies which are subjected to regimes of disciplinary-regulative power in the emergence of discourse surrounding the attribution of personhood to the fetus. Nor are all maternal bodies subjected to these mechanisms of power in the same way in the "age of fetality." Because appeals to citizenship accompanies appeals to fetal personhood, the fetus-as-person makes meaningful in new ways an entire horizon of "citizenship" as a juridical category and realm of social practice. As the fetus comes to participate in the definition of personhood, it comes also to participate in defining the category of citizen. In this context, where "the fetus appears as personhood in its natural completeness" before the fracturing elements of contexts of history and identity, it becomes the index against which adult bodies are measured and must "derive their legitimation."[111] Thus, bodies become valuable and bearing of rights and proximity to citizenship by virtue of their relation to and production/protection of the "fetal super-citizen." In the "age of fetality," mechanisms of power which regulate and discipline gender, race, and nationality operate together in simultaneity—sexism, racism and xenophobia become inextricably bound up together.

In line with the way that non-reproductive female identities are construed as threatening relative to the health and well-being of the nation, the reformation of identities relative to the production of the fetus super-citizen manifests itself as a leveling

[111] Berlant, 156.

down of difference and discontinuity in terms of adult bodies in general. A move towards a "quasi-embodied," more abstract conception of the ideal citizen as exemplified by the fetus super-person creates a new nation, with "one face," represented by the a-historical and abstract "fetal body." In this way, the "problem of difference" is supposedly solved in the annihilation of historically situated and embodied discontinuity. In the emergence of the fetus as the paradigm of "abstract personhood," the nation is free to unite in abstract national intimacy in our observation of it and transformative identification with it—in it we share a non-differentiated and universal history; we have all been fetuses and thus all partake in an abstract and universal national history. Any bodies which resist this narrative are thus constituted as threats to the national unity. In this paradoxical discourse, the "universal abstraction" of citizenship is both *concretely* racialized and *particular* in its exclusions.

The emergence of discourse surrounding the "anchor baby" alongside conceptions of the fetus as the unbroken example of a kind of iconic and quasi-corporeal "supercitizen" can be understood through a deeper analysis of the ways that disciplinary and regulatory mechanisms of power are directed at maternal bodies which resist the fetus' rejection of difference in terms of race and class difference. In "America, 'Fat,' the Fetus," Berlant describes the way that the national fantasy of abstract intimacy which supports and is supported by the centrality of the "fetal body" to conceptions of citizenship sets itself up against the threats and demands posed by tensions of racial, ethnic, sexual, and gender differences. She acknowledges that the violence of this discourse "retraumatized a set of already vulnerable bodies; the body of the woman unsettled by pregnancy and already exposed to the misogyny of the state; the

impoverished, the young, and often African American or Native American woman..."[112] Thus, as Berlant notes here, when women are held responsible for the production of a virtuous citizenship, it is poor women and women of color who are most likely to fail and thus to be the objects of blame and scorn on behalf of the nation.

This acknowledgement of the important role of race and class difference in terms of the functioning of disciplinary and regulatory regimes of power begins to make room for a fuller account of the "alien maternal body" and the "anchor baby" within and alongside the technologies and discourses of the hysterization of (white) women's bodies which Foucault and Berlant describe. But in what ways are specific raced/classed bodies, and "alien" bodies in particular, especially "retraumatized" by the discourse of fetal personhood? Berlant acknowledges the impact of a long and violent historical linkage between race, maternity, and citizenship in the United States, particularly as related to slavery and its legacy:

> To 'follow the condition of the mother' was the slave child's legal and experiential condition in antebellum America. By focusing solely on the maternal context, the often violently biracial genealogy of slave children was occluded, made non-knowledge, and circumvented the law's gaze. This maternal line of entailment without entitlement set up the horizon for the slave child's relation to embodiment—that is, to futurity, identity, and political self-soveregnty.[113]

Thus, the logic which determined the relation of motherhood to the fetus in the context of slavery is consistent with what Berlant takes to be the logic of fetal personhood in a more contemporary context; just as the increased visibility of the "fetal person" is supportive of mechanisms which render the maternal body both invisible and dangerous, the agency, history and identity of mother to the slave child was delegitimized at the same time as she

[112] Berlant, 149.
[113] Berlant, 147.

was held responsible for the racial identity of the fetus. In Berlant's words, "the pregnant woman becomes the child to the fetus," and is held responsible for the fetus' marginalized racial identity while simultaneously receiving less political and legal representation than the fetus does in the national culture. Similarly, in referring to pregnant immigrant women as "rats" who "multiply," Todd suggested that these particular "maternal bodies" are responsible for a threatening "alien" infestation. In this way, as with upper-middle class white maternal bodies, "alien" women's always-already racialized bodies are disciplined and regulated by discourses which cast the maternal body as marginal alongside the fetus it produces. But instead of constituting "alien" fetuses as "fetal citizens" deserving of protection, these fetuses (and the children they sometimes become) are constituted as racialized anti-citizen "anchor babies."

In *Surrogates and Outcast Mothers: Racism and Reproductive Politics in the Nineties,* Angela Davis analyzes this relationship between race and sexual regulation/ reproductive politics in the United States, describing the production and impact of the "contemporary social compulsion toward motherhood." According to Davis, young women, poor women, and Black and Latina teens in particular are caught up in a paradox relative to this compulsory maternity. Single mothers and teen mothers, and particularly women of color, are the exceptions in this drive towards reproduction as virtuous; while older, whiter, and wealthier women are held responsible for the production of a healthy citizenship, "there is a glaring exception: motherhood among Black and Latina teens is constructed as a moral and social evil."[114] In anti-abortion discourse which locates both voluntary and involuntary motherhood in a transcendent space, pregnancies produced by

[114] Angela Y. Davis, It Just Ain't Fair: The Ethics of Health Care for African Americans, eds Annette Dula and Sara Goering (Westport CT: Praeger, 1994) 217.

raced bodies are somehow less sacred; while the "universal fetus" emerges as the paradigm of innocent and vulnerable personhood, specific kinds of raced bodies which fundamentally resist this universal are left out of the drive toward reproduction.

This trend against valuation of reproduction for certain kinds of raced and classed bodies is reflected in the legislative discourse which regulates sexuality in the United States. This discourse has a long and sordid history in practices such as forced sterilization of particular "kinds" of bodies initiated during the United States eugenics movement. In *Racism and Sexual Oppression in Anglo-America*, Ladelle McWhorter describes the way in which the practice of eugenic sterilization, which at first targeted mostly "impoverished whites," became a tool of racial purification largely aimed at people of color:

> …as the practice continued into the 1950s and a very visible and vocal black civil rights movement got underway, a growing number of the people who were forcibly sterilized were African American girls and women…In California, where the largest number of eugenic sterilizations took place, three fourths of those sterilized under the state eugenics law were people of color—including Latinos, Asian Americans, African Americans, and Native Americans.[115]

McWhorter describes the way in which African American and Working-Class Immigrant communities were particularly targeted by efforts of forced sterilization after the second World War—people deemed undeserving or incapable of producing healthy and virtuous citizens were systematically prevented from reproducing. The more recent structure of welfare reform law illustrates the continuance of this historical national investment in the preventing the (re)production of certain kinds of bodies. In 1997, the *Temporary Assistance for Needy Families* (*TANF)* became the United States' federal assistance

[115] Ladelle McWhorter, Racism and Sexual Oppression in Anglo America (Bloomington: Indiana University Press, 2009) 214-215.

program, providing assistance with cash and services to "indigent families" with dependant children through the US Department of Health and Human Services. In accordance with its stated goal of "supporting families," *TANF* benefits usually reflect household size, where the households with a greater number of dependant children generally receive a larger benefit than their smaller counterparts. This trend, however, has been the object of anxiety and dispute among lawmakers and the public. As a result, twenty-four states have instituted a "family cap," under which needy households either receive a flat benefit amount, or the social service agency is prohibited from allotting increase in cash benefits when a newborn child is added to the *TANF* household after a certain number of dependant children have already been claimed.[116]

The institution of "family caps" is transparently and admittedly aimed at the perceived social problem of poor women having too many children; the neo-liberal arguments in its favor perceive the solution of this problem as existing in persuading poor women through market forces (by withholding the *TANF* benefits that are perceived as "incentive") not to engage in reproduction.[117] Contemporary welfare reform, especially as it pertains to the family cap, then, is based in a number of assumptions, not least of which demands that the woman on welfare be a self-conscious and sovereign market subject for whom pregnancy is a "bad choice" for which she should be held responsible

[116] Anna Marie Smith. *Welfare Reform and Sexual Regulation* (Cambridge: Cambridge University Press, 2007), 147-148.
[117] Much important and influential work has been done by feminists towards the end of rebutting neoliberal arguments for flat benefit rates and the family cap. A full and nuanced account of this discussion is outside of the immediate scope of my project, but the work of Jodie Levin-Epstein (*Lifting the Lid Off the Family Cap: States Revisit the Problematic Policy for Welfare Mothers: Policy Brief*), and Tonya Brito ("The Welfarization of Family Law") have been influential in my analysis.

by the state.[118] This rhetoric of responsibility surrounding the role of the pregnant woman relative to the well-being of the state supports my claim, following Foucault and Berlant, of the fetus' emergence at the center of a paradox of autonomous citizenship and extreme vulnerability for which the pregnant woman is responsible. Like Davis' analysis above, however, functioning of juridical and regulative power surrounding welfare in the US suggests that this subjectification is racially differentiated. In what follows, I will ground my analysis of this racial differentiation in Foucault's descriptions of the operation of juridical, disciplinary and regulative power in this vein.

Foucault describes how mechanisms of regulatory and disciplinary power surrounding sexuality in the nineteenth and twentieth centuries (which included the "hysterization of women's bodies") were intertwined with racist structures of power:

> Things went from ritual lamenting over the unfruitful debauchery of the rich, bachelors, and libertines to a discourse in which the sexual conduct of the population was taken both as an object of analysis and as a target of intervetion…In time these new measures would become anchorage points for the different varieties of racism of the nineteenth and twentieth centuries. It was essential that the state know what was happening with its citizens' sex, and the use they made of it, but also that each individual be capable of controlling the use he made of it.[119]

For Foucault, the strategies of disciplinary and regulatory power which developed with and through the increase in discourses and knowledges about sexuality were also key in the emergence of new functions of racism in the nineteenth and twentieth centuries. At

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[118] Ironically, this same language of choice, sovereignty and freedom is used in the neoliberal feminist reproductive rights discourse. This point will be discussed briefly later in this chapter, but a more extensive discussion of the interplay between neoliberal feminist discourse about choice and welfare reform, see Rickie Solinger, *Beggars and Choosers: How the Politics of Choice Shapes Adoption, Abortion and Welfare in the United States* (New York: Hill and Wang, 2001), 189, 191.
[119] Foucault, *The History of Sexuality: Volume 1*, 26.

the center of these strategies is the "one element that will circulate between the disciplinary and regulatory"—the norm. Though Foucault identifies sexuality as occupying a "privileged position" relative to the norm because it has effects at both the level of the body and the level of the population, he also describes racism as central to the operations of regulatory disciplinary power. He explains that in the new domain of power which disciplines bodies and regulates populations in the biopolitical management of *life,* racism intervenes in giving the state power over *death*:

> It is, I think, at this point that racism intervenes. I am certainly not saying that racism was invented at this time. It had already been in existence for a very long time. But I think it functioned elsewhere. It is indeed the emergence of this biopower that inscribes it in the mechanisms of the State. It is at this moment that racism is inscribed as the basic mechanisms of power, as it is exercised in modern States. As a result, the modern state can scarcely function without becoming involved with racism at some point, within certain limits and subject to certain conditions.[120]

For Foucault, it is with and through discourses, technologies and practices surrounding both sexuality and race that regulatory disciplinary mechanisms of power are put to work in the management of life and death.

