Rehearsals of The Sovereign: States of Exception and Threat
Governmentality
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The attacks of 9/11 have been generally viewed as a traumatic, historical rupture, ushering in the ‘war on terror’ as well as a warfare/security state in the US. Yet close attention to police practices on urban streets suggests that the actions of the state in this context are not without precedent. This article links apparently divergent situations in order to track the persistence of a rationality of government, which I call ‘threat governmentality’. Concerned with security and the management of risk, and fixating on racialized bodies, threat governmentality comprises repressive violence on the part of police and civilians, and public discourse after the fact of such violence, in which the relative criminality of the victims—and hence the relative value of their lives—is debated. Rather than a post-9/11 invention, I argue that this rationality represents what Agamben called the ‘nomos of the political space’ in which we live.

Key Words ◊ governmentality ◊ police ◊ race ◊ security ◊ urban

The tradition of the oppressed teaches us that the ‘state of emergency’ in which we live is not the exception but the rule. (Benjamin, 1968: 257, thesis VIII)

We must begin by refuting a commonplace idea, one so widely held as to be a truism: that 9/11 changed everything. The trauma of 9/11 has been interpreted as a historical rupture, a loss of innocence. The hijackings have taken their place in the public imaginary as a more recent version of the Kennedy assassination, marking a sea change in the personal memories of those who turned on the TV with their morning coffee and remained glued to it as the events unfolded that day and the towers fell. Besides giving us an updated ‘JFK moment’, though, 9/11 was followed by the massive redirection of resources toward new patterns of governance and policing that might be called a warfare/security state. Its landmarks include the PATRIOT Act and the invasions of Afghanistan and Iraq; the National Security Agency’s
domestic telephone surveillance marks a recent chapter in its ongoing development.

The warfare/security state renders our current situation after 9/11 as one of perpetual war, the ‘war on terror’. The period following the trauma of the 9/11 attacks is thus understood to be ‘exceptional’, leading us into campaigns that were quickly characterized as being ‘no ordinary’ military exercise. The mythologically impermeable borders of US security had been breached, and ‘America’ grew accustomed to a new identity, that of a nation under attack, with routines of color-coded ‘threat levels’ and long lines at airport security. The state of emergency conferred special powers to the president and extended the responsibilities of far-flung branches of the military, including state militias in the National Guard and Reserves, changing the character of those institutions. Discourse on the conduct of this new, emergent war brought shocks of its own, as reports of the treatment of ‘enemy combatants’ filtered back from various fronts. Prisoners in this war were not ‘prisoners of war’, it was announced; treaties on the limits of acceptable management of such prisoners were ascribed irrelevancy, and at home we, the ostensible beneficiaries of such policies, were instructed that everything had changed.

But had it? Critics of Bush’s Iraq policy were quick to point out that not only were 9/11 and the resulting war on terrorism tenuous at best in providing a rationale for the invasion of Iraq, but that members of the administration had been clamoring for close to a decade for just such a move, in such venues as the Project for a New American Century (see Shank, 2003). It was not so much that 9/11 had changed everything, then, but that it had created new conditions of possibility for state actors to execute a pre-conceived program as the boundaries of politically acceptable action on the part of the US state expanded. On the home front, polls showed greater acceptance than before 9/11 for racial profiling as a means of maintaining ‘security’, with such attitudes registering even among groups that had been subject to profiling in the past. At the same time, a kind of national-security panopticon emerged, with calls for all to remain ‘alert’ and to identify and report the ‘suspicious’. In a collective amnesia about Timothy McVeigh and the second most disastrous terrorist act on US soil, the figure of the terrorist was more deeply inscribed as ‘foreigner’, giving the quality of suspiciousness a racial hue.

Change was evident in the news, to be sure, and yet there was something grimly familiar about even the surprising events in the ‘war on terror’. In this article, I want to seek out historical continuities that cross the temporal boundary of 9/11 by forging an encounter between different kinds of texts, which emanate out of very different spaces: the philosopher’s desk and home of ‘theory’; certain majority–‘minority’ neighborhoods in Texas, in which I lived and did field research during a period that spanned 9/11; the
camp at Guantánamo; and the virtual space of electronic bulletin boards. In order to link these disparate spaces and narratives, I draw on the work of academics who have brought the critical force of their libraries to bear on international political developments, as well as public discourses that surround the periodic, traumatic events that punctuate our current ‘state of exception’: moments in which individuals clash with governmental power and are destroyed. The purpose of this linking is to track a structure of feeling (Williams, 1977), seeking to effect a condensation of otherwise unmapped, amorphous flows of affect, power, fear, and desire that nonetheless are felt as social forces.

By linking apparently divergent contexts, experiences, and crises, I do not mean to imply that they are ‘the same’: to equate the treatment of captives at Guantánamo with the racial profiling of minority drivers in traffic misrepresents both situations. Yet my premise is that the practices with which certain ‘minoritized spaces’ in Texas and the people who occupy them are regulated, and the means by which the security state is established through war and more individualized terrors, are somehow related. I do not intend to succumb to the temptation to attribute their relationship to the fact that the executive office of Texas during part of my fieldwork and of the US at the time of 9/11 were occupied by the same person. The agency of government which I describe in this article is not to be located in a single individual, office, or group (the police, the military, ‘the Neocons’, a dynastic family). Nor does it follow only from or is it bounded by specific policies, though these do sometimes articulate its strategies. Rather, what I am pursuing in this analysis is a particular rationality that I think can be found in operation both at Abu Ghraib and in Austin, Texas, albeit on different scales of force.

