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Biopolitics or the legislation of life: a Foucauldian analysis

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BIOPOLITICS OR THE LEGISLATION OF LIFE:
A FOUCAULDIAN ANALYSIS

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS

AK	*The Archeology of Knowledge.*
AN	*Abnormal: Lectures at the College de France 1974-75.*
BC	*The Birth of the Clinic: An archaeology of Medical Perception.*
DL	"Discourse on Language." In *The Archaeology of Knowledge.*
DP	*Discipline and Punish: The Birth of the Prison.*
EW1	*Ethics, Subjectivity and Truth. Essential works of Michel Foucault 1954-84. Volume One.*
EW3	*Power. Essential works of Michel Foucault 1954-84. Volume Three.*
FL	*Foucault Live: Collected Interviews, 1961-84.*
HS	*The History of Sexuality: An Introduction.*
MC	*Madness and Civilization: A History of Insanity in the Age of Reason.*
NGH	"Nietzsche, genealogy, history." In *The Foucault Reader.*
P/K	*Power/Knowledge: Selected Interviews and Other Writings, 1972-77.*
PR	*I, Pierre Rivière, Having Slaughtered my Mother, my Sister and my Brother: A Case of parricide in the Nineteenth Century.*
SMD	*'Society Must be Defended'. Lectures at the College de France 1975-76*
SP	Afterword: Subject and Power. In Dreyfus and Rabinow (Eds) *Michel Foucault: Beyond structuralism and hermeneutics.*

ABSTRACT

Michel Foucault uses the term biopolitics to highlight the focus on life that is at the center of contemporary politics. Biopower or biopolitics is the maximization of life through various regulatory apparatuses that monitor, modify, and control life processes. I elucidate and exemplify Foucault's framework in order to show how the medical discourse exercises a certain kind of power over bodies in the name of health. My argument is that through the mechanisms of biopower, the juridico-medical discourse simultaneously makes pregnancy into an object of study and the pregnant woman into a subject of power. With the help of a Foucauldian interpretation, I attempt to unmask the not-so-visible techniques of biopolitics that surround the pregnant woman. The unmasking makes it possible to think differently which is the primary task of philosophy. Specifically, such a critique helps in reformulating the problem as one of subjectivation.

INTRODUCTION

> For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics calls his existence as a living being into question.
>
> (Foucault, *History of Sexuality*)

> What is philosophy if not a way of reflecting, not so much on what is true and what is false, as on our relationship to truth?
>
> (Foucault, *Ethics, Subjectivity and Truth*)

Philosophy has always been concerned with the issues of life and death as well as with the concept of rights and justice. Over the last two millennia, philosophers have written about the relationship between politics and life. For Aristotle, the *polis* exists for the sake of life: "the state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of a good life."[1] But Michel Foucault turns this around and shows that we are now in a regime where man's very existence as a living being is called into question by his politics. Foucault theorizes about this conjunction of life and politics through the conceptual lens that he calls 'biopolitics.' In a biopolitical regime, according to Foucault, power is exercised over life in contrast to the historical sovereign power that was over death. Power, in the Foucauldian framework, is neither centralized nor is it an object that can be possessed by an individual. Instead, we find diffused and immanent networks of power where the individual is shown to be nothing but the subject of these network relations. In other words, the sovereign individual of the humanistic discourse disappears; instead it comes to be realized as the subject. And

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[1] Aristotle, *Politics*. Trans. Benjamin Jowett. Book One Part II.

1

therefore in place of the sovereign model of power as a repressive force we have technologies of biopower[2] exerted in order to maximize life in the biopolitical framework.

This reconceptualization of the individual as a subject of power problematizes the liberal rhetoric of choice and rights which assumes the existence of autonomous individuals. Using a different understanding of power and its operations in the constitution of the subject, the Foucauldian framework of biopower provides us with the theoretical tool necessary to analyze social phenomena – concerning health, reproduction, euthanasia, and related issues – differently from their usual formulation, where the rights of an individual are posited against the State or rights of one group are seen as vying with those of another.