Foucault's analysis of the interactions of mechanisms of normalization with regard to race and sexuality is consistent with Davis' analysis and with recent discourses around welfare-reform regulation. In line with the trend of increased regulation of sexual reproduction and disciplining of women's bodies, the re-production of the fetus has become essential in the national consciousness to the re-production of the citizenship. But, at the same time, racist structures of power both discourage and attempt to prevent

[120] Foucault, *Society Must Be Defended*, 254.

the reproduction of certain kinds of raced bodies, "introducing a break" between which fetuses should live and flourish in the nation and which should not.[121]

In the case of "anchor babies" and "alien" mothers, regulatory disciplinary management of sexuality is particularly caught up with biopolitical racism. This is evident in the expression of widespread disgust and fear at the prospect of such bodies receiving state-funded healthcare, including Representative Todd's "rats" comparison.[122] For Foucault, the discourses and mechanisms of racism in the biopolitical era not only mark particular "kinds" of bodies as disposable but also, in the constitution of these subjects as perverse, degenerate, and abnormal, deems them as threats to the well being of the entire population:

> The fact that the other dies does not mean simply that I live in the sense that his death guarantees my safety; the death of the other, the death of the bad race, of the inferior race (or the degenerate, or the abnormal, is something that will make life in general healthier: healthier and purer.[123]

As a member of a "bad race," in its reproduction the "alien" body is particularly "impure" and threatening—the risk posed by "aliens multiplying" and/or "anchor babies" drawing more "aliens" to the US means an always increasing presence of "impurity" and "perversion" in the population as a whole.

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[121] Foucault, *Society Must Be Defended*, 254.

[122] On September 9th, 2009, during president Barack Obama's nationally televised speech to a joint session of Congress on the topic of healthcare reform, Representative Joe Wilson of South Carolina gained notoriety from a rare breach of the protocol when he shouted "You lie!" in response to Obama's statement that the Democratic healthcare proposals would not cover illegal immigrants. But the much publicly discussed and dissected speech act was an aberration due to its context and performer rather than its emotional force; almost as soon as healthcare reform was put on the United States Congress' agenda earlier the same year, discourse connecting themes of immigration and healthcare reform exploded on the national scene. From the floor of Congress to televised "town hall meetings," medical, cultural and political discourse surrounding the "illegal alien" and the health of the nation increased in scope, volume, and emotional tone.

[123] Foucault, *Society Must Be Defended*, 255.

The threat posed by the reproduction of the racialized "alien" body is evident not only in Representative Todd's comments, but in a larger context of (relatively) new and expanding discourse surrounding immigration and sexual reproduction. This discourse calls for (and indeed enacts) governmental management of reproduction for purposes which are explicitly linked to the "defense" of the nation. On the first day of the new congress in January of 2011, Representative Steve King of Iowa introduced legislation to end the guarantee of birthright citizenship; he said that the purpose of the bill was to "close the anchor baby loophole." During the same legislative session, five states persued legislation to deny citizenship to children born in the United States to "non-citizens." In June of 2010, South Carolina senator Lindsay Graham (who has long been criticized by conservatives as weak on immigration), announced his support of a similar constitutional amendment. He stated on Fox News: "People come here to have babies. They come here to drop a child. It's called "drop and leave." To have a child in America, they cross the border, they go to the emergency room, have a child, and that child's automatically an American citizen. That shouldn't be the case. That attracts people here for all the wrong reasons."[124] This discourse betrays the always-already raced nature of both "citizen" and "illegal alien" subjectivities; Graham acknowledges that the 14th amendment grants citizenship to "anchor babies" and in doing so admits that juridical power constitutes so-called "anchor-babies" as citizens. But in referring to the "illegal aliens" and their children, he invokes a conception of rightful-citizenship and "alien-ness" which is not consistent with their corresponding juridical categories (i.e. technical legality or illegality). In doing so, he betrays the way in which cultural and national political

[124] Greta Van Susteren, Interview with Lindsey Graham, "On The Record with Greta Van Susteren" (July 28, 2010) broadcast.

discourse surrounding maternity and citizenship have constructed the "true" or "virtuous" citizen in specifically raced ways, positioning "aliens" as the "bad race" which threatens this national population. In this recent eruption of discourse, it is the always-already threatening nature of deviant alien sexuality that makes the management of gendered alien bodies necessary for the security of the state. This discourse constructs "alien" sexuality as deviant and degenerate by virtue of its reproduction of the alien-ness with which it is irreparably infected. While the white "fetal citizen" represents a perfectly pure and virtuous national future, the racialized anti-citizen "anchor baby" is constructed as an impure and degenerate threat to this future.

The simultaneous mutuality of the constructions of the "fetal citizen" and the "anchor baby" is evident in national political and juridical discourse about the relationship between abortion and immigration. In 2006, a Republican-led legislative panel of the Missouri state house issued a report on illegal immigration which states that abortion is to blame because it is causing a shortage of American workers. The report from the state House Special Committee on Immigration Reform also states that "liberal social welfare policies" have discouraged Americans from working and have encouraged immigrants to cross the border illegally.[125] Mainstream Republican politicians on the national stage have echoed these claims, maintaining a causal and normatively-weighted link between abortion, illegal immigration, and welfare. In a speech in Washington DC in 2007, former Republican Majority Leader Tom DeLay stated "I contend that abortion affects you in immigration…If we had those 40 million children that were killed over the last 30 years, we wouldn't need the illegal immigrants to fill the jobs that they are doing

[125] David A. Lieb, "Mo. Panel's Report Links Immigration to Abortion," *The Washington Post*, November 14, 2006, Part A09.

today."[126] Zell Miller, former Democratic Senator from Georgia made similar statements in a speech the same year: "How could this great land of plenty produce too few people in the last 30 years? Here is the brutal truth that no one dares to mention: we're too few because too many of our babies have been killed."[127] This discourse actively reinforces a national compulsory maternity; reproduction of healthy fetus-citizens is essential to the well-being of the nation, in this case in terms of the prevention of the perceived threat to national security and identity of illegal immigration.

Just as it affirms, and, in fact, mandates a certain kind of reproduction of citizens, however, this discourse explicitly condemns another kind—though the logic of this discourse implies agreement with the contention that the US economy demands more docile bodies for its well-being than the nation currently (re)produces, population growth through immigration is not an acceptable method of increasing citizenship.[128] In this way, it is clear that the discourse around the fetus and the prevention of abortion is for the strategic policing of a hegemonic national body—removing undesirables through ridding

[126] Tom Delay. (2007, July). Speech presented at American University, Washington, DC.
[127] Zell Miller. (2007, March). Speech presented at a fund raiser for Save a Life Center of Macon, Georgia.
[128] The other reason (besides abortion) which was cited in both the legislative report and Delay's speech for the "national problem" of illegal immigration was welfare policy. The 2006 Missouri report states "Suggestions for how to stop illegal hiring varied without any simple solution. The lack of traditional work ethic, combined with the effects of 30 years of abortion and expanding liberal social welfare policies have produced a shortage of workers and a lack of incentive for those who can work." Thus, according to the report as well as similar statements made by national political figures (including those mentioned above), so-called "lax welfare policies," like those which prompted both Democratic and Republican politicians to call for family caps, pose a dangerous threat to national well-being.

the nation of "alien" bodies and supporting the conception of the ahistorical, vulnerable, autonomous citizen-subject inaugurated by the "age of fetality."[129]

In this context, the "alien" maternal body is constituted as particularly threatening in its perverse reproduction of the "bad race." In contradistinction to the regulation and disciplining of white women's bodies towards "compulsory maternity," the "alien" woman is exposed to different kinds of violence surrounding race, sexuality, and gender. In *Borderlands/La Frontera*, Gloria Anzaldúa describes "la mujer indocumentada" as *doubly threatened*:

> The Mexican woman is especially at risk. Often the *coyote* (smuggler) doesn't feed her for days or let her go to the bathroom. Often he rapes her or sells her into prostitution. She cannot call on county or state health or economic resources because she doesn't know English and she fears deportation. American employers are quick to take advantage of her helplessness. She can't go home. She's sold her house, her furniture, borrowed from friends in order to pay the coyote who charges her four or five thousand dollars to smuggle her to Chicago. She may work as a live-in maid for white, Chicano or Latino households for as little as $15 a week. Or work in the garment industry, do hotel work. Isolated and worried about her family back home, afraid of getting caught and deported, living with as many as fifteen people in one room, the mexicana suffers serious health problems. Se enferma de los nervios, de alta presíon. *La mojada, la mujer indocumentada*, is doubly threatened in this country. Not only does she have to contend with sexual violence, but like all women, she is prey to a sense of physical helplessness. As a refugee, she leaves the familiar and safe homeground to venture into unknown and possibly dangerous terrain.[130]

For Anzaldúa, "alien" women are in a sense "doubly threatened" in the United States because they are exposed to violent mechanisms of disciplinary regulative power as "aliens" and as "women." But this "double" vulnerability of "alien" women bodies

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[129] It also seems that the strategic work to regulate the pregnant body, and particularly black and brown bodies, for the sake of the preservation of the nation is not towards the ends of decreasing government spending on welfare: several states offer women who are no longer eligible for increased payments due to the family cap a monetary award for giving up their children for adoption at birth.

[130] *Borderlands/La Frontera*, 12.

cannot be accounted for as a simplistic combination of two forms of oppression (sexist and racist). Instead, for Anzalúa, as we saw above in the case of the "alien" maternal body, "alien" women are constituted at the center of a complex network of disciplinary and regulatory functions of power surrounding gender, sexuality, class, race and citizenship. The same functions of power which deny *la mujer indocumentada* state-funded healthcare because of the "danger" she poses to the health of the state (especially in her capacity as a potential reproducer of "alienness") make her fearful of seeking healthcare (and other) services. As a dangerous and always-already "impure" subject by virtue of her "alienness," she participates in the "quarantining" of her own infectious body, and in her vulnerable isolation she is subjected to even more violence.