This rationality, like so many formations of power in the present, is particularly concerned with the management of risk. It also has to do with the normativity of an imagined white/Western subject, against which individual bodies, cultural practices, and interpretive schemes are compared for their relative levels of riskiness, or threat. It is embodied in the deployment of destructive force by the agents of the state against those bodies deemed both risky and targetable. Yet these exercises of state power also stimulate the operation of a civilian rational apparatus in which the boundaries and protection of ‘rights’ are contested and weighed against the interests of security.

What I am trying to describe, then, and indeed track between the apparently disparate spaces and encounters narrated here, is a rationality of government, in the general sense used by Foucault to describe not only the state, but all interventions in the ‘conduct of conduct’ (1982; see Foucault, 1991). Hence the actions of the warfare/security state are part of a larger historical formation, shaping and shaped by the discourse and
practices of ‘private’ citizens as well as officials, which I will call ‘threat
governmentality’. In the sections that follow, I identify distinct sites and
events in which violence is directed at ‘risky bodies’, and evaluated in the
discourses surrounding a racialized panopticon of threat. It is not only
important that these ‘moments of danger’ (Benjamin, 1968: 255) occur both
before and after 9/11, both at ‘home’ and ‘abroad’, but that private citizens
find themselves to be both the surveilled and the surveillants, both victims
and executioners.

Petty Sovereigns

Post-9/11 political developments lend fresh prescience to the recent work of
Giorgio Agamben (e.g. 2003). Drawing on Carl Schmitt’s work on the state
of exception and Walter Benjamin’s ‘Theses on the Philosophy of History’
among other sources originating well before 9/11, Agamben demonstrates
in various ways the persistence of exception as definitive of political cate-
gories. For instance, he discusses the Roman legal category *homo sacer* as
the rendering of persons as ‘bare life’, stripped of the protection of law
(1998). At the same time, after Benjamin, Agamben shows how a state of
exception is really the rule: the concentration camp, for example, that modern
construction of located exceptionality, is no anomaly or anachronism, but
rather the materialization of ‘the hidden matrix and nomos of the political
space in which we still live’ (2000: 37). These notions of the camp and *homo
sacer* as places and persons outside ‘ordinary’ law came together vividly
after the 9/11 attacks, in the US state’s description of its enemy in the ‘war on
terror’ and the construction of a camp at Guantánamo to hold captives from
the war in a space excepted from ordinary legal procedures. Subsequent
revelations of CIA practices of ‘rendition’ and secret ‘prison ships’ only
reinforced the applicability of Agamben’s work.

Intellectuals critical of the warfare/security state rushed to deploy
Agamben’s theory (see Žižek, 2002). Yet despite the publication of many of
these ideas well before 9/11, it was still possible to imagine the beginning of a
new era in light of the detention and investigation of US citizens on the basis
of Muslim or Middle Eastern association, the denial of academic visas or
residency papers on political grounds, and many other moves both in official
policy and in more diffuse executions of power. Perhaps most strikingly, the
limits of acceptability regarding torture entered public debate.

The latter was particularly notable for scholars concerned with issues of
power, as it brought to mind Foucault’s (1995) widely read analysis of the
historic shift in strategies of power from the sovereignty of monarchs to
discipline as a more diffuse, micropolitical mode of governance. Using
torture as a brutally graphic synecdoche of the power of the sovereign,
which is inscribed on the bodies of its subjects by repressive and even
dismembering force, Foucault’s *Discipline and Punish* shows how, in
contrast, disciplinary power, with its rationalization of bodily practices, its
organization of institutions and space, and its reliance on the production
of docile bodies, arose to maintain social order despite the formal claims
to freedom purportedly delivered by the Enlightenment liberal state
(1995: 222). Hence discipline is often understood as a modern form of power
that superseded the premodern rule of the sovereign.

Such a view of *Discipline and Punish* as a periodizing work is
probably a misreading, and interpreters of Foucault such as Agamben,
Judith Butler, Nikolas Rose, and others caution that the analytical
distinction between sovereignty and discipline should not be taken as a
chronological one (Butler, 2004: 59–60, 92; Rose, 1999: 23). This is no less
of an issue for more recent post-Foucaultian work on ‘governmentality’.
The notion of governmentality reasserts and extends the diffuse concept
of power that was already central to *Discipline and Punish*, articulating
new assemblages of strategies and discourses that operate differently
from the ‘classic’ disciplinary technologies such as the military drill or
the panoptic penitentiary. Recent studies of governmentality describe
techniques of power that operate more on the regulation of spaces and
populations than through the institutionalization of individuals and the
actuarial management of risk rather than normalization, often outside
the legal-bureaucratic institutions of the state (see Bratich et al., 2003;
Burchell et al., 1991; Merry, 2001; O’Malley, 1993). Here again, an analytical
distinction makes it possible to gloss ‘discipline’ as the modern form of
power par excellence, while ‘governmentality’ then becomes the neoliberal
or postmodern version. Yet Butler reminds us that what is at issue for
Foucault is not discerning the replacement of one technique by another so
much as analyzing precisely how various strategies of power are combined
at specific historical junctures.2

Thus it should perhaps not be surprising if the ‘sudden, violent, dis-
continuous forms that are bound up with the exercise of sovereignty’
(Foucault, 1995: 208) crop up in the present like some weed previously
thought to be eradicated. If 9/11 shattered the illusion of US invincibility
and made the national dream of exceptionalism from the consequences of
history untenable, it also ushered in a style of statecraft that can be described
as obsessed with security; a hyper-actuarial regime. Within this context,
sovereign power emerges at and beyond the limits of liberal law to address
risks with a crushing repression, asserting the mastery of the state over
all chance, a hyper-modern apotheosis of predictability and instrumental
agency that ‘both declares and desires universal applicability for itself’
(Appadurai, 1996: 1).