This is exemplified in a recent incident concerning a woman from Utah named Melissa Ann Rowland. In 2004, she was charged with homicide because she failed to heed the doctor's advice to have a caesarean section and gave birth to a stillborn fetus. This incident generated a lot of debate at both the national and international levels. "Some rights are deadly," ran a newspaper headline discussing her case.[3] The controversial issue was framed in terms of rights: those of the mother on the one hand, and the rights of the fetus on the other hand. Does the mother have a right to choose with

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[2] We should note that Foucault used the terms biopower and biopolitics interchangeably, as do several commentators on the subject; thus I follow the same practice. Farrell (2005) writes: "Foucault describes the technologies used to manage populations as *'biopolitics' or 'biopower'* " (105, emphasis added), thus not distinguishing between the two terms, as does Parry (2005). To mention another example, Ojakangas (2005) writes it as "bio-political power or biopower" (p. 5).

[3] Some rights are deadly, Deseret Morning News (Salt Lake City), March 19, 2004.

respect to matters that concern her own body over the rights of the fetus, or does the rights of the unborn – the fetal 'right to life' – come first?

Similar lines of argument are seen in the context of abortion as well. And the issue of 'right to life' has emerged albeit in various guises quite often in contemporary discourses on euthanasia and death penalty, among others. At a broader level, vital issues such as life, death and health have increasingly become the focus of attention in politics.

Therefore I assert that a Foucauldian biopolitical analysis can be an important philosophical undertaking. In making visible the generally invisible networks of power, and showing in particular how medical and juridical discourses produce certain subjects of power and objects of study, my thesis uncovers the processes that criminalize a woman who refuses certain forms of medical intervention on her own body. Further, by showing how life is increasingly legislated, a biopolitical analysis can help us to think differently about these issues that can lead to the unmasking of the workings of power and thereby to loosen its hold on the subject.

While traditional philosophy has been engaged in seeking foundational truths, Foucault's project is to examine how certain utterances come to be viewed as true discourses, and to identify the conditions of possibility that delineates something as an object of knowledge. Foucault's work brings into focus the conditions of formation of a discourse that produces certain subjects of social attention, such as a criminal and a madman, and thus by looking into the conditions of "truth," engages us in philosophical activity. The significance of a biopolitical analysis arises from such activity.

Let me now briefly consider the philosophical lineage of Foucault and the nature and methodology of Foucault's work. Foucault has been viewed both as a philosopher

and as a historiographer, though not in the traditional sense in either case. Foucault

probably comes closest to being a philosopher in the usual sense of the term in his work

titled *The Order of Things*; but even here, as elsewhere, he attempts to critique the notion

of disciplinary knowledge, trying to carry out his archaeological analysis at the level of

the subconscious of knowledge, or what he calls the epistemological field. However,

epistemology per se is not Foucault's concern. Rather than seeking transcendental truth,

Foucault asserts that truth is a historical category. Knowledge, as Foucault shows, comes

out of and is bounded by political and historical factors, that is, by the workings of

power. While Foucault was viewed as a structuralist in the early phase of his writing, he

moved away from the structuralist framework to undertake an investigation of knowledge

that led him to the problematics of power.

In terms of being a historiographer, Foucault's genealogical analysis of systems of

thought is very close to Nietzsche's work. Just as Nietzsche (1989) traces the emergence

of ascetic ideals not in some lofty principles but in the mundane petty feelings of

ressentiment, revenge, and guilt, Foucault traces regimes of truth to regimes of power and

not to some universal domain of absolute knowledge. Nietzsche the genealogist identifies

his project as a revaluation of moral values, and according to him

> *the value of these values themselves must first be called in question* – and for that
> there is needed a knowledge of the conditions and circumstances in which they grew,
> under which they evolved and changed [based on] what is documented, what can
> actually be confirmed and has actually existed, in short, the entire long hieroglyphic
> record (1989: 20-21, emphasis in the original).