As Anzaldúa notes in *Borderlands*, this violence is not only at the hands of her employers and smugglers; she describes how the "alien" women's exposure to violence as constitutive of "alien" subjectivity, explaining that, for women, "life in the borderlands" consists of constant and "intimate terrorism":

> The world is not a safe place to live in. We shiver in separate cells in enclosed cities, shoulders hunched, barely keeping the panic below the surface of the skin, daily drinking shock along with our morning coffee, fearing the torches being set to our buildings, the attacks in the streets. Shutting down. Woman does not feel safe when her own culture, and white culture, are critical of her; when the males of all races hunt her as pray. Alienated from her mother culture, "alien" in the dominant culture the woman of color does not feel safe within the inner life of her Self.[131]

For "alien" women, existence at the center of mechanisms of disciplinary and regulatory power which constitute her in gendered and racialized ways is fraught with terror. As an "alien" who is constituted by the "dominant white culture" as a source of infestation (a "rat" who "multiplies"), the "alien" woman experiences "daily shock," fear, and panic.

[131] Anzaldúa, *Borderlands/La Frontera*, 20.

She is "alienated" by multiple and intersecting strategies of disciplinary regulative power—in "white culture" she is a dangerous criminal, never quitting in her attempts to "anchor" herself to the nation like a dangerous parasite on a healthy organism, while at the same time the norms of her own "mother culture" which expect her "to renounce herself in favor of the male."[132] This double vulnerability of the "alien" woman in contemporary regimes of regulative disciplinary power marginalizes and instramentalizes "alien" women in the context of both "white" and "Latino" culture—even though the normative functions of these two cultures are in some ways distinct and even at odds, they nonetheless coordinate and facilitate each other in the constitution of "alien womanhood."[133]

Perversion, Citizenship, and Alien Reproduction: Backwards Un-Citizening

While retraumatizing the already traumatized "alien" women's body, the emergence of discourse surrounding the "anchor baby" in the United States betrays the always-already perverse nature of the "alien" body as a racialized anti-citizen body. In depicting "alien reproduction" as the dangerous perversion of the norms of natality (and the "anchor baby" as an impure threat to national hegemony), this discourse constitutes the "alien" subject as always-already sexually deviant and perverse. This discourse reinforces the construction of these "inhabitants of the borderlands" as what Anzaldúa

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[132] Anzaldúa, *Borderlands/La Frontera*, 17.

[133] María Lugones points to the multiplicity of forms of resistance against converging oppressions such as that constitutive of and experienced by "alien" women. In the face of these converging oppressive functionings for power, Lugones advocates for the formation of what she calls "deep collations," which are heterogeneous collectives characterized by multiple understandings of oppressions and resistances. María Lugones. *Pilgrimages/Peregrinajes: Theorizing Coalition Against Multiple Oppressions* (Lanham, MD: Rowman & Littlefield, 2003.

calls “Los atravesados”: “the squint-eyed, the perverse, the queer, the troublesome, the mongrel, the mulatto, the half-breed, the half-dead; in short, those who cross over, pass over, or go through the confines of the ‘normal.’”[134] Discourse surrounding “illegal alien” reproduction is normalizing discourse which sets the perverse, infectious, and abnormal “alien” subject against a normal virtuous white citizenship. Just as the threat of “immigration” serves to support norms of compulsory maternity among this “virtuous white citizenship,” in this discourse “alien” subjects not only pose a threat to the “health” of the nation, but also serve as the “anti-citizen” bodies against which citizenship is constituted.

The constitution of the “alien” subject as an impure and infectious “anti citizen” in discourse surrounding “the problem of alien sexuality” is evident in recent calls for the repealing and/or resisting of the citizenship clause of the 14th amendment to the United States constitution. This amendment, also known as the “naturalization clause,” states that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,” and functionally guarantees “birthright citizenship” to anyone born in territories of the United States. The amendment was adopted in 1868 as one of the Reconstruction Amendments, and the definition of citizenship provided by this clause overruled the US Supreme Court’s ruling in Dred Scott v. Sandford that Black folks were not and could not become citizens of the United States. As Du Bois describes in *Black Reconstruction in America*, before the passing of the amendment “The Four million people who had suddenly been released from slavery, while falling within the category of ‘free persons,’ were not yet

[134] Anzaldúa, *Borderlands/La Frontera*, 3.

political persons."[135] In part as a consequence of their lack of political personhood, Black folks were exposed through the institution of "Black Codes" to systematized and legally-enforced economic exploitation and violence; these codes in the US South forced former slaves to enter into labor contracts, restricted their movements and prevented them from being able to testify in court or bring civil action.[136] The 14th amendment, which made such abuses explicitly unconstitutional, was bitterly contested, particularly by Southern state legislators; their refusal led to the passage of the Reconstruction Acts and their establishment of new state governments and the eventual ratification of the amendment.[137]

In the context of the emergence of discourse surrounding "anchor babies" and the threat of "invasion" or "infestation" posed by "alien" reproduction, the "birthright" citizenship guaranteed under the 14th amendment has been called into question. According to *The New York Times*, in January of 2011 "legislators from five states opened a national campaign…to end the automatic granting of American citizenship to children born in the United States to illegal immigrants."[138] The year before, Fox News claimed that "lawmakers in at least 14 states announced…[that] they are working on legislation to deny U.S. citizenship to the children of illegal immigrants."[139] That same year, Pennsylvania State Representative Daryl Metcalfe said the 14th amendment "greatly incentivizes foreign invaders to violate our border and our laws." State Senator Russell

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[135] W.E.B. Du Bois, *Black Reconstruction in America*, 289.
[136] Du Bois, *Black Reconstruction in America*, 167.
[137] Du Bois, *Black Reconstruction in America*, 493.
[138] Julia Preston, "State Lawmakers Outline Plans to End Birthright Citizenship, Drawing Outcry," *The New York Times*, January 5, 2011.
[139] "Lawmakers in 14 States Craft Bill to Deny Citizenship to 'Anchor Babies'," *FoxNews.com*, October 19, 2010.

Pearce, who sponsored immigration bill SB1070 in Arizona, also supported resisting the "citizenship clause" of the 14th amendment: "the 'anchor baby' thing needs to be fixed…Anchor babies are an unconstitutional declaration of citizenship to those born of non-Americans. It's wrong, and it's immoral."[140] For both Metcalfe and Pearce, the granting of so-called "birthright citizenship" to the children of "aliens" is not a function, as the juridical discourse of the 14th amendment suggests, of distinguishing citizens from non-citizen "aliens." Instead, in the context of this "anchor baby" discourse, the granting of "birthright citizenship" to children of illegal "aliens" constitutes an immoral and dangerous act of giving the rights and privileges of citizenship to always-already alien bodies. In this discourse, "alienness" is both inheritable and essential—even if juridical discourse would constitute a subject as a "citizen" from birth, her or his constitution as always-already alien (and thereby perverse and threatening) persists in mechanisms of disciplinary and regulatory power.

This persistence of perverse and threatening "alien" subjectivity in ways resistant to functions of juridical power has led to a move towards mechanisms of "backwards un-citizening." In January of 2011, US Representative Steve King of Iowa, chairperson of the House Judiciary subcommittee on immigration, announced that he would introduce a bill to eliminate "birthright citizenship" at the national level. Some of this resistance to juridical power has taken the form of direct calls for a repeal of the 14th amendment. Another mechanism proposed for "backwards un-citizen" is a new definition of "state citizenship," which would be in addition to national citizenship. "State citizenship" would exclude children born to "illegal aliens" in the US. A different

[140] " 'Anchor Baby' Phrase Has Contorversial History," *ABC News*

measure proposed in the United States Congress would form a compact between individual states, whereby the children of "aliens" would receive distinctive birth certificates that would differentiate them from the children of "non-alien" citizens. The explicit and implicit contestation of the 14th amendment by moves towards "backwards uncitizening" reveals the way that discourse surrounding the "problematic of alien sexuality" operates in the racist constitution of citizenship itself. The original ratification of the amendment, and its naturalization clause in particular, can be understood as a mechanism of the biopolitical management of life—the freedoms it is said to guarantee simultaneously enact what Foucault describes the "establishment of limitations, controls, forms of coercion, and obligations relying on threats…" (Foucault 2008, 64). Against a background of contestation by many white southerners, in the ratification of the amendment the United States government both asserted its authority as the supposed guarantor of the freedom and its authority to restrict that freedom. But many of the freedoms made explicit in this juridical discourse were undermined and negated by de jure and de facto segregation and discrimination in both the northern and southern United States—people of color in the US often have been and continue to be denied the "political personhood" that citizenship is supposed to guarantee (Alexander 2010, 2010). It is in this context that the most recent moves towards "backwards un-citizening" have emerged with and through discourse surrounding the "problematic of alien sexuality." Whether or not any of the juridical changes called for in this discourse are instituted, the moves towards "backwards un-citizening" are significant in their revelation of how biopolitical racism and normative policing of borders of sexuality and identity participate in constituting citizenship.

This "backwards" temporality is a function of the strategies of naturalization employed by biopolitical racism functioning with and through discourse surrounding the "problematic of alien sexuality." By moving "backwards" to reconstitute current and past citizens as always-already perverse and threatening anti-citizen "aliens," this discourse serves to "naturalize" the denaturalization of United States citizens. As a mechanism of normalizing power, "backwards un-citizening" exposes the positing of a mythical pre-existing category of "true," "moral" or "natural" citizenship which is prior to the "unnatural perversion" of "birthright citizenship." Moves towards "backwards-uncitizening" don't constitute the "alien" subject as simply a former citizen, or even as a non-citizen, but as a perverse anti-citizen. The anti-citizen, unlike the non-citizen, is both marginalized and securitized—despite the fact that the "alien" is "un-citizened" by this discourse, she is no less exposed to the violent mechanisms of normalizing power. In this sense, in calls for "backwards un-citizening," mechanisms of normalizing power resist, reconstitute and make meaningful juridical categories of citizenship.

In tracing the emergence of strategies of biopower that construct the "problematic of alien" sexuality and its ultimate functioning in "backwards un-citizening," I have attempted to illuminate important and unsettling implications for the conceptions of maternity, sexuality, race, citizenship, immigration and the strategies of power which operate through them associated with this discursive development. Representative Todd's comparison of maternal alien bodies to "rats that multiply" and other discourses surrounding the "anchor baby" and "alien" reproduction betray the complex interconnectedness of these strategies of biopower. In doing so, it invites a new consideration of the ways in which these issues have traditionally been framed to take

into account the unique constitution of the maternal "alien" body. In describing the way that the juridical conceptions of citizenship, exemplified in the 14th Amendment, are being contested, my analysis of the move towards "backwards un-citizening" also illustrates the way in which racist normalizing power has re-constituted the "alien" subject as a perverse, infesting and uniquely threatening body. While, in the context of juridical power, the "alien" is seemingly constituted in a neutrally abstract subject, the functioning of discourses and mechanisms of regulatory disciplinary power betray the construction of the "alien," and in particular, the reproductive maternal "alien," as always-already threatening to the well-being of the state. In this way, there is no room for the "invading" and "infesting" "alien" subject in the biopolitical constitution of the citizen-subject. This perverse body is not a potential citizen or a non-citizen— the "alien" subject is the perverse "anti-citizen," and the perverse "alien anti-citizen" functions as a mirror image and contrast to the "virtuous citizen" of the "age of fetality." The normalizing functions of power that constitute the racialized, criminalized and perverse "alien" simultaneously reform the borders of citizenship itself.