Judith Butler (2004) ‘unpacks’ this seeming paradox between the dif-
fusion of power in an era marked by governmentality and its apparent
concentration in sovereign acts. Specifically, she uses the work of Foucault, Schmitt, and Agamben to critique the ‘indefinite detention’ of ‘enemy combatants’ at Guantánamo. For Butler, it is far from incidental that these captives are not called ‘prisoners’, a term which conveys some measure of rights. In contrast, the term ‘detainees’ highlights the exceptionality of the captives’ situation, depicting them as waiting for the clarification of their status, despite all indications that such a wait is interminable (2004: 64).

Bradford Berenson, a former White House Counsel lawyer, articulated something close to the state line on Guantánamo in a radio interview on 10 June 2005. Responding to reports of torture and abuse of detainees at the camp and admitting that certain practices constituted ‘abuse’, Berenson argued that the ‘things we are doing’ at Guantánamo were a necessity, an ‘ugly, but unfortunate aspect of warfare’. Berenson asserted that it was necessary to keep detainees outside of any legal process to prevent any restriction of state power in the exercise of ‘security’, including ‘the primary, preeminent purpose’ of the camp, which he identified as being ‘to prevent them from returning to the fight against the United States . . . It’s a matter of incapacitation and intelligence’. Despite the intentional lack of any hearing or trial for the captives, Berenson expressed confidence that ‘the vast majority of those down there are terrorists or are in some way or another associated with Al-Qaeda or the Taliban’.

In her critique of Guantánamo, which appeared before the Berenson interview, Butler notes that this rendering of captives as a risk is a fundamental exercise of the bureaucratic sovereignty that is increasingly evident in the warfare/security state. In particular, she zeroes in on the sovereign rhetoric expressed in the Bush administration’s language by the term ‘deem’. The captives are those who are ‘deemed’ to be a risk. This is explicitly a process that operates outside the legal apparatus: whoever does the deeming is unrestrained by law, yet has the full effective force of law backing him or her up: the power of life and death itself (Butler, 2004: 58–9). The establishment of the camp as a space of exception, then, effected a transfer of biopower to bureaucrats.

The diffuse nature of a bureaucratic regime of governmentality allowed for sovereignty to return to governance, albeit in a new, decentralized form. Thus:

Butler’s first sentence here could be taken as a spot-on synopsis of the Abu Ghraib scandal, which surfaced in the mainstream media as her book went to press. The prison scandal revealed low-ranking agents of the state assuming their own capacity to act outside of the restrictions of law. The response
to public outrage about the abuse of prisoners was to cast the individuals involved as aberrant—that is, as exceptions themselves. Yet there remained space for sovereign action within the bureaucracy of the warfare/security state. As Butler observes, the unaccountable ‘deeming’ of persons as threats that characterizes much of the operation of the state in the war on terror is a sovereign act that brands those captives as *homo sacer*, an exception to human subjectivity, which exists outside the boundaries of protection offered by law, who may be killed without need for sacrifice, without, that is, cost. It was in the sense of *homo sacer* that ‘detainee’ and ‘enemy combatant’ were linked with the master label for the enemy of the warfare/security state: ‘terrorist’ (see Collins, 2002). The arbitrary power to ‘deem’ persons as fitting such labels grants this process a strategic ambiguity, such that the war on terror promised to be a permanent state of war against an enemy who shape-shifted like a shadow and regenerated like a hydra.

Yet the ascription of the sense, if not the name, of *homo sacer* was not unprecedented. Indeed, the license to kill has many genealogies, including within the colonial contexts of US history. The genocidal conquest of North America advanced with the notion of the expendability of Native life. This was summed up in Colonel Chivington’s grim directive on the eve of the Sand Creek massacre in 1864: his men were to kill Cheyenne people of all ages, since ‘nits make lice!’ (see Kane, 1999). Américo Paredes’s (1958) landmark demythification of the Texas Rangers in *With A Pistol in His Hand* also argues that Mexicans in Texas were no strangers to a *homo sacer* status in political life, at least to the experience of being rendered targets by the ‘shoot first, ask questions later’ modus operandi which Paredes details as the Ranger approach to Mexican relations. More recently, yet well before 9/11, another category of official and folk demonology caused social panics deep enough to bring the right to live into question: the gang member. Thus the deeming of *homo sacer* will serve here to link exercises of state power on an international scale with the domestic front in the war against risk, and particularly, to the context of urban communities of color.

**Gangster Sacer**

At 2 o’clock one July morning in 1998, the owner of a punk rock club in the Sixth Street bar district and her boyfriend were walking to her Chevy Suburban in downtown Austin. According to newspaper coverage of the trial that followed, the two saw that a window was broken and someone was in the car. The boyfriend, Paul Saustrup, drew a handgun and shouted ‘Freeze! Anyone else comes jumping out of there, you’ll be the first to die!’ The man in the car, 20-year-old Eric Demart Smith, got out. Accounts differ about what happened next. Somehow the two men moved some 800 feet away
from the vehicle. Sasha Sessums, the club owner, said that Smith was drunk and shirtless—she could see his ‘gang tattoos’. Later, a news report would have it that Smith’s shirt came off as he and Saustrup scuffled. According to Saustrup, Smith walked away, then turned toward him and reached for his waist—Sessums told the 911 operator from her cell phone that he was ‘going for something in his pants’—and Saustrup fired. A man who lived in a nearby alley told reporters that he remembered thinking that Smith was trying to get away, with Saustrup chasing him: ‘The black male [Smith] looked scared . . . He wanted to run.’ Saustrup shot Smith twice, with bullets striking him behind each shoulder blade. In the first news coverage of the shooting, the front page of the Austin American-Statesman read in part:

Smith, also known as ‘Blue Devil’ and ‘Eloc,’ was convicted of possession of a controlled substance and attempted burglary of a habitation on Feb. 18, 1997, according to court records. . . . Smith was also convicted of five misdemeanors including a conviction on Dec. 21, 1995, of burglary of a vehicle . . .