Foucault's approach is very similar as he undertakes a study of the "knowledge of

the conditions and circumstances" – not of morals – but of that in which knowledge itself

emerges, by sifting through the archives or accumulated discourses, akin to Nietzsche's hieroglyphic record. In fact, Foucault (1984) shows his debt to Nietzsche in his article titled "Nietzsche, Genealogy, History" implicitly bringing to bear Nietzsche's work on his own. Foucault takes up some Nietzschean terms such as *Herkunft*, *Entstehung* and *Ursprung* and shows that in the Nietzschean discussion of morality there is no originary moment or essence to be found. Instead, there are only the conflict of forces and the consequences minor accidents. Foucault emphasizes the opposition of the genealogical method to history: neither is there a teleological movement nor is there any profound intention behind events. Genealogy denies the "suprahistorical perspective" (NGH: 88) that a traditional historian assumes. Moreover, genealogy also denies the historical or phenomenological subject and instead "account[s] for the constitution of the subject within a historical framework" (P/K: 117).

Foucault formulates his own work as a "genealogy of problems" that tries to answer "why a certain way of problematizing appears at a given point in time" (FL: 414). The conflict of forces that is found in Nietzsche – where the struggle is not between individuals but, as *Entstehung*, is "the struggle these forces wage against each other" (NGH: 83) – is reflected in Foucault's analytics of power. In Foucault, there is no subject wielding power; instead power is seen as "modes of action … [that] structure the possible field of action of others" (SP: 221). Thus Foucault's genealogy simultaneously critiques philosophy's search for transcendental truth and the traditional political conception of power as a commodity (Shiner: 1982).

Paul Rabinow (1984) comments that Foucault's original contribution lies in his taking Nietzschean genealogy and pursuing "the consequences of these [genealogical]

questions with unparalleled systematicity and vigor" (12). Rabinow also finds a Heideggerian strain in Foucault. For Rabinow, "Foucault seems to be identifying with the critique of theory initiated in modern times by Nietzsche and pursued by Heidegger" (13). For Foucault, critique is "the movement by which the subject assumes the right to question truth on its effects of power, and power on its effects on truth" (Foucault cited in Gordon 2000: xxxix). Knowledge and power cannot be separated according to Foucault; and it is this connection that he serves to highlight throughout his wide-ranging work including that on prisons and sexuality.

In the first chapter, I will explain Foucault's conception of power-knowledge through a discussion of some important terms in Foucault such as discourse, truth and power. I will connect it to Foucault's work on the history of sexuality and elaborate on the Foucauldian framework of biopolitics. To understand these concepts, it is necessary to understand power in the way that Foucault theorizes. Power is not a possession but a relation, not concentrated but diffused, not transcendent but immanent. Thus, according to Foucault, we cannot study power in terms of the juridical model but in terms of technologies and strategies that power deploys. Most importantly, power is not simply prohibitive but productive, producing true discourses. Foucault identifies two technologies of power. The first is the disciplinary technology operating often through institutions at the level of individual bodies while the second is the regulatory technology, which operates at the level of populations and works on life itself. The former is disciplinary power while the latter is biopower.

In the following chapter, I will review some literature that employs the biopolitical framework and the closely related studies of governmentality to analyze

social issues. I will discuss four studies that relate specifically to pregnancy. These studies show in different ways how the fetus and the pregnant woman are made into objects of knowledge in a highly medicalized discourse of pregnancy.

In the final chapter, using the Foucauldian notion of biopower, I will analyze the particular case of Melissa Ann Rowland who after delivering a stillborn was charged with murder for not following the doctor's advice. I argue that this case exemplifies the biopolitical strategies that Foucault identified, and show that there is an even greater deepening and widening of the lines of penetration of power. My argument is that through the mechanisms of biopower, the juridico-medical discourse simultaneously makes pregnancy into an object of study and the pregnant woman into a subject of power.

CHAPTER 1

BIOPOLITICS: THE REGULATORY TECHNOLOGY OF POWER

> In order to make a concrete analysis of power relations, we must abandon the juridical model of sovereignty. That model in effect presupposes that the individual is a subject with natural rights or primitive powers; … and finally, it makes the law the basic manifestation of power.
>
> (Foucault, *Society Must be Defended*)

> In the passage from this world to the other, death was the manner in which a terrestrial sovereignty was relieved by another, singularly more powerful sovereignty; the pageantry that surrounded it was in the category of political ceremony. Now it is over life, throughout its unfolding, that power establishes its dominion; death is power's limit, the moment that escapes it; death becomes the most secret aspect of existence, the most "private."
>
> (Foucault, *History of Sexuality*)