CHAPTER IV

DEATH AND THE "ILLEGAL ALIEN"

On the October 10th, 2011, I accompanied an attorney with the South Texas Pro Bono Asylum Representation Project (ProBAR) inside Port Isabel Detention Center in Los Fresnos, Texas, just five miles from the gulf of México.[141] I was in the Rio Grande Valley to give a talk on immigration and Gloría Anzaldúa at her alma mater, the University of Texas- Pan American in Edinburg, Texas. When I expressed interest in visiting a detention center while planning the trip months earlier my host put me in touch with an attorney who worked with detainees at a detention center in Raymondville, Texas, an hour away from campus. After telling me that the center in Raymondville had been closed (a closure, I was later told, that occurred amidst reports of widespread abuses of detainees and the eventual arrest of a guard for sexual abuse), my host's contact referred me to an attorney at ProBAR who regularly traveled to Port Isabel to give legal orientations to detainees.[142] After months of phone calls and emails to Port Isabel and ProBAR, a week before my trip I finally submitted a Immigration and Customs Enforcement's official "Request for Record Checks" form, which stated that a record

[141] According to page on the American Bar Association Website, ProBAR "is a national effort to provide pro bono legal services to asylum seekers detained in south Texas by the United States government. "South Texas Pro Bono Asylum Representation Project (ProBAR," *American Bar Association*, n.d., http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/south_texas_pro_bono_asylum_representation_project_probar.html.

[142] Allen Essex, "Detention Center Guard Charged with Sexual Abuse of Detainee," *TheMonitor.com*, June 24, 2011, http://www.themonitor.com/news/raymondville-52129-center-sexual.html.

check was a “part of the Homeland Security efforts to ensure a safe working environment,” and asked for “record check information,” “immigration check information,” and “personal information,” including a physical description.

When I arrived at McAllen Miller International Airport and I still hadn’t heard whether my security clearance had gone through, my philosopher hosts assured me that it this didn’t mean I should give up on hearing back. They told me that in “the valley”—the familiar term used by the Rio Grande Valley’s residents including Gloria Anzaldúa for their home— though most appointments start much later than planned and it isn’t uncommon to wait days or months for a reply to an email or (more often) phone call, things often come together inexplicably at the last minute. And “valley time” turned out to work exactly as they’d told me. The next day, my host drove me the two hours to meet the attorney, Chris, at a local coffee shop, and Chris and I (after a brief stop at his house so that I could borrow tennis shoes to replace my open-toed heels) drove another 45 minutes on a gravel and dirt road to the check station at the entrance of Port Isabel.

Interacting with the guards, both at the entrance checkpoint and inside the facility, was completely different than I’d imagined after the research I’d done months before on immigration detention facilities in the US. While I expected the guards to be aggressive gate-keepers, Chris seemed to know everyone, and the mood was laid-back (the guard at the entrance asked him about car trouble, and someone inside even joked that his driver’s license was a fake). In fact, the guards I spoke to at the Port Isabel on the day of my visit and during the months leading up to my trip, all of whom I identified as Latino and many of whom had Chicano/Tejano accents, were polite and friendly, though most seemed

genuinely perplexed about who I was and why I would possibly want to visit the detention center if my job didn't require it.

After parking within the barbed wire walls of the compound, Chris and I went through a metal detector and security pat-down in the main building, and then were escorted by another guard through another series of locked gates and into a space where detainees spoke to visitors through plexiglass windows. When we were finally escorted to the orientation location, another guard ushered about 20 male detainees through the opposite door. From the looks of it they ranged from teenagers to men in their 60s or 70s. Everyone wore blue uniforms and had plastic monitoring devices on their wrists, and most were timid—shoulders hunched, voices shaking— though smiling when they introduced themselves as Chris requested. Though he conducted the entire orientation in Spanish, most responded to him in English, and one detainee who had been ushered in with the others confusedly said he spoke Punjabi (Chris called the guard to escort him back to his cell). Another detainee told us in English that his Spanish wasn't very good (he had been in the United States since infancy) and asked Chris to translate his comments into English at several points throughout the orientation. It was clear that our group had been selected for the Spanish orientation on the on the basis of their brownness.

The orientation proceeded at a lightening pace—this was the only contact most of the detainees would ever get with an attorney of any kind before their hearings, and Chris only had about an hour to give them the most basic of advice. Most of it wasn't technical legal advice. He told them how to comport themselves in court (they should bow their heads to show deference, and they shouldn't act "macho," but they also shouldn't be too

much the opposite), and he warned them against hiring attorneys who might exploit them (they should be careful about giving an attorney cash, and they should base judgments of quality on the number of cases a lawyer has won rather than number of clients she or he has). He also told the detainees to try to "make themselves seem as sympathetic" by bringing in photographs and other mementos that might "humanize" them. He also spent time outlining possible defenses, though he later told me that they were rarely applicable and that it was probable that none of the detainees we met with would be released. In the middle of the orientation, a guard came to count the detainees, who sat in rapt attention, laughing at Chris' jokes and reminding him what he was saying when he forgot where he was. When the orientation ended and the same guard returned to usher them out of the room, several people rushed up to me (I was sitting in the front row with the group of detainees) and asked to borrow my pen. They wrote furiously on their arms while they were being hurried out, trying desperately to remember the few things they had learned, hoping it would help in their hearings the next day.

Later, when doing research about Port Isabel back in Nashville, I found out that there were reasons for this palpable anxiety and desperation besides the detainees' obvious and justified anxieties about their hearings and possible deportment. In the year before my visit, detainees in the center had been on hunger strike, listing among their demands "End[ing] the abuse of Human Rights in detention" and listed "lack of medical access, indefinite detention, inadequate food, [and] physical and verbal abuse) among the abuses experienced at Port Isabel.[143] I read a report that in 2005, a few years before my visit, "ICE Headquarters rated the facility as deficient because of its use of EMDDs-

[143] "Indefinite Hunger Strike at the Port Isabel Detention Center in Bayview, TX," *Southwest Workers Union: ¡La Union es la Fuerza!*, January 19, 2010.

Electro Muscular Disruption Devices. Also deficient were Food Service, Classification System, Emergency Plans, Environmental Health and Safety, Post Orders, and two Special Management Units"; in 2008 the facility was again found deficient by ICE officials.[144]

But the abuse of subjects constituted as anti-citizen "aliens" is neither new nor unique to Port Isabel. Almost as soon as immigration detention in the United States began in 1981, reports of abuses began to surface.[145] In the years since, "alien" subjects housed in immigrant detention facilities have dramatically increased in number—by 1996 there were approximately 8,500 "aliens" in custody, and in 2009 there were over 30,000 "aliens" in custody on any given day, with over 350,000 people detained over the course of the year.[146] With this dramatic increase has been an equally drastic number of reports of abuse issued by individuals, non-profit organizations, and news outlets. Over the past few years, sources including Amnesty International, the ACLU, the Los Angeles Times and the New York Times have reported the same sorts of abuses against "alien" subjects in detention that the Port Isabel detainees on hunger strike detailed in their press

[144] Former Port Isabel guard Tony Hefner published a memoir which detailed the horrific abuses he witnessed at the detention center as well as attempts to cover up these abuses during his time there in the 1980s. *Between the Fences: Before Guantanamo, there was the Port Isabel Service Processing Center* (Seven Stories Press, 2010).
"Port Isabel Detention Center | Los Fresnos, Texas | IDJC," *Immigration Detention Justice Center*, n.d., http://www.immigrationdetention.org/wiki/port-isabel-detention-center/.
[145] Ruth Ellen Wasem, *U.S. Immigration Policy on Haitian Migrants*, CRS Report for Congress, January 21, 2005.
[146] "USA: Jailed Without Justice", n.d., http://www.amnestyusa.org/research/reports/usa-jailed-without-justice.

release.[147] These and other sources have detailed numerous cases in which the mechanisms of detaining alien bodies have resulted in exposure to violence and ultimately to death.

In this chapter I explore the ways that the "illegal alien" subject, as abnormal, racially impure, deviant and criminal, is constituted as deathly. Though, as Anzaldúa notes, there are many contexts in which alien bodies are constituted as "deathly" bodies and subjected to violent and even murderous functions of power, including during border-crossings and because of exploitative and dangerous working conditions, the specific focus of my analysis is the practice of the institutionalized "detainment" of aliens and accounts of the exposure of "alien" bodies in this context to violence and death. I will analyze these deaths as instances of what Anzaldúa describes as a sort of racist "warfare" on "perverse, impure and degenerate" border inhabitants, and Foucault describes as the ultimate functioning of biopolitical racism.[148] In the context of the technologies, practices and institutions of immigrant detainment, "illegal alien" subjects, already constituted as the degenerate and abnormal "bad race," are both directly and indirectly murdered. Through the operations of racism, the political, social and literal deaths of "illegal alien" subjects are not only justified because they are understood as staving off a "threat" to the existence of the state, but are required for preserving (racial, ethnic, sexual) health and purity. The impure, deviant and contagious nature of "alien"

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[147] Ibid., "Immigration Detention Centers Failed to Meet Standards, Report Says," *Los Angeles Times Articles*, n.d., http://articles.latimes.com/2009/jul/29/nation/na-detention29.,
Nina Bernstein, "Ill and in Pain, Detainee Dies in U.S. Hands," *The New York Times*, August 13, 2008, sec. New York Region, http://www.nytimes.com/2008/08/13/nyregion/13detain.html.
[148] Anzaldúa, 11.

subjectivity justifies and is reaffirmed by this institutionalized killing. My analysis of the technologies and practices of immigrant detainment reveals how the "alien" subject has emerged as an always-already deathly subject—the "alien" subject is constituted not only as a subject capable of causing death, but as essentially deathly.

To this end, I first analyze how immigrant detention functions as part of a larger carceral system. Drawing on Foucault's work in *Discipline and Punish* as well as his published College de France lectures, I argue that in many ways the strategies of biopower that constitute and reform the "criminal" body in the context of the prison are similar to those that constitute the "alien" body in detainment. I establish that both forms of confinement are functions of biopolitical racism. In my analysis of how immigrant detainment intersects with other forms of incarceration in the US context, I draw on Angela Davis' intersectional analysis of race and gender of imprisoned subjects. While I agree with her claims about the distinctive vulnerabilities of women and particularly women of color in the functioning of practices of confinement, my discussion diverges from hers in acknowledging the unique vulnerabilities of "alien" bodies in this context. In this vein, I explore the mechanisms of biopolitical racism which are uniquely aimed at "alien" bodies in the context of detainment. In so doing, I suggest that in addition to functioning as the subject of a larger carceral system, the "alien" is vulnerable in distinct ways in the context of practices of imprisonment. Finally, I argue that this "uniquely deathly" constitution of the "alien" subject can be understood as necessarily reinforcing of the murderous functioning of the modern racist biopolitical state in the carceral system— drawing on Anzaldúa and Foucault's work, I suggest that the uniquely deathly

nature of the "alien" subject in the context of systems of incarceration belies the close interconnectedness of prison and colonial violence.