Saustrup was eventually indicted in Smith’s death. In court, the defense followed the lead of the newspaper, putting the deceased Smith on trial. Saustrup never denied the shooting, but mounted a plea of self-defense. In 2000, he was acquitted of murder on these grounds. During the trial, the defense attorney displayed life-sized photographs of Smith’s torso, clearly showing his tattoos. He told the jury that it was easy to tell good guys from bad guys. He pointed to Saustrup. ‘Here’s the good guy. And here,’ he continued, picking up the photo of Smith, ‘is the bad guy. He’s dead because he’s the bad guy.’

The issue of good guys and bad guys—of criminality—is a key issue in the governmental management of risk, and in the interpretive frames used to make sense of violence after the fact. To discern whether Saustrup was justified in his claim of self-defense involves a calculation of the probable threat to him posed by Smith. This kind of interpretation of probable criminality is not immune to wider social discourses, as Butler argues in her previous (1993) critique of the Rodney King trial as an act of interpretation of the infamous video on the part of the jury. In such situations, parsing acts of violence and states of risk after the fact proceeds along a racial logic. While the Simi Valley jury’s decision to acquit the police officers who had beaten King shocked a public that had been privy to the videotaped evidence, Butler explains that the jury had labored under a racial ‘logic of probability’ that allowed them to construe the beating as defensive. Invoking Frantz Fanon’s account of interpellation, Butler argues that ‘the black body is circumscribed as dangerous, prior to any gesture’ (1993: 18) and thus that King’s body became the focal point for the officers’, and vicariously the jury’s fear:

The fear is that some physical distance will be crossed, and the virgin sanctity of whiteness will be endangered by that proximity. The police are thus structurally placed to protect
whiteness against the violence, where violence is the imminent action of that black male body. And because within this imaginary schema, the police protect whiteness, their own violence cannot be read as violence; because the black male body, prior to any video, is the site and source of anger, a threat, the police effort to subdue this body, even if in advance, is justified regardless of the circumstances. (1993: 18)

Despite the liberal role of the court to review and thereby limit the violent agency of the state, Butler suggests that a racially defined rationality of risk and security rendered the police who beat King as sovereigns, at least in that particular situation. Seven years after Rodney King’s ordeal, Saustrup’s lethal encounter with Smith would bear more than a passing resemblance. Then, too, even in ‘liberal Austin’, the calculus of self-defense could not operate in a race-neutral fashion, and Saustrup was able to convince another jury that it was a defensive move when he shot Smith in the back, several blocks away from their initial confrontation.

But criminality cannot be simply equated with race. The discernment of good guys and bad guys proceeds as well along a cultural logic, engaging a matrix of class and place as well as the race and gender articulation described by Butler. This is immediately evident in the history of violent responses to those genres of representation associated with urban, minoritized marginality. Hip-hop journalist and historian Jeff Chang relates one of the more famous instances of these, describing graffiti writer Michael Stewart’s early morning trip on the New York subway in 1983:

He was alone but feeling good. He’d had a six-pack’s worth of beers, it was warm out. No one else seemed to be on the platform. Perfect time to tag. He pulled out a marker and scrawled ‘ROS’ when a white Transit Authority policeman walked up to arrest him. At this point, it was about ten minutes to three in the morning.

At twenty minutes after three, Michael Stewart was prone facedown on a gurney in the Bellevue Hospital emergency room. He had bruises all over his body. His face and hands were turning blue. His neck was scarrd below his Adam’s apple. There was swelling around his eyes, back to his temples and behind his ears. He was still hogtied—the cops had handcuffed him, secured his ankles with tape and then tied his wrists to his ankles with cord. He had no heartbeat, no pulse, no blood pressure. He was not breathing. (2005: 194–5)

Michael Stewart would breathe again, but was comatose for 13 days before he died. The New York Transit Authority denied that he had been beaten, though six officers were indicted in his death and ultimately acquitted (an earlier indictment of three officers ended in mistrial). Stewart’s family sued the Transit Authority and the city, and seven years later settled out of court for $1.7 million (Christian Science Monitor, 1990; New York Times, 1990). Stewart was memorialized by anarchist folksinger Michelle Shocked in the song ‘Graffiti Limbo’, and in Spike Lee’s film Do the Right Thing, in which another black agent of unruly signification, Radio Raheem, dies at the hands of the police.
Smith and Stewart shared not only a racial category as African Americans, but were engaged in identifiable modes of signification that assert a minoritized presence on the urban landscape. Both graffiti and the ‘gang tattoos’ worn by Smith are examples of signs out of line, ‘crimes of style’ (Ferrell, 1993; see also Stewart, 1994) that are routinely read as symptomatic or constitutive of other crime, often of gang membership. In these two cases, such an association resulted in individuals being deemed homo sacer.

**Governmentalities**

It might seem that these are cases of racialized bodies and renegade signs being crushed by a sovereign power, that is, an exercise of force unrestrained by any limits of law, whether wielded by police or a civilian. But their very different contexts were both also marked by a spatial governmentality. This becomes clear in light of the fact that the controversy and conflict which urban expressive styles of graffiti and gang culture provoke are closely identified with matters of the management of space. Their challenge to the social order is not only in their unruliness, but occurs when they appear ‘out of place’. What I have called signs of a ‘minoritized’ presence index neighborhoods that are themselves ‘minoritized space’. Michael Laguerre introduces this term to underscore that ‘minority’ is a status determined by social power, not sheer numbers, and that such social identities are inherently spatial, such that ‘there can be no minority without minoritized space’ (Laguerre, 1999: 98).