With the recent extraordinary development of the biological sciences, medical and genetic technology, along with the increasing complexities of the corresponding legal and ethical issues, several intellectuals (Negri and Hardt 2004; Rabinow and Rose 2006) have marked the last few decades as a regime of the biopolitical. As Foucault points out, in the biopolitical regime politics and life come together in a way that is quite different from the one Aristotle first envisaged in terms of the relation between the *polis* and man. In Foucault's words,

> For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics calls his existence as a living being into question. (HS: 143)

Foucault conceptualizes the terms biopolitics and biopower to describe the governing of life itself that replaces the earlier sovereign power over death. Life is now at the heart of politics that concerns itself with the distinction between life and non-life, including issues

like euthanasia and abortion, and that also concerns itself with minimizing risk and maximizing life in terms of hygiene, health, and other regulatory controls over the population. Thus we find a growing emphasis on the management and monitoring of populations.

While the concepts biopower or biopolitics relate to a specific form of political power over life, the terms have also become prominent in the context of a wide variety of non-Foucauldian discourses, including environmental issues and energy concerns; there is even a Christian biopolitics. Indeed,

> the 'bios' of biopolitics is in danger of becoming as expansive a term as Marx's concept of social reproduction - a black box where everything that had previously been discarded from economic and political philosophy is conveniently recuperated. What gets lost in the process is the temporal precision of Foucault's account and its attention to the minutiae of institutional practice. (Cooper, Goffey and Munster 2005: n. pag.)

Thus while biopolitics has become a 'black box' that has been utilized for various ends, we need to understand its precise meaning within the Foucauldian framework before we can use it as a tool of analysis.

As outlined in Foucault's College de France lectures, his research on biopower and biopolitics was to be an extensive project, touching upon the relationship of biological sciences to the state, their role in a regime of liberalism, and the relationship between life and law, race and war, among others. However, though the projected six volumes could not be actualized, the discussions that we find on the topic in the first volume of *History of Sexuality* as well as in some other lectures and interviews nevertheless provide us with a robust theoretical apparatus.

Discourse and the Production of Truths

One key notion in Foucault's work is the concept of discourse. As Dreyfus and Rabinow clarify, "discursive practices are distinguished from the speech acts of everyday life. Foucault is interested only in what we will call *serious* speech acts: what experts say when they are speaking as experts" (1982: xxiv, emphasis in the original). Foucault discusses the rules of formation of discourses in *The Order of Things*, *The Archaeology of Knowledge* and *The Discourse on Language*. While I will try to explain the notion of discourse in Foucault's work, we should also note that Foucault himself was equivocal about the term and admitted to having "used and abused [it] in many different senses: in the most general, and vaguest way, it denoted a group of verbal performances" (AK: 107).

In *The Order of Things*, Foucault studies the historical transformations that affected the fields of natural history, grammar, and the analysis of wealth and how these were systematized into biology, philology and political economy. Through this study, Foucault shows that during different periods of history, there can be discovered certain ordering principles that organize all these different areas of knowledge. While resemblance was the ordering principle up until the sixteenth century, this was replaced by tabular classifications and categorizations later on. Foucault argues further that it was during this period that 'man' entered the field of knowledge as an object to be studied, and we see the discourses on man begin to appear.

We must note that Foucault's work here is not about a history of ideas per se but about what makes those ideas or knowledges possible. From a philosophical perspective, one might say that Foucault's questioning relates to epistemology, even though Foucault

himself never uses this word to describe his work. The closest that Foucault comes to an

explicitly epistemological inquiry lies in his coinage of the term *episteme* or

'epistemological field' by which he refers to the conditions that lead to a particular

ordering of knowledge in specific periods. In Foucault's words, he undertakes:

> an inquiry whose aim is to rediscover on what basis knowledge and theory became possible; within what space of order knowledge was constituted; on what basis of what historical a priori, and in the element of what positivity, ideas could appear, sciences be established, experience be reflected in philosophies,… what I am attempting to bring to light is the epistemological field, the *episteme* in which knowledge, envisaged apart from all criteria having reference to its rational value or to its objective forms, grounds in positivity and thereby manifests a history which is not that of its growing perfection, but rather that of its conditions of possibility (OT: xxi-ii).