Detention as Imprisonment: The "Alien" Subject and the Carceral System

In chapter three of this dissertation I describe how criminality intersects with racism in biopolitical strategies of power, especially in the case of the constitution of the "alien" subject in the United States. My analysis shows how, in the context of biopolitical strategies of discipline and regulation, the "alien" emerges as an always already criminal subject, and that the criminalization of this subject operates with and through biopolitical racism. In this vein, Foucault claims that "Once the mechanism of biopower was called upon to make it possible to execute or isolate criminals, criminality was conceptualized in racist terms."[149] Thus, is through biopolitical racism that the modern state employs and justifies its techniques of punishment; the state's imprisonment and execution of criminalized subjects in the contemporary context is made possible by this functioning of normalizing power. Given the central role of discourses and practices of criminalization in the constitution of the "alien" then, it is no surprise that this subject is also exposed to these violent mechanisms of biopolitical "justice." Not only do "immigrant detention centers" in many ways resemble other sorts of institutions of imprisonment in the United States, but in many cases the actual institutional context is identical—many individuals housed in state and federal (non ICE) run prisons are incarcerated for immigration-related offenses. Because the strategies of "punishment" aimed at "alien" subjects have much in common with those which constitute other "criminal" subjects, much of the important

[149] Foucault, *Society Must Be Defended*, 158.

critical work which analyzes modern practices of imprisonment is applicable to "alien" detention in the United States.

In *Discipline and Punish*, Foucault gives an account of the emergence and development of imprisonment as the primary form of punishment in the West. He describes how the prison emerged in concert with the development of distinct strategies of power aimed at the disciplining of bodies. These strategies of power, which Foucault famously terms "Panoptic" after Jeremy Bentham's architectural model, are enacted with the institution of particular modes of spatial and temporal organization, functioning through the internalization of individualizing disciplinary power. For Foucault, Bentham's Panopticon became central to the operations of power in the 19th century, and the prison, though not the only institution which embodies these strategies, was key in their development and implementation.[150]

As is suggested by his emphasis on the Panopticon as a literal and symbolic site for this new function of power, for Foucault disciplinary individualization the context of the modern prison functions significantly through the strategic organization of space:

> Here is the major effect of the Panopticon: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action; that the perfection of power should tend to render its actual exercise unnecessary; that this architectural apparatus should be a machine for creating and sustaining a power relation independent of the person who exercises it; in short, that the inmates should be caught up in a power situation of which they are themselves the bearers.[151]

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[150] In fact, as I will discuss later in this chapter, for Foucault the "Panoptic" mode of power is much more than a particular model for a prison: "The Panopticon, on the other hand, must be understood as a generalizable model of functioning; a way of defining power relations in terms of the everydat life of men." Michel Foucault, *Discipline & Punish: The Birth of the Prison*, Second Vintage Books ed. (Vintage, 1995), 205.
[151] Foucault, *Discipline & Punish*, 201.

The architecture of the modern prison is of central importance to its functioning as a space of individualizing discipline. Its arrangement of space, weather or not it follows exactly Betham's model, is "Panoptic" in that it makes visible and ultimately mechanizes structures of surveillance—the prison must be structured in such a way that each prisoner, feeling that they might at any time be observed, begins to monitor their own behavior. ICE declines to term the spaces of "alien" confinement "jails" or "prisons," instead referring to these institutions either as "detention centers," "detention facilities," or even (in the case of spaces where children are also confined) as "residential centers/facilities."[152] But the different terms applied to these spaces of confinement can't successfully cover over the resemblance of institutions of "alien" confinement to modern prisons. This fact was immediately clear upon my visit to the Port Isabel center— from the barbed wire fences which edged the perimeter to the panopticon-like guard towers into which no one on the outside could see, to my untrained eye the space was virtually indistinguishable from the maximum security prisons I have visited. During my brief visit I constantly observed "alien" bodies exposed to the mechanizing practices of individualization and surveillance. Individuals were confined to cells into which guards could peer at will, and even the conversations between the "aliens" housed in the center and their visitors took place in a long often-traveled hall where any conversation could be (but wasn't always) listened to by an official.

Not only do so-called "detention facilities" like Port Isabel resemble "more traditional" prisons in their spatial organization and architecture, but often times ICE and the private companies with which it contracts actually occupy spaces which were

[152] "ICE Enforcement and Removal," *ICE.gov*, n.d., http://www.ice.gov/detention-standards/family-residential/#.

formerly prisons. One of the many examples of this architectural overlap is what is now called "T. Don Hutto Residential Facility," located 400 miles north of Port Isabel in the city of Taylor, Texas, near Austin.[153] The center, which currently confines around 300 people, was previously a medium security prison. The spatial organization of the facility reflects its history—like the Port Isabel center, T. Don Hutto confines "aliens" (including, before a recent public outcry, infants and children) to individual cells always potentially visible from spaces occupied by guards. Also like Port Isabel, which is managed by the private, for-profit company Ahtna, Incorporated, the T. Don Hutto facility is managed by a for-profit company (Corrections Corporation of America) that also operates more than 60 prisons across the U.S.[154][155]

The private management of both the T. Don Hutto and Port Isabel centers reflects another way that the specific reformations of power surrounding imprisonment in the United States in general are also prevalent in the context of immigrant detention. In *Are Prisons Obsolete*, Angela Davis describes how the trend towards the privatization of prisons (which the management of these two detention centers suggests) is indispensable to the reproduction and expansion of practices of incarceration:

> …corporations associated with the punishment industry reap profits from the system that manages prisoners and acquire a clear stake in the continued growth of prison populations. Put simply, this is the era of the prison industrial complex. The prison has become a black hole into which the detritus of contemporary capitalism is deposited. Mass imprisonment generates profits as it devours social

[153] "Landmark Settlement Announced in Federal Lawsuit Challenging Conditions at Immigrant Detention Center in Texas," *American Civil Liberties Union*, n.d., http://www.aclu.org/immigrants-rights-prisoners-rights/landmark-settlement-announced-federal-lawsuit-challenging.
[154] "Fact Sheet: T. Don Hutto Residential Center," *ICE.gov*, November 7, 2011, http://www.ice.gov/news/library/factsheets/facilities-hutto.htm.
[155] "About CCA," *CCA: America's Leader in Partnership Corrections*, n.d., http://www.cca.com/about/.

> wealth, and thus it tends to reproduce the very conditions that lead people to prison.[156]

Davis describes how discourses and mechanisms of power surrounding the economic interact with those of imprisonment in the formation of what many theorists and activists call "the prison-industrial complex." As for Foucault, According to Davis prisons are not merely the place where delinquency is confined, but the place where it is produced. In this way, practices of imprisonment works in their own reproduction. Davis shows how the privatization of prisons has contributed to their reproduction by providing a profit motive for the expansion of the prison industrial complex. At the same time, the expansion of this system has come to serve as the "depository" for the bodies rendered destitute by the economic exploitation inflicted by the system that is driven by this motive. Because as I describe above prisons are often also "depositories" for always-already criminalized "alien" bodies (many "alien" bodies are confined alongside other "criminal" bodies in facilities which aren't operated by ICE), the "prison industrial complex" can also be understood as reproducing "alienness."

Further, as the examples of the Port Isabel and T. Don Hutto centers show, spaces of immigrant detention have been no exception in the movement towards the privatization of institutions of confinement in the contemporary United States. Corrections Corporations of America (CCA—the private company which owns and runs the T. Don Hutto facility) is the largest ICE contractor, operating a total of fourteen immigrant detention facilities; the second largest (GEO Group, Inc.) operates seven

[156] Davis, *Are Prisons Obsolete?*, 16.

facilities.[157] These two private prison corporations alone reported combined annual revenues of $2.86 billion.[158] The mechanisms of power through which these centers of "alien" incarceration reproduce and expand "alienness" are particularly visible in their direct interventions in reconstituting juridical discourse. The private corporations which manage ICE detention centers (and other prisons) have been active in lobbying for laws to detain more "alien" bodies for longer periods of time, including Arizona's controversial S.B. 1070 bill, which, as I discuss in chapter one, functions in and through the racialization of the "alien" body.[159] Not only did the CCA and other private prisons or lobbyists make campaign contributions to 30 of the 36 co-sponsors of the legislation, but the bill itself was drafted in the presence of officials from the CCA. The situation in Arizona is indicative of the significant and continuing involvement of private corporations in the expansion of systems of the regulation and disciplining of alien bodies. The five corporations that contract with ICE for which federal lobbying records are available spent over $20 million on lobbying between 1999 and 2009 alone.[160] Thus, the reproduction of "criminal alienness" with and through mechanisms of racist normalizing power (such as those surrounding the Arizona law and the institution and expansion of Secure Communities) are intentionally supported by the private companies which profit off of the existence of an impure "alien subrace." Just as for Foucault the emergence of "carceral system" and for Davis the emergence of the prison-industrial

[157] "The Influence of the Private Prison Industry In Immigrant Detention," *Detention Watch Network*, n.d., http://www.detentionwatchnetwork.org/privateprisons.
[158] *The Math of Immigration Detention* (National Immigration Forum, August 2011), 4.
[159] Ibid.
[160] "The Influence of the Private Prison Industry In Immigrant Detention."

complex have aided the expansion and reproduction of "criminality," the emergence of the system of alien detention functions in the reproduction and expansion of "alienness."

As my analysis of the constitution of the "alien" subject by and through mechanisms of biopower has shown, these strategies of racist normalizing power intersect with structures of power surrounding gender and sexuality. Davis describes how sexual violence operates in the context of the expansion of the abuses of incarceration in rendering women particularly vulnerable:

> …sexual abuse—which, like domestic violence, is yet another dimension of the privatized punishment of women—has become an institutionalized component of punishment behind prison walls. Although guard-on-prisoner sexual abuse is not sanctioned as such, the widespread leniency with which offending officers are treated suggests that for women, prison is a space in which the threat of sexualized violence that looms in the larger society is effectively sanctioned as a routine aspect of the landscape of punishment behind prison walls.[161]

Davis describes how, in the context of the prison industrial complex, women are repeatedly exposed to sexual violence at the hands of the state—through both explicitly state-sanctioned violations like frequent invasive strip-searches and implicitly accepted abuse like widespread tolerance of sexual assaults, sexual abuse has "become an institutionalized component" of the practice of disciplining and regulating incarcerated female bodies. This violence functions in large part in and through invisibility. According to Davis' analysis, the violent sexualization of prison life in general is particularly complicated for women because of its repetition of the sexualized violence that they have experienced outside of the prison walls.