Minoritized spaces are those areas of a city that are not only home to large numbers of people of color, but that are financially and politically marginalized as well. Laguerre notes how the spatial order of multiethnic cities serves to inscribe and reproduce racial hierarchies spatially. Furthermore, in an era of de facto segregation, minoritized space serves as a ‘space of containment’. Thus it ‘is not allowed to expand or spill over beyond its borders, lest its problems contaminate the rest of the city. . . . The residents of the ghetto must also be prevented from carrying their life style and values to other parts of the city’ (1999: 110). This spatial hierarchy, reproduced and contested in spatially marked expressive styles, functions as a strategy for managing (‘conducting’) what Foucault might have called the ‘formal freedom’ brought by desegregation movements of the mid-20th century (Foucault, 1995: 222). Moreover, the designation of spaces of risk and safety was integral in each case to the ways in which the presence of King, Smith, or Stewart was evaluated and responded to. All of these encounters presage the current logic and pre-eminent importance of security, itself a spatial concept speaking to access, force, and vulnerability.
In the two years leading up to 9/11, and some months afterward, I engaged these issues in a field research project centering on another urban expressive style: lowrider car customization, which is practiced mostly by Mexican Americans. Participating in the lowrider cruising scenes of East and South Austin, I witnessed the constant presence of police surveillance, one of the tactics which maintained a hierarchy of space. I also heard stories of traffic stops, a kind of racial and cultural profiling, that nearly every lowrider had to tell. Thus police practices in the regulation of minoritized space became central to the project, and I was in a position to hear the Austin Police Department introduce its strategy of ‘community policing’ in a series of neighborhood ‘town hall meetings’. In retrospect, I am able to read my notes of these events as rare instances of a publicly offered rationale for spatial governmentality.

The meetings held in different neighborhoods had very different atmospheres, with meetings in the African American majority neighborhood of Northeast Austin and the Latino barrio of central East Austin taking a contentious tone that was unmatched in more exclusively white locales. Still, there were several themes common to all the meetings I attended. First was an emphasis on the notion that community policing depended on partnerships with the community. Underlying to this discussion was the recurring theme of surveillance as a spatial tactic of citizen participation in the community policing program. For example, in the northwest, when an officer spoke of the need for partnerships in the community policing program, he mentioned corporations like the local cable TV and telephone companies as partners. At first I understood this as a reference to corporate sponsorship, but then he mentioned that ‘they’re our eyes and ears’. The need for civilian involvement in community policing was at least in part related to constitutional limits on state practices of surveillance. Surveillance by both police and civilians was presented as a means of evaluating crime levels—or more generally, the overall ‘health’ or ‘quality’ of a particular site. Officers invited civilians to join in this panoptic evaluation. When someone asked how the police know if they’re doing a good job at crime control an officer described the desired specular impression: ‘Who’s out walking on the street? Is it the drug dealers? Or is it people sending their kids across the street for milk?’

Discussions about partnerships, surveillance, and quality of life were all articulated spatially in the discussion of high-crime ‘hot spots’. Hot spots were defined partly by arrest statistics for different crimes, but it was also possible for patrol officers and citizens, including the city manager, to deem a place hot. Hot spots were areas where crime was expected to occur. They were also identified by associating one type of crime with another; for instance, any place that narcotics was an issue became a hot spot because ‘drugs and guns just go together’. Hot spots were defined provisionally...
and changed according to conditions. Once a hot spot was designated, the police response was to do a ‘lot of surveillance’, and try to ‘saturate’ the area. At one meeting, a lieutenant gave a Power Point presentation on one particular program of ‘high-profile interdiction’, an approach of stopping and identifying anyone ‘out there’ in the targeted area. The assumption was that ‘after a certain time, they’re up to no good’ in that area. This results in a situation like what Oakland columnist J. Douglas Allen-Taylor observed in an article on cruising and car culture on the west coast: ‘It was apparently one of those “random stops” by police that always seem more random in some neighborhoods, less random in others’ (2002). The spatial management of hot spots extends the science of gangs or ‘bad guys’ to a geographical calculus of threat. It also indicates a police approach to crime that interacts less with individual offenders than with populations.

The focus on hot spots was not without controversy, and had led to complaints about police harassment, which a lieutenant at the eastside meeting addressed by instructing civilians that ‘you have to trust that the police know what they’re doing’. In fact, he suggested that a less contentious atmosphere would be created by people thanking the officers they see at work. In hindsight, this bears a remarkable similarity to assurances that the expanded police powers of the PATRIOT Act are to be directed only at terrorists, as well as the routine deflection of critiques of foreign policy with an enjoinder to ‘support the troops’. At the same time, the designation of hot spots provided a spatial rationale for the deeming of threatening bodies, in the same way that captives at Guantánamo, we are reminded, were ‘captured on the battlefield’.

In striking resonance with the warfare/security measures that would follow, then, community policing measures in East Austin established a governmental rationality of space and threat that functioned through the operation of deeming exceptionality. The inversion of the presumption of innocence within threat-spaces went hand in hand with the sovereign power to hail individuals as gangsters or criminals, thus rendering them a risk and subject to violence that could be rationalized at least legally by an appeal to defense of self or society. Indeed, this management of urban, minoritized populations and spaces can be viewed almost as a dress rehearsal for the states of exception that were to come post-9/11.