Instead of an epistemological inquiry, Foucault uses the archaeological method to study

the epistemological field, to work 'from within' discourses, to identify those conditions

of formation or rules and relations beyond grammar that make possible certain

statements. According to Foucault, during the Classical period, language was no longer

seen as a secondary comment on a primary text, but itself became a 'discourse,' a way of

speaking, arranging and presenting representations of the world in a logical order. In

Foucault's early work, discourse appears as the "material verbal traces left behind by

history" (Farrell 2005: 133), which includes all that is said, while the rules of formation

of discourse determine what *can* be said, or what is possible to speak. However, what is

most important for us to note is how these "serious speech acts" (Dreyfus and Rabinow

1982: xxiv) produce certain knowledges or "truths." To put it differently, more

significant than "what can be said" is the issue of how what is said within discourse

becomes 'true' knowledge, providing us with some kind of "Truth;" this is the task that Foucault undertakes.

The objective of Foucault's inquiry into knowledge and the conditions of possibility of knowledge is not to determine the verity of such knowledge. Neither is Foucault concerned with an exegetical inquiry or "what the text *truly* says beneath what it *really* says" (FL: 25, emphasis in the original). Rather, his project is to examine the discourses that are so normalized in our everyday lives that they become invisible to us and we do not think of questioning why we speak of certain things, leaving out other possible statements. Thus Foucault's analysis of discursive formations is neither deconstructive nor hermeneutical. Instead, as I mentioned above, it is archaeological – not as an excavation of subterranean things but dealing with archives, which for Foucault is the accumulated existence of discourse:

> By archives, I mean first the mass of things spoken in a culture, presented, valorized, re-used, repeated and transformed. …How does it happen that at a given period something could be said and something else has never been said? It is, in a word, the analysis of the historical conditions that account for what one says or of what one rejects, or of what one transforms in the mass of spoken things. The "archive" appears then as a kind of great practice of discourse, a practice which has its rules, its conditions, its functioning and its effects. (FL: 66)

What are these rules and conditions of formation of discourses, and what are their effects?

In *The Discourse on Language*, Foucault talks about the rules governing discourse, which include certain external and internal delimitations that have a significant role to play in controlling and structuring all that is said. External delimitations work on the exterior aspects of a discourse to systematize its 'appearance.' The most important

category among external delimitations or the rules of exclusion is prohibition. Foucault states:

> [I]n every society the production of discourse is at once controlled, selected, organised and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality.
>
> In a society such as our own we all know the rules of *exclusion*. The most obvious and familiar of these concerns what is *prohibited*. We know perfectly well that we are not free to say just anything, that we cannot simply speak of anything, when we like or where we like; not just anyone, finally, may speak of just anything. (DL: 216).

In other words, we are constrained by the regulations of the discourse, which determine who can speak or who has the "privileged or exclusive right to speak," on what "object" or topic, and the "ritual with its surrounding circumstances" (216) determine when and where we speak it; these prohibitions are also interrelated. For example, in *Madness and Civilization* Foucault shows how the discourse around madmen transformed and solidified into the pseudo-scientific discourse of psychiatry. Madness came to be constituted as an illness around the seventeenth and eighteenth centuries from the earlier perception of madmen as men of knowledge. It was now the doctors who were the men of knowledge: they had the expertise to talk about madmen, and also to observe, control and reform the madmen.

Another form of external delimitation that has an important role to play in our present context is the "will to truth." The answer to the question of "effects" of discourses lies in this. Tracing the opposition between true and false from earlier Greek literature to recent times, Foucault discusses the "will to knowledge," or more generally, the "will to truth" and how this gave rise to the empirical sciences. According to Foucault, "the

highest truth no longer resided in what discourse *was*, nor in what it *did*: it lay in what was *said*" and truth moved from the enunciated act to "what was enunciated itself: its meaning, its form, its object and its relation to what it referred to" (DL: 218, emphasis in the original). For example, in the discourse on sexuality, what is said by the doctors or psychologists is taken as the truth about sex.