The violent sexualization of spaces of imprisonment and particular vulnerability of women in this respect is also evident in mechanisms of confining alien bodies—not

[161] Davis, *Are Prisons Obsolete?*, 77.

only is this clearly the case in the spaces where juridically-constitued "illegal aliens" and "legal citizens" are confined together (in local jails and state and federal prisons across the country), but it is also true for women in "immigrant detention facilities." As my hosts had told me, the Raymondville center I initially tried to visit was closed after a guard was charged with sexually abusing a female detainee. Chris (the attorney I accompanied to Port Isabel) told me that there had been years of "unofficial" reports of sexual abuse at the facility before the guard's indictment.[162] But this instance of abuse is hardly unique—there have been numerous complaints of abuse at detention facilities around the country, including from Texas, Florida, New York, California and Washington State. In fact, only three years before my visit to Port Isabel, five women detained there were assaulted by a guard who entered their rooms in the detention center infirmary (where they were patients) before forcibly fondling them. According to the Department of Justice the guard, who admitted to the sexual assault, had worked at Port Isabel for six years before his eventual dismissal.[163] But while some instances of sexual violence are eventually made public (though are rarely publicized at the national level), as with sexual violence in many other contexts, the mechanisms of power surrounding the violent sexualization of immigrant detention centers is often rendered completely invisible. Thus, in both detention facilities and other spaces of confinement, the sexual violence which characterizes spaces of incarceration for juridical "citizens" and "non-

[162] Chris described Port Isabel as a "clean, safe and humane by comparison" to the Raymondville center, which was often referred to by the local community, immigrant rights activists and even local media sources as "Tent City" because of its construction out of Kevlar pods.

[163] Department of Justice, Office of Public Affairs, "Detention Officer Sentenced for Repeated Sexual Abuse of Detainees," April 7, 2010, http://www.justice.gov/opa/pr/2010/April/10-crt-380.html (accessed July 15, 2010).

citizens" alike occurs in concert with the functions of normalizing racism in rendering particular bodies vulnerable.

Uniquely Vulnerable: Incarceration and "Alien" Subjects

Davis explicitly mentions immigrant detention at several points in *Are Prisons Obsolete?*. In a chapter on "The Prison Industrial Complex," which provides a genealogical account of the privatization of the prison system in the U.S., she sites practices of immigrant detention in her description of the way that racist structures of power operate through and in the service of mass incarceration in the United States:

> The uncontested detention of increasing numbers of undocumented immigrants from the global South has been aided considerably by the structures and ideologies associated with the prison industrial complex. We can hardly move in the direction of justice and equality in the twenty-first century if we are unwilling to recognize the enormous role played by this system in extending the power of racism and xenophobia.[164]

For Davis, the detention of an ever-expanding number of "alien" bodies is made possible by the new mechanisms of racism which are mobilized through the prison industrial complex. This description is in line with my analysis of the important ways in which the incarceration of "alien" bodies functions similarly to other forms of imprisonment in the U.S. But in my understanding of normalizing racism following Foucault, this mechanism of biopower is central in that it allows for the murderous function of the state. In the context of a regime of power aimed at "making live," biopolitical racism introduces a break into the population, enabling the constitution of a "bad" or "impure" race which is not only disposable but which must be disposed of—by it's very existence it poses a

[164] Davis, *Are Prisons Obsolete?*, 103.

threat to the well-being of the state. In the case of bodies that are constituted by juridical discourse as both "aliens" and "citizens," incarceration can be understood as an operation of normalizing racism in rendering particular bodies (in this case, the incarcerated) disposable.

In line with her understanding of how the mechanisms of the prison industrial complex function in the implementation and expansion of violent practices of immigrant detention, Davis also mentions the importance of the struggle for immigrant rights to the prison abolitionist movement:

> One obvious and very urgent aspect of the work of discrimination is associated with the defense of immigrants' rights. The growing numbers of immigrants—especially since the attacks on September 11, 2001—who are incarcerated in immigrant detention centers, as well as in jails and prisons, can be halted by dismantling the processes that punish people for their failure to enter this country without documents. Current campaigns that call for the decriminalization for undocumented migrants are making important contributions to the overall struggle against the prison industrial complex and are challenging the expansive reach of racism and male dominance.[165]

Davis' insight here about the interconnectedness of the political projects of resistance to oppressive structures of power surrounding immigration and the prison industrial complex is important. But her suggestion seems to be that struggles against the oppression of "alien" bodies, such as moves for the "decriminalization for undocumented migrants" are a part of an "overall struggle against the prison industrial complex." While I agree that these political struggles are inextricably intertwined, it is important to note how the "alien" subject is rendered uniquely vulnerable and "deathly" in the context of this violent (and often murderous) racist oppression. It is also important to investigate how the criminalization and incarceration of the "alien" body, as a function of racist

[165] Ibid., 110.

normalizing power, might reinforce the functioning of state-sanctioned violence (in addition to being reinforced by it).

As even my day-long experience at Port-Isabel makes clear, just as structures of power surrounding gender and sexuality intersect with mechanisms of normalization in rendering women's bodies particularly vulnerable in the context of the imprisonment, the "alien" is constituted as a "deathly" subject in a unique way by mechanisms of incarceration. Though, as my above analysis makes clear, in many ways the Port Isabel center resembles other spaces of incarceration in the U.S., the detainees who I met there were exposed in different and intersecting ways to the mechanisms of biopower in the context of detainment by virtue of their "alienness." One of the most obvious examples of this is that most if not all of the people gathered to listen to Chris' hour-long legal orientation would never meet with an attorney one-on-one, much less have an attorney to represent them at their deportation hearings. Unlike "citizen" subjects who are charged with a crime, in immigration court "alien" subjects have no right to a court-appointed lawyer. Because of the prohibitive cost of legal representation, many "aliens" who face detainment and/or deportation go without any sort of legal representation.[166] Private non-profit programs like ProBar, the joint project of the American Bar association, the State Bar of Texas and the American Immigration Lawyers association that Chris worked for, can serve only a small fraction of the total number of "alien" subjects who are detained and deported each year. Further, the "alien" incarcerated can be and are often moved without notice or recourse, making the task of providing legal representation difficult if

[166] Sam Dolnick, "Barriers to Lawyers Persist for Immigrants," *The New York Times*, May 3, 2011, sec. N.Y. / Region, http://www.nytimes.com/2011/05/04/nyregion/barriers-to-lawyers-persist-for-immigrants.html.

not impossible. The detainees who were escorted into Chris' brief orientation on the day of my visit sat in rapt attention and desperately attempted to take notes because most if not all of them would receive no other advice or assistance and would face their immigration proceedings alone (Chris told me that most of their hearings would be the next day). Many other confined "alien" subjects (including, perhaps, the detainee who was ushered out of the room after Chris discovered he had been placed in the wrong group) don't have even one interaction with an attorney the entire time they are detained.[167]

In suggesting that this lack of access to legal representation is an example of how incarcerated "alien" subjects are especially vulnerable, I do not mean to elide the dramatic failures of the court-appointed attorney system, the abusive effects of which are experienced by other incarcerated subjects. These severe, systematic and persisting failures have been well documented by prison abolitionists and others.[168] But it is also important to note that structures of power that constitute the imprisoned "alien" subject are with respect to access to legal representation significantly differentiated. Their vulnerability in this vein stems from the way in which the "alien anti-citizen" is positioned as a uniquely dangerous, impure and deadly subject— as such, aliens must be systematically denied even the pretense of access to the rights and privileges of citizenship.

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[167] Nina Bernstein, "Immigrant Jail Tests U.S. View of Legal Access," *The New York Times*, November 2, 2009, sec. New York Region, http://www.nytimes.com/2009/11/02/nyregion/02detain.html.

[168] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 1st ed. (New Press, The, 2010), 84–95.

The unique vulnerability of the "alien" subject in the context of incarceration is also evident in her or his exposure to mandatory indefinite detention for crimes that do not assign jail time. After being picked up by ICE officials, "alien" subjects may be in accordance with juridical discourse be detained indefinitely, including those who have "non-violent misdemeanor convictions without any jail sentence, and anyone considered a national security or terrorist risk."[169] Thus, while the incarceration of juridically "non-alien" subjects is "justified" by their supposed commission of criminal acts which "deserve jail time," the juridically "alien" subject's mandatory (and sometimes indefinite) detention doesn't require justification—not even an accusation of the commission of a "jailable" criminal offense is necessary for an "alien" subject to be incarcerated. This incarceration of the "alien subject" can be indefinite, especially if the "alien" is refused repatriation by both the United States and the country to which they would be deported.[170] Thus, without even being accused of committing a criminal act, the "alien" subject is constituted as such a threat to the well-being of the state by their mere existence outside of prison walls that their mandatory indefinite detention is deemed acceptable. Though the prolonged detention (and even execution) of incarcerated citizen-subjects who haven't committed the crimes of which they have been convicted is widespread, that "alien" subjects need not have even been accused of committing a crime to be indefinitely imprisoned is significant.[171] While the incarceration of the juridical citizen-subject requires at least the discursive construction of a crime having been committed, the

[169] "USA."
[170] "Cases Challenging Indefinite Detention of Immigrants," *American Civil Liberties Union*, n.d., http://www.aclu.org/immigrants-rights/cases-challenging-indefinite-detention-immigrants.
[171] Davis, *Are Prisons Obsolete?*; Alexander, *The New Jim Crow*.

"alien" subject's status as a dangerous (and, indeed, deathly) member of the impure "subrace" requires no such fantasy.

In fact, "alienness" is constituted by biopolitical racism as so essentially dangerous to the wellbeing of the general population that even "alien" children are constituted as deathly subjects who must be detained. A frighteningly problematic example of this functioning of normalizing racism can be seen in the relatively well-publicized practices at what was from 2006-2009 known as the T. Don Hutto Family Residential Facility (which is now the T. Don Hutto Residential Center). During this time, the facility housed approximately 300 "alien" detainees, about half of which were children. As with most "alien" detainees across the country, most of those imprisoned at Hutto were Latinos, and it was reported that none of the families had been accused or convicted of any criminal act besides entering the United States illegally.[172] Hutto was not the only institution of detainment that imprisoned entire families including children, and the practice continues today. But this particular center for the incarceration of "alien" subjects drew international attention when photos of children in prison uniforms and behind barbed wire were made public by national news outlets in 2007.[173] Some of the images (see figure 1) show the prison-like detainment cells that housed entire families, complete with cribs for infants. Others (see figure 2) are of children wearing prison uniforms and monitoring-bracelets almost identical to those worn by the detainees I met at the Port Isabel Facility.

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[172] "Landmark Settlement Announced in Federal Lawsuit Challenging Conditions at Immigrant Detention Center in Texas."

[173] Ralph Blumenthal, "U.S. Gives Tour of Family Detention Center That Critics Liken to a Prison," *The New York Times*, February 10, 2007, sec. National, http://www.nytimes.com/2007/02/10/us/10detain.html.