Moments of Danger

... even the dead will not be safe from the enemy if he wins. And this enemy has not ceased to be victorious. (Benjamin, 1968: 255, thesis VI, original emphasis)

On 9 June 2005, Austin Police Department officers were in a Southeast Austin neighborhood on a drug investigation, responding to ‘resident
complaints concerning narcotics activity’ according to the lead paragraph of an APD press release. They ‘identified three individuals in a blue and silver suburban that were believed to be involved’. The release continues:

At approximately 11:00 p.m. Street Response officers conducted a traffic stop at the intersection of South Pleasant Valley Road and Quick Silver Boulevard. As two officers approached the vehicle, the front seat passenger fled the scene. Officer Michelle Borton, a four-year veteran, approached the suburban and began to secure the driver. Officer Julie Schroeder, a seven-year veteran, approached Daniel Rocha 18, (DOB: 03–20–87) the rear seat passenger and attempted to place him in custody. Rocha began fighting with Officer Schroeder. Sgt. Don Doyle, an eighteen-year veteran, arrived at the scene and entered the violent struggle with Rocha.

During the struggle, Officer Schroeder fired her weapon once and struck Rocha. Officers immediately began emergency first aid and requested EMS. Rocha was pronounced dead at the scene at 11:23 p.m. (Austin Police Department, 2005)

Almost immediately after Daniel Rocha’s death, a public debate erupted around the details of the situation. Two opposing viewpoints quickly coalesced: was this a case of police power run amok, or the appropriate (if unfortunate) execution of justice in a zone of likely criminality? More to the point, did Daniel Rocha deserve to die or had the police acted outside the law?

In the first news stories covering the killing, the possibility of Rocha’s culpability in his own death was implicit in the highlighting of his record of prior criminal offenses. Rocha was on probation for a burglary charge, and the APD knew him from ‘numerous contacts’ before. More directly, the APD version of the story held that the 5 foot 2 inch, 127 pound Rocha, in the course of struggling with at least two officers, kicked away Schroeder’s Taser weapon, posing a threat by leaving her without non-lethal means of subduing him. It was only then, Schroeder said, that she drew her gun and fired.

Yet alternative accounts also circulated in the immediate post-killing public discourse. Community members, some of whom knew Rocha, and others who claimed information from eyewitnesses, posted comments to an Austin IndyMedia internet forum (Austin IMC, 2005), pointing out Rocha’s small size and coroner’s reports that there were no physical signs of struggle on his body. By non-APD accounts, Rocha yelled to the officers that he did not have a weapon, and lifted his shirt to show that he was unarmed. A response to the killing issued by Resistencia bookstore pointed out that Rocha was shot at point-blank range while prone on the ground, and that his death at APD hands was only the latest in a series of recent police killings that had claimed the lives of Sophia King, Jesse Lee Owens, and Lennon Johnson, all people of color and residents of the minority-majority eastside of Austin (Resistencia Books, 2005).

What really happened in Daniel Rocha’s last 20 minutes of life is inaccessible to the present discussion. But the discourse following his death has a direct bearing on issues of the sovereign and *homo sacer* in governmentality. Like Smith, Rocha was subjected to a posthumous trial.
Rocha’s body underwent extensive toxicology testing for various drugs, as if to verify the legitimacy of the initial motivation for the fatal traffic stop: drug interdiction. After initial testing yielded a negative result, an APD detective phoned the county medical examiner to inform him that there was ‘considerable evidence that . . . Rocha may have smoked marijuana prior to the incident that led to his death’ (quoted in Smith, 2005b). A second test revealed traces of THC, indicative that Rocha could have smoked a small amount shortly before his death, or a more substantial amount up to a month prior. The ambiguity of the tests regarding the exact timeframe of Rocha’s marijuana use indicates that this quest for physical evidence had nothing to offer by way of certainty about the immediate context of the killing, or about Rocha’s mental state on the night of 9 June. The drug test story made news, however, as a factor in whether Rocha could be fairly classified as a ‘drug user’, or, as a local television station’s initial report had it in its headline, a ‘narcotics suspect’ (KXAN-TV 36, 2005). The posthumous attempts to establish Rocha’s criminality, then, were addressed less to the issue of Schroeder’s culpability than to questions of Rocha’s status before the law.

The implicit argument that Rocha got what he deserved may not have been expressed quite as openly or in as official a setting as were the statements by Saustrup’s defense in his murder trial. It certainly played out in informal exchanges on the internet. The Austin IndyMedia site, which posted reports of the killing from a perspective critical of the APD and contextualized in larger frames of racial struggle and police violence, hosted a bulletin-board discussion that eventually ran to over 90 printed pages, with most posts coming in at a hundred words or less. Some posts humanized Rocha by mentioning personal or familial connections, while invoking a liberal understanding of the relationship of subjects to the law consistent with a disciplinary regime:

ricvics-02: you know this was one of my friends from school and around the neighborhood and you know this really didn’t have to happen!!!

liltweety78704: I knew daniel roch and his girlfriend he was a good kid all he wanted was to change his life for the better.

In these versions of the story, Rocha was essentially a subject in the process of formation, perhaps having ‘gone wrong’, or ‘made mistakes’, but who was struggling to conform to the social norms of legitimacy. His faults established, rather than disqualifying, him as human, ‘one of us’, and hence entitled to the protection of formal justice.

On the other hand, some participants in the forum justified Schroeder’s actions by shifting culpability to Rocha himself for ‘resisting arrest’ or more generally defying the law embodied in the officers trying to detain him. Notably, this was not restricted to the immediate encounter, but became a
narrative about Rocha’s inherent qualities. In numerous posts, Rocha was situated within larger categories of criminality, which in effect identified his life as outside the protection of the law.

Mike: I just want to point out that this ‘kid’ is not some choir boy who had just turned his life around. He was a criminal and that makes it a little more likely that the police are being honest about the incident. The rush to call him some poor innocent victim is ridiculous. Choirboys don’t fight the police but people with felony warrants often do. It adds much credibility to the APD version. That is the real world.