Foucault sees the will to knowledge as emerging out of the more general will to truth. He suggests that the will to knowledge that we witness in the developments in science could have arisen from some discoveries, but they could also have been "new forms of the will to truth" (DL: 218). According to Foucault, around the sixteenth and seventeenth centuries

> a will to knowledge emerged which… sketched out a schema of possible, observable, measurable and classifiable objects; a will to knowledge which imposed upon the knowing subject – in some ways taking precedence over all experience – a certain position, a certain viewpoint, and a certain function (look rather than read, verify rather than comment), a will to knowledge which prescribed (and, more generally speaking, all instruments determined) the technological level at which knowledge could be employed in order to be verifiable and useful (navigation, mining, pharmacopoeia). (DL: 218)

Thus it is not that we have always been interested in knowing about certain things in specific ways, but that over different periods, the objects under scrutiny can change as does the way of approaching the problems. To put it differently, Foucault's argument is that through the operation of discourse we may even produce new objects of study.

There was a certain emphasis on measuring and classifying objects in the Classical Age, which went together with the invention of instruments or new technologies. As Foucault illustrates, with the rise of psychiatric discourse the utterances of madmen became something to be listened to with great attention – in other words –

they became objects of study. There is also the operation of a process of normalization that delineates the objects of study. Foucault contends that in the case of madness reason is normalized and opposed to unreason, while in the case of the discourse on sexuality, the family becomes the norm.

Let us understand this process of normalization further. While earlier, concerns about and discussions related to sex dealt solely with marriage — such as what one could and could not do within and without the bonds of marriage, what were the imperatives for a married couple, and similar issues — the later discourses increasingly focused on sexuality outside the category of marriage:

> The legitimate couple, with its regular sexuality… tended to function as a norm…Instead, what came under scrutiny was the sexuality of children, mad men and women, and criminals; the sensuality of those who did not like the opposite sex; reveries, obsessions, petty manias, or great transports of rage. (HS: 38-9)

These other sexualities became the new objects of study, and paradoxically it was the act of studying itself – a result of a growing "will to knowledge"– that led to the production of these various sexualities, to what Foucault calls the "multiple implantation of perversions" in our age (HS: 37). Consider for example certain rather exotic classifications of sexualities: auto-monosexualists, mixoscopophiles, presbyophiles, gynecomasts and other such "minor perverts whom nineteenth century psychiatrists entomologized by giving them strange baptismal names" (HS: 43). All this was part of the 'scientific' discourse on sexuality of those times.[4]

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[4] It is useful here to note the original French subtitle of the first volume of the History of Sexuality: "will to knowledge" (*La volonté de savoir*). This will to knowledge makes sexuality into a field of study within the scientific discourse – a *scientia sexualis* in contrast to the *ars erotica* of the East – having an almost obsessive preoccupation to talk about sex, observe, analyze and codify its every single detail, and wanting above all a wealth of knowledge about sex.

What is important to note is that the 'will to knowledge' performs a double role: it produces 'true discourses' and in the process of this production masks itself so well that it becomes invisible. Thus we are not conscious of the will to truth that gave rise to a particular discourse from many possibilities, instead, that what has arisen is taken to be the only truth. "Only one truth appears before our eyes… we are unaware of the prodigious machinery of the will to truth, with its vocation of exclusion" (DL: 220). Thus while the demarcation between true and false has been historically constituted, it works at the unconscious or invisible level. We leave out or exclude from our utterances many things that might have been said because of unnoticed controls and regulations. To sum up, while Foucault foregrounded what is generally excluded from discourse, we should keep in mind that his central project was to examine the "production of truth," or in other words, to examine the conditions that led to the emergence of a particular discourse.

In the case of madness, Foucault's concern was to examine how the psychiatric discourse became the 'true' discourse in observing and controlling 'madmen' and how the discourse gave rise to 'mental illness' as an attributive phenomenon of the mad. We should remember that for Foucault there is no fundamental 'Truth' out there, behind the discourses, that we are simply unable to reach. Instead there are multiple 'truths' or certain realities that are the products of various discourses.