Figure 1. Photograph of “Family Cell” at T. Don Hutto Family Residential Center

Figure 2. Photograph of a Child Detainee at T. Don Hutto Family Detention Center

“Alien” children are in this way exposed to the same sorts of biopolitical mechanisms of normalization that surround and constitute criminal juridical “citizen-subject” adults in

the context of incarceration. Besides being deeply troubling, such structures of power betray how "alien" subjects are constituted as always-already impure and dangerous, and are thus made especially vulnerable in the context of practices of detainment and incarceration by functions of racist normalizing power.

Deathly "Alien" Subjects: Incarceration and Colonial Violence

That the "alien" is constituted as a "deathly" subject is made clear by the troubling trend of large numbers of immigrant deaths in detention. "Alien" subjects imprisoned in immigrant detention facilities are often denied sufficient medical care—people with illnesses, including the mentally disabled, and those who are exposed to violence while incarcerated are often left to suffer and even to die. The the U.S. government has failed to give a detailed and timely reporting of the "alien" subjects who have died while in custody—though a 2010 investigation by the New York Times and the ACLU yielded thousands of pages of government documents which suggested the widespread nature of "alien" deaths in detention which various government agencies had attempted to keep quiet, these deaths have gone largely unnamed and uncounted in public discourse. Since being accused by the New York Times and other nonprofit organizations of covering up many of these deaths, ICE has reported that between 2003 and 2009 there had been 107 deaths of "aliens" in detention.[174] In this way, for "alien" subjects incarceration for non-criminal offenses often turns into a death sentence.

Thus, as the "bad race" constituted by the functioning of racist normalizing power, the "alien" is constituted not only as an essentially dangerous threat, but also as

[174] Nina Bernstein, "Officials Hid Truth of Immigrant Deaths in Jail," *The New York Times*, January 10, 2010, sec. US, http://www.nytimes.com/2010/01/10/us/10detain.html.

uniquely deathly. This "deathly" nature of the "alien" subject is a function of its constitution as an essentially impure threat by the functioning of the biopolitical racism which constitutes it. I have argued that these mechanisms of normalization are part of the strategy of power which Foucault describes as a "new racism."

> … we have then a new racism modeled on war. It was, I think, required because a biopower that wished to wage war had to articulate the will to destroy the adversary with the risk that it might kill those whose lives it had, be definition, to protect, manage, and multiply. The same could be said of criminality. Once the mechanism of biopower was called upon to make it possible to execute or isolate criminals, criminality was conceptualized in racist terms…[175]

In this passage, part of which I cited in my initial discussion of the interrelatedness of the incarceration of "alien" subjects and the incarceration of (other) alien bodies in this chapter, Foucault provides an analysis of how a new kind of racism emerged for the specific purpose of making it possible for the biopolitial state to wage war. Though he admits that racism had existed long before the emergence and expansion of regimes of normalizing power, Foucault describes how racism took on a new purpose with the development of these mechanisms, asking: "How can one not only wage war on one's adversaries but also expose one's own citizens to war, and let them be killed by the million…except by activating the theme of racism?"[176] In this way, Foucault positions racism as that which allows the biopolitical discursive regime which is explicitly aimed at the "preservation of life" to inflict death *on its own citizens*.

Foucault's claim that this new racism allows the state to put its own citizens to death is in an important sense in line with Davis' and others' analyses of the functioning of the prison industrial complex in general and of the intersection of racism and the death

[175] Foucault, *Society Must Be Defended*, 258.
[176] Ibid., 257.

penalty in particular. But if this is the case, how can we understand the functioning of this biopolitical racism against non-citizen alien subjects? In a brief discussion in the same set of lectures, Foucault states that racist normalizing power was originally directed against non-citizens, suggesting that this new kind of racism first developed with colonization:

> …we can also understand why racism should have developed in modern societies that function in the biopower mode; we can understand why racism broke out at a number of privileged moments, and why they were precisely the moments when the right to take life was imperative. Racism first develops with colonization, or in other words, with colonizing genocide. If you are functioning in the biopower mode, how can you justify the need to kill people, to kill populations, and to kill civilizations? By using the themes of evolutionism, by appealing to racism."[177]

In this way, it becomes clear that while Foucault often describes biopolitical racism in terms of the structures of power which make it possible for the normalizing state to inflict violence on its own citizens, it also can be and has been deployed in inflicting violence against non-citizen and even anti-citizen "alien" subjects. In fact, this "new racism" originated in the colonial context, where it was first inflicted upon those subjects to whom citizenship was never extended.

Taking into account the functioning of biopolitical racism in the context of its historical origin in "colonizing genocide" means attending to the relationship between racist violence which constitutes non-citizen subjects (who were the original targets of this the biopolitical state's "new racism") and that which surrounds the state's own citizens, including current practices of incarceration and execution. Davis emphasizes the importance of this interrelation in her discussion of the prison industrial complex as the institutional legacy of US chattel slavery.[178] And in *The New Jim Crow*, Michelle

[177] Ibid.
[178] Davis, *Are Prisons Obsolete?*, 22–39.

Alexander shows how the thoroughly racist functioning of the criminal "justice" system enacts the systematic political disenfranchisement of people of color in the United States, functionally stripping basic rights of citizenship in a way parallel to the Jim Crow system.[179] Both of these accounts point to the how contemporary operations of biopolitical racism, including practices of incarceration in the US, are caught up with functionings of power surrounding citizenship itself.

The historical legacy of biopolitical racism towards non-citizens can be seen in the history of the violence in the constitution of "deathly" alien subjects on the México/U.S. border. Anzaldúa, like Foucault, describes this history of colonization in terms of racism and the raging of war. She provides a genealogy of a long and violent history in the southwest, describing how Mexican-American resistance to the rule of "Anglo" colonizers was met with racist violence:

> After Mexican-American resisters robbed a train in Brownsville, Texas on October 18, 1915, Anglo vigilante troops began lynching Chicanos. Texas rangers would take them into the brush and shoot them. One hundred Chicanos were killed in a matter of months, whole families lynched. Seven thousand fled to Mexico, leaving their small ranches and farms. The Anglos, afraid that Mexicanos would seek independence from the U.S., brought in 20,000 army troops to put an end to the social protest movement in South Texas. Race hatred had finally fomented into an all out war.[180]

In this way, Anzaldúa illustrates how the history of the emergence of what Foucault calls "biopolitical racism" coincides with the history of the colonization of the Americas and with the constitution of the perverse "alien" subject *en la frontera*. The violent functioning of normalizing power not only was deployed in this context against non-Anglo bodies never before legitimized as citizens, but also acted in foreclosing this

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[179] Alexander, *The New Jim Crow*, 185.
[180] Gloria Anzaldua, *Borderlands / La Frontera: The New Mestiza*, 2nd ed. (Aunt Lute Books, 1987), 8.

possibility. The violence of this "new racism" in the colonial context set up the border which would come to define these bodies as "los atravesados," the perverse "alien" anti-citizens. Anzaldúa describes this violent practice of border-making in terms similar to those used by Foucault to describe the "break into a population" made possible by biopolitical racism: "Borders are set up to define the places that are safe and unsafe, to distinguish us from them. A border is a dividing line, a narrow strip along a steep edge."[181] Her analysis makes intelligible how the constitution of "alien" subjects originated in and through racist practices of violent colonialism.

That normalizing racism begins with colonization is important for my analysis of the "alien" subject as constituted by these structures of power. My analysis in this chapter of the practices and conditions of the detainment of "alien" subjects suggests that these always-already dangerous subjects are rendered uniquely vulnerable and "deathly" by these functions of racist normalizing power. I have illustrated the many ways in which the detainment of "alien" subjects functions similarly to other forms of detention in the United States. In so doing, I have shown how the violent incarceration of "alien" bodies has in many respects been made possible by the functioning of the larger prison industrial complex. I have also uncovered the ways in which the "alien" subject is rendered uniquely vulnerable in this context, suggesting that while the experiences of bodies which are constituted as "alien" and "citizen" subjects by juridical discourse are in many ways similar, these practices illustrate how the "alien" subject is constituted as distinctly impure and threatening. Given Foucault's description of the origin of the normalizing racism which the prison industrial complex is a function of in enacting colonial violence,

[181] Ibid., 3.

it becomes clear that the constitution of the uniquely deathly "alien" subject is not only reinforced by but is reinforcing of the prison industrial complex as a whole. Just as, according to Anzaldúa, "Gringos in the U.S. Southwest consider the inhabitants of the borderlands transgressors, aliens—whether they possess documents or not, whether they're Chicanos, Indians or Blacks," in the context of the functioning of biopolitical racism on the model of colonial violence, even those who are not otherwise understood as "alien" can and do become "deathly." Though distinct practices render "alien" bodies particularly deathly in the context of incarceration, ultimately "alienness" infects even the bodies of juridical citizen-subjects in their criminalization. In this way, other incarcerated subjects are rendered deathly insofar as they resemble the ultimately dangerous "alien" anti-citizen in a way in line with historical practices of racist colonial violence.

CONCLUSION

In providing a genealogical and intersectional account of the "illegal alien" in the contemporary U.S., I have attempted to show how this "type" of subject has emerged at the center of various and interrelated discourses and practices. I have done this in order to shed light on both the functions of power and subjugation which have been strategically hidden and the possibilities for resisting and reforming these oppressive practices. As I stated in the introduction to this dissertation, my genealogical and intersectional account of the "illegal alien" is a thoroughly personal and political as well as critical philosophical account. It is fitting, then, that in conclusion I focus on the political elements of this project as interconnected with its critical and philosophical work.

It is my hope that the foregoing analyses contribute in some small way the diverse bodies of literature to which it refers and with which it connects—social and political philosophy, critical philosophies of race, feminism, ethnic studies and Foucault studies. The project was in part motivated my desire to introduce a possible intervention into what I see as a trend in literature about immigration in social and political philosophy in failing to take seriously the functioning of non-juridical normalizing power in the constitution of immigrant subjects. For example, in what Shelley Wilcox calls "the best known philosophical defense of [the conventional view on immigration]," Michael Walzer takes up the question of whether "liberal democratic societies" ultimately have an obligation to admit immigrants—that is, to make non-citizen aliens into citizens or "legal aliens."[182] He concludes that the "modern liberal state" only has an obligation to grant citizenship or

[182] Shelley Wilcox, "The Open Borders Debate on Immigration," *Philosophy Compass* 4, no. 5 (July 14, 2009): 813–821.

legal residence to one particular type of "illegal alien," persons seeking asylum.[183] In this approach to political and ethical questions surrounding immigration, the non-citizen would-be immigrant is taken for granted as a subject constituted exclusively by juridical discourse. In contradistinction to my analysis of how the "illegal alien" subject is constituted at the center of various and intersecting functions of normalizing power, for Walzer "illegal alien" subjectivity is coextensive with the law which renders certain subjects as "citizens" and others as "alien."