Hispanic female/southside: Mike, I totally agree with you! To all of you out there who believe this was a racist act by law enforcement, facts are facts! I’m sure the video will soon become available. Right or wrong you must learn to respect the law.

Global Love Cop: I’m Glad Rocha was Killed. That one less Mexican thug off the streets. All you gangsters punks and hippies should now know that its us cops who run this city not you!

zekedotson: i’m supposed to shed tears that a thug is dead? let’s look at his record: burglary, stealing an elderly woman’s wallet. I don’t care about the drugs, I’m against interdiction and incarceration, but even if we accept the premise that the APD is evil, they’re not stupid. . . . I don’t believe they set out to execute anybody that night, and I believe Officer Schroeder’s actions are completely justified. . . . At his age, he was a lost cause anyway, and his death saves Texas taxpayers the future costs of his incarceration with the Texas Department of Criminal Justice.

While these debates swirled around the character of an individual, repeated references to his place within larger populations were consistent with more diffuse and risk-oriented formations of governmentality. This was a move away from characterizing Rocha as an individual ‘delinquent’, perhaps produced by disadvantageous circumstances and in need of institutional help to become disciplined. Rather, Rocha’s encounter with the lethal force of law was interpreted with reference to norms and patterns of regulating populations and discerning threat. Thus, the internet discussion quickly became a struggle over whether Rocha was to be cast as an individual subject or ‘de-subjectivated’ (Butler, 2004: 98) as a gang member or a representative resident of a ‘hot spot’ of crime:

southside: . . . She didn’t have to kill him, I went to his funeral mass today, you know what it was like seeing his brother drowning in his own tears, his [parents], and all the homeboys? You have no idea.

Mike: When you went to the funeral, did you happen to see all of the gang members wearing red? Just curious.

Citizen: You’re right Mike, Daniel wasn’t a model citizen. But he wasn’t a gang member. He did make his share of mistakes but did any of them mean he deserved to be murdered by a cop? You should know that Dove Springs’ color is red. Dove Springs Rec sells shirts, guess what color they are Mike . . . red! Daniel liked red, his friends liked red, his neighborhood color was red, I like red, I’m not a gang member. I’ve never sold drugs or robbed anyone. I’ve never been arrested or involved in a public conflict. I wear red too Mike . . . I wear my Dove Springs shirts with my zip code on it, I’m not in a gang and my friends aren’t in a gang. Though they do dress urban and are Hispanic males.
As I write this, the bitter interpretive contest goes on. A grand jury refused to deliver an indictment of Schroeder, though certain sectors of the public continued to express outrage (Moses, 2005; Plohetski and Osborn, 2005; Smith, 2005a). Ultimately, Schroeder underwent an internal disciplinary process and was fired (Plohetski, 2005; Smith, 2005c). This action subjected Chief of Police Stan Knee to fierce critique by the Austin Police Association, and may have contributed to his own resignation (Plohetski, 2006). Meanwhile, Schroeder appealed for reinstatement as Rocha’s family brought a civil action against the former officer (Kreytak, 2006).

The ongoing controversy reinforces the need to recognize discursive practices beyond the official boundaries of the state as part of threat governmentality. The situation lends prescience to Benjamin’s chilling prediction that ‘even the dead will not be safe’ from the enemy in whose interest the state of exception continues—indeed, Rocha himself remained the principal object of the rationality of threat running through public debate. It is also crucial to recognize that ‘the enemy’ here is not Julie Schroeder in any simple sense. Interpreted within the framework of liberal justice, the fact that Schroeder lost her position of authority can appear as a triumph of a just system over one of its aberrant agents. But in the discursive struggle to ‘deem’ Rocha one way or another, threat governmentality continues its operation. It remains to be seen whether this enemy will cease to be victorious.

**Conclusion/Constellations**

To articulate the past historically does not mean to recognize it ‘the way it really was’ (Ranke). It means to seize hold of a memory as it flashes up at a moment of danger. (Benjamin, 1968: 255, thesis VI)

As I began to draft this article, the news was filled with images of trauma on a scale that immediately recalled 9/11, and offered a new temptation to periodize. Hurricane Katrina visited a small apocalypse on the Gulf Coast, also revealing the near-complete ineffectiveness of a public ‘security’ apparatus focused exclusively on the repression of ‘terrorism’ rather than preparation for other emergencies or the mitigation of harsh social inequality. While the media space was filled with images of devastation and abandonment, the desperation of those huddled on rooftops waiting interminably for rescue, and the terror of containment in the Superdome and the New Orleans convention center, the state defaulted to its preferred means of exercising power. Responding to the widely reported ‘lawlessness’ in the streets of New Orleans, Louisiana governor Kathleen Blanco announced:

We have 300 soldiers arriving from the National Guard, fresh back from Iraq. . . . They are battle-tested. They will restore order in the streets. They have M-16s, locked and
loaded. Hoodlums are victimizing and inflicting suffering on people who are at their wit’s end. They are taking away our valuable resources. These troops know how to shoot and kill, and they are more than willing to do so.11 (Lezon and Moran, 2005)

Around the same time, George W. Bush appeared on Good Morning America calling for a ‘zero-tolerance’ policy on looting, even, when pressed by Diane Sawyer, extending this to desperate survivors in search of food.

Thus ‘looters’ and ‘hoodlums’ were added to the list of populations deemed *homo sacer*, joining ‘terrorists’, ‘gang members’, and ‘drug dealers’. Not the lives of individuals but the security of property emerged as the vestige of the social order most worthy of preserving in the hurricane’s wake. For those of us who were physically untouched by the destruction of New Orleans and the rest of the Gulf Coast, the post-traumatic interpretive process recalled a familiar line of questioning, following the discernment of threat. Are the captives at Guantánamo terrorists? Did they attack the US, are they likely to do so, or do they know who did? Did Michael Stewart or Rodney King constitute immediate threats that had to be subdued? Did Daniel Rocha resist arrest? Was he a thug or a lost kid in need of redemption? Was the end of his life preordained by his choice to go down the wrong road? Are those people wading waist-deep out of Wal-Mart carrying crackers and Gatorade? Or jeans and video games? Or have they taken guns?