Pierre Rivière (Foucault 1975) is a case in point. Pierre was a villager in Normandy, France, who killed his mother, sister and brother with a pruning hook. Later while in prison, he wrote a memoir giving reasons for his act. This was in the year 1835, a time of transition from only the juridical discourse around crimes to the introduction of the psychiatric discourse in order to verify the sanity or insanity of the criminal. Though

16

Pierre was initially sentenced to death, the intervention of Paris psychiatrists led to the modification of the sentence to life imprisonment. Foucault catalogs the growth of a whole network of discourses around Pierre that purported to prove his sanity, insanity, evilness, or idiocy. On the one hand, there were the opinions of villagers and local doctors, on the other hand, there were the expert recommendations of the leading psychiatrists in Paris. These various discourses led to two portraits, that of Rivière as "criminal-having-given-way-to-the-propensities-of-his-evil-nature" and that of Rivière as "deluded maniac" (PR: 234). "A threefold question of truth: truth of fact, truth of opinion, and truth of science" (PR: 210) that was centered on Pierre's acts and his text struggled to find the truth of the matter.

Rivière's case will be interesting to us later on in this thesis as well since it provides parallels to the particular case that I will take up, that of Melissa Ann Rowland. While 150 years ago there was still a turf war between justice and medicine and Pierre's madness was ambiguous, in the present times through the normalization of the discourse on madness, through the "prodigious machinery" of the will to knowledge, we seem to have no difficulty in labeling Melissa mad: only a madwoman would be willing to let her 'baby' die in order to avoid an operation.

The discourse of psychiatry also gives rise to certain effects of power. For Foucault, power and knowledge are inextricably linked to each other, which is why he uses the term "power-knowledge." As Farrell (2005) states, there has been a "long-standing assumption in Western philosophy that there is a fundamental opposition between knowledge and power, that the purity of knowledge can only exist in stark opposition to the machinations of power" (96). However, Foucault rejects this

assumption as a myth. Foucault not only shows the mutuality between knowledge and power, he rethinks the notion of power itself. Here again, Foucault's analysis of power is not simply a reversal of commonly held beliefs but is much more nuanced and complex.

Power: Not Prohibitive But Productive

As Farrell (2005) observes: "Foucault's name is linked most famously with the notion of power and also with the idea that knowledge and truth exist in an essential relation with social, economic and political factors"(96). Though early on Foucault employs the classic analysis of power as a repressive force, he later develops his own analysis to show how power is also a productive force. In addition, contrary to the view of power as a thing that one may or may not possess, or power as *imperium*, Foucault redefines power as a set of relations, stating explicitly that "power is relations; power is not a thing" (FL: 410). He contrasts it to the sovereign model of power. An explanation might be found in the original French words for power, *pouvoir* and *puissance*. Foucault's conception of power can be said to be closer to the sense of *pouvoir*, which is a verb, while traditional sovereign power or that which is vested in an authority is closer to *puissance*, a noun.[5] Foucault also contrasts it to the "model of Leviathan… whose body is made up of citizens but whose soul is sovereignty" (SMD: 34). According to Foucault, around the seventeenth and eighteenth centuries there appeared new mechanisms of power that focused on bodies and their product or on labor, rather than on land and agricultural produce as was the case earlier.

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[5] For a well articulated difference between *pouvoir* and *puissance* from a philosophical perspective see Hegy (1974).

Foucault also distances himself from the Hegelian model of power within the master-slave dialectic where power's function is to prohibit, prevent, and isolate (AN: 51). Foucault points out the limitations in Marxist analyses of power as well, where what is of primary concern is not relations of power but relations of production in terms of economic interests which is not the same as power; 'power' in such analysis is "relatively marginalized or… simplified" (FL: 410). In Foucault's words,

> power is not to be taken to be a phenomenon of one individual's consolidated and homogeneous domination over others, or that of one group or class over others [recall how Marx would say it's a struggle between classes]…power…is not that which makes the difference between those who exclusively possess and retain it and those who do not have it and submit to it. Power must be analyzed as something which circulates, or rather, as something which only functions in the form of a chain." (P/K: 98)

We should be careful about the word 'individual' as well. For Foucault, an individual is an effect of power, a subject of relations of power, not an autonomous agent. An articulation of this notion can be found in Nietzsche, whose insight of there being no doer behind the deed shifts the emphasis from agency to a play of forces.[6] In Foucault's words, "the subject is