As a result of this assumption of the direct constitution of "aliens" and "citizens" by juridical discourse, the question Walzer and many other philosophers of immigration take up is: what should be done with this (preexisting, stable) category of subjects? Some answer this question by calling for the preservation of the status quo; others call for various changes in juridical discourse surrounding immigration. Perhaps most notably among the latter is Joseph Carens, who argues that immigration should be "legal" (that is, "illegal alien" subjects should in some sense become legal and/or citizen-subjects) unless the preservation of "illegal alienness" is "necessary to maintain public order, ensure national security, and protect liberal institutions from erosion by immigrants with illiberal political values."[184] It is important to note that for both Carens and Walzer changes to juridical discourse are justified and necessitated when (and, it seems, only when) it is inconsistent with/contradicts the sovereign interests of liberalism. And, in this vein, the changes that are required are meant to alter who is constituted as a citizen/alien by juridical power.

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[183] Michael Walzer, *Spheres Of Justice: A Defense Of Pluralism And Equality* (Basic Books, 1984).
[184] Wilcox, "The Open Borders Debate on Immigration."

In arguing that the "illegal alien" is constituted in the contemporary US context by the functioning of various strategies of normalizing power, I mean to unsettle these assumptions about juridical power's exclusive role in the constitution of this "type" of subject. As my analysis of the "illegal alien" as an always-already racialized, criminal, perverse and deathly subject shows, this type of subjectivity is constituted at the center of not only juridical power, but also disciplinary and regulative modes of power. In chapter one I show how the example of the Arizona immigration legislation makes clear how juridical discourse is both made intelligible by and is mutually reinforcing of other strategies of power with which it is intertwined, including normalizing racism. I make clear in my analysis of the Secure Communities program in chapter two, as well as my discussion of anchor baby discourse and the practices of immigrant detention in chapters three and four, that a diverse variety of technologies operate in constituting the "illegal alien" as a perverse body and dangerous threat. These explorations have also uncovered the ways that non-juridical functions of power are frequently operative in both making meaningful and biopolitically reconstituting juridical categories of legality/illegality and citizenship/alienness. This analysis serves as a critique of both the popular political (and philosophical) discourses which call for holding the "illegal alien" responsible for her or his transgression of federal law and philosophical arguments about immigration which fail to take seriously the functioning of racism, sexism, heterosexism and classism.

In the many ways that I make explicit throughout this text, this critique is inspired and informed by a particular reading of Foucault, and specifically of his work on the formation of subjectivities at the center of normalizing and biopolitical structures of power. I draw to the forefront Foucault's analysis of racist normalizing power for the

purposes of my analysis. I do this through engaging with key texts from throughout his corpus, showing how diverse works such as *Discipline and Punish*, *The History of Sexuality: Volume I*, and a variety of Lectures and interviews (including perhaps most notably the *Society Must Be Defended* lectures from 1975-1976) come to bear on an analysis of contemporary functions of biopower. In so doing, I suggest (in chapter four in particular) that even in his earlier work, such as *Discipline and Punish*, Foucault was beginning to explicitly account for the functioning of racist power. My analysis explores how the various strategies of normalizing power, including racism, function both in concert and in tension with one another drawing out the specific confluences of various modes of disciplinary, regulative and juridical power. I provide a variety of new conceptual tools for such analysis, including my accounts of "post-racial racism," "alien panic," "backwards un-citizening," and "deathly subjectivity." Further, in drawing Foucault's work together with that of a variety of other thinkers, and particularly critical race and feminist theorists, this project critically expands his accounts of the functioning of normalizing power. This interpretive application of some of Foucault's central insights is an integral and constant feature of my project, and is particularly evident in my suggestion in chapter four that his claim about the colonial origin of biopolitical racism can and should be read with and through postcolonial accounts such as Anzaldúa's.

My analysis of "illegal alien" subjectivity has been thoroughly committed to an intersectional understanding of identity formation. In reading Foucault's project in conjunction with the work of feminist and critical race theorists such as Anzaldúa, Fanon, Du Bios, Alcoff, Hill Collins, Inda, Sedgewick, Davis, Berlant and Lugones, it is my hope that this project's methodological approach to ethical and political philosophical

thought to some extent reflects the complex, diverse and intersectional process of the formation of subjectivity itself. By integrating various critical approaches and insights in conjunction with my analyses of the four chosen case studies, this project sheds light on new philosophical/political questions relating to studies of race, class, gender and nationality-based oppression and reinforces the philosophical analyses which have established the centrality of intersectionality.

Finally, it is my great hope that by placing the central figures of this dissertation—Michel Foucault and Gloría Anzaldúa—in conversation with one another this project serves to open up a philosophically and politically fruitful area of inquiry and practice. The claim that *Borderlands/La Frontera* is a potentially useful and illuminative text for resistance to racist, sexist, classist and homophobic structures of power, and particularly those which participate in the constitution of "alien" dwellers of the borderlands, is certainly not new; in fact, Anzaldúa describes in the preface to *Borderlands* how the project arose out of and for the sake of political engagement.[185] But my reading of her account of normalizing power with Foucault's makes it possible to expand her analysis to shed light on specific strategies of power she doesn't discuss in this text, including the practices of incarceration and the intersection of functions of normalizing racism with juridical discourse.

At the same time, by reading together Foucault's account of normalizing of biopower and Anzaldúa's analysis of *la frontera,* I have extended Foucualt's analysis to a formation of subjectivity which occupies a privileged role in contemporary biopolitical practices and discourses but receives problematically little attention in Foucault's own

[185] Anzaldua, *Borderlands/La Frontera, the 1st Edition*.

work—that of immigrant or "alien" identity. My application of Foucault's thought to the topic of immigrant "anti-citizen" identity is not novel—an excellent example of this application can be seen in Jonathan Inda's work, which I discuss at length in chapter two. But in combining an interpretive application of Foucault's analysis of normalizing power with Anzaldúa's critical work (as well as the work of other feminists and critical race theorists), this project provides an intersectional as well as Foucaultian analysis of immigrant identity, one that takes into account gender and sexuality along with race and criminality in the constitution of subjectivity.

It is my hope that by drawing together of Foucault and Anzaldúa's analyses of the ways that human beings are made into particular kinds of subjects, this project points to modes of resistance to oppressive normalizing power. As I discuss throughout the dissertation, and at length in chapters one and two, Anzaldúa's conception of mestizaje is particularly helpful in this vein. In addition to providing an autobiographical and genealogical account of "borderland" subjectivity at the center of oppressive formations of power, Anzaldúa's work describes and performs a resistant counter-discourse from within "border" subjectivity. In her creation of "mestiza" identity, her project "disrupts pretend continuity" in terms of identities, categories, and bodies:[186]

> …I am participating in the creation of yet another culture, a new story to explain the world and our participation in it, a new value system with images and symbols that connect us to each other and to the planet. Soy un amasamiento, I am an act of kneading, of uniting and joining that not only has produced both a creature of darkness and a creature of light, but also a creature that questions the definitions of light and dark and gives them new meanings.[187]

[186] Foucault, *Language, Memory, Practice*, 154.
[187] Anzaldúa, 81.

Anzaldúa's account locates the possibility of resisting oppressive functions of normalizing power with those constituted as "abnormal"— mestiza identity is possible not through the border inhabitant "pervert's" "purification," but through acceptance of ambiguity and breakdown of oppressive dualities.

One such "oppressive duality" is that constructed and reified by normalizing power that places the racialized "criminal alien" subject on one hand and the white "virtuous citizen" subject on the other. My reading of Anzaldúa's account of the potential of mestizaje as a means for both resistance and constructive meaning-making in the face of oppressive formations of power surrounding immigration casts in a critical light attempts to advocate on behalf of immigrants by calling for "immigration reforms" which employ the discourses and strategies of normalization in their articulation. This includes recent moves by President Obama to speak in favor of immigration reform by making a clear distinction between the always-already criminal subjects/populations which must be removed for the security of the state and those non-citizens who in their industrious virtue rightfully belong to the population of citizen-subjects. But while my account makes intelligible the danger of this strategy, it also makes sense of its recent dismal failure—that the "alien" is always-already a member of an impure, and infectious sub-race explains the floundering of attempts at national immigration reform in recent decades. The risk of proximity to this infectious anti-citizen subject has made even the suggestion of limited amnesty programs equivalent to political suicide for candidates on both the "right" and the "left." In fact, in the most recent Republican presidential primaries, being "soft on immigration" was a frequent accusation levied by candidates

against their rivals; “alienness” is so threatening that mere association with it calls into question one’s status as a virtuous citizen.

But while my account of “illegal alien” subjectivity constitutes a critical analysis of oppressive forms of normalizing power in this vein, in its critical interpretation and application of the work of Foucault and Anzaldúa to political and ethical questions surrounding immigration, it also suggests that resistance to oppression surrounding immigration can and does occur in various modalities and spaces. Put differently, this account, following Anzaldúa and Foucault, suggests that the reformation of oppressive structures of power surrounding immigration occurs in spaces other than legislative chambers and through practices of bodies which often do not have access to those spaces: the bodies of “illegal aliens” themselves through the embracing and enactment of mestizaje.

This is not to say that changes in juridical discourse and resistance to sovereign power are either impossible or fruitless—movements for amnesty and reforming juridical conceptions of alienness and citizenship are unquestionably meaningful in struggles against oppressive normalizing power surrounding immigration. In fact, my attention to the interrelation of strategies of juridical power and other functions of normalizing power, especially in chapter one, impress the particular urgency of resisting and reforming juridical discourse. My analysis of the specific ways in which juridical power and other interconnected strategies of biopower act in concert also suggests the resistant potential and promise of movements for resisting or supporting particular legislative initiatives, such as political action which resists English-only legislation and is supportive of bilingual education.

But my account of the "illegal alien" also shows that more can and must be done than is currently being proposed by many national political figures and social and political philosophers. Instead, as Foucault and Anzaldúa suggest, the project of resisting oppressive structures of power surrounding immigration requires recognizing and resting the structures of normalizing racism which have historically and continue to turn human beings into "virtuous citizens" and threatening "anti-citizen aliens." In *Borderlands/La Frontera* Anzaldúa describes such a project:

> Individually, but also as a racial entity, we need to voice out needs. We need to say to white society: We need you to accept the fact that Chicanos are different and to acknowledge your rejection and negation of us. We need you to own the fact that you looked upon us as less than human, that you stole our lands, our personhood, our self-respect. We need you to make public restitution: to say that, to compensate for your own sense of defectiveness, you strive for power over us, you erase our history and our experience because it makes you feel guilty—you'd rather forget your brutish acts. To say you've split yourself from minority groups, that you disown us, that your dual consciousness splits off parts of yourself, transferring the "negative" parts onto us. To say that you are afraid of us, that to put distance between us, you wear the mask of contempt. Admit that Mexico is your double, that she exists in the shadow of this country, that we are irrevocably tied to her. Gringo, accept the doppelganger in your psyche. By taking back your collective shadow the intracultural split will heal.[188]

[188] Anzaldua, *Borderlands/La Frontera, the 1st Edition*.

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