Are the objects of state violence culpable in their own destruction? Such a question is not unknown in the discourses of discipline, implied in clinical suggestions that proper social intervention and the training of the individual subject would have or could have prevented violence from occurring. But the discourses that seek to render coherent and consistent these recent events seem to indicate a historical situation marked by the operations of a threat governmentality less individually focused than discipline. At issue is not only the evaluation of individuals, but their proper placement in social categories, the actuarial evaluation of which in turn is ongoing. The management of individuals in these categories becomes part of the work of diffuse petty sovereigns whose bureaucratic purpose is the enforcement of security. At times, ‘deeming’ a person *homo sacer*, that is, ‘de-subjectivating’ him or her with regards to protection under the law, by virtue of ‘belonging’ in a particular category, is the most efficient means for this bureaucratic mandate to function:

Finally, it seems important to recognize that one way of ‘managing’ a population is to constitute them as the less than human without entitlement to rights, as the humanly unrecognizable. This is different from producing a subject who is compliant with the law, and it is different from the production of the subject who takes the norm of humanness to be its constitutive principle. (Butler, 2004: 98)

Sovereignty thus emerges, decentralized but no less powerful, within threat governmentality.
Yet we continue to pose questions as if we assume that there can be some sense made of the destructive events we witness, directly or mediatly. What were the characteristics, or actions, or social position of the victim that brought the force of the state down on him or on her? With questions like these, we engage in an individualizing myopia. We commit a similar fallacy, though, if we individualize the events as well as the victims, constructing a history told in periods, punctuated by ruptures, a series of causes and effects characteristic of what Benjamin thought to be a historicist fallacy, ‘telling the sequence of events like the beads of a rosary’ (1968: 263). Yet the untidiness of evidence and the malleability of interpretive frames often leads to an abandonment of understanding and resignation to the possibility that victims were in the wrong place at the wrong time (the wrong place: the space of exception; the wrong time: the moment that a petty sovereign shows up, hell-bent on security).

The critical task is to rub this narrative against the grain. Benjamin enjoins us to glimpse the ‘constellation’ formed between past and present, in a larger frame of the now, of actuality. Butler concurs, suggesting that ‘the historical time that we thought was past turns out to structure the contemporary field with a persistence that gives the lie to history as chronology’ (2004: 54). We may find with Faulkner, then, that the past is not even past.

It is thus possible to understand governmental violence on city streets—whether enacted and explained by state agents or civilians—as a rehearsal of threat governmentality, not only in the sense of providing a prologue to the warfare/security state, but to emphasize the notion of repetition and cycle. Each time a policy is debated, or the specifics of a street encounter recalled and negotiated, the rationality of threat governmentality is rehearsed. What is needed is a new practice of connecting the dots. In this vein, I have tried to offer an expanded notion of the historical present, one which spans the apparent boundary of 9/11, tracking historical relations as they change, but also recognizing their continuities. I have offered an attempt at an ‘anthropology of the actual’ (Rabinow, 2003), based on the contention that without seeking an expanded view of the ‘here and now’, the present historical situation cannot effectively be resisted.

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NOTES

1. Amnesty International (2004) reported an expansion of racial profiling following 9/11. A poll conducted by Public Agenda found that ‘two-thirds of Americans agreed that racial profiling of Middle Easterners by law enforcement is “understandable, but you wish it didn’t happen.”’ The same statement was endorsed by 59% of African Americans responding to the study (Bittle and Johnson, 2002).

2. Indeed, Butler points out that discipline represents a historically specific combination of governmental and sovereign forms of power (2004: 54), while Rose references Foucault’s mention of a ‘triangle’ of sovereignty, discipline, and governmentality (1999: 23).

3. I choose in this article to use ‘captives’ to reflect the only clarity that is forthcoming about this population: that they were captured by the US military.

4. Of course, this is also the rationale for holding prisoners of war, with the all-important difference that POWs fall under the sheltering reach of the law by virtue of being subjects of a rival state, fighting on its behalf.

5. The story as related here is drawn from Daniel and Banta, (1998); Quin, and (2000a, 2000b).

6. This association has spawned a kind of gang science, in which experts interpret for the public the mysterious codes of the streets. See e.g. the National Alliance of Gang Investigators Associations (http://www.nagia.org) or the American Gang Information Center (http://www.members.tripod.com/~Carl815/ganginfo.html). Significantly, the Austin Police Department Gang Suppression Unit (formed out of the Hispanic Crimes Unit and the Street Crime Unit) has a website intended for public education which places expressive culture at the center of the very definition of a gang: ‘Criminal Street Gang: three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities’ (http://www.austingangbusters.org).

7. The study resulted in Chappell (2003), as well as several shorter articles (e.g. Chappell, 2006).

8. The meetings foreshadowed such post-9/11 ‘security’ measures as the ‘TIPS’ program, through which the government called upon service providers like plumbers and delivery personnel to report anything suspicious they saw in the course of doing their business.

9. One exception was a post that included a legal research article asserting the right to resist arrest, which took up 14 pages.

10. Knee has accepted a new position advising law enforcement officials in Afghanistan.

11. Unwittingly reinforcing my ‘rehearsal’ metaphor, an activist blogger has called the state response to Hurricane Katrina in New Orleans a ‘laboratory for counter-insurgency’. See http://www.ww4report.com/node/1038
REFERENCES


**BIOGRAPHICAL NOTE**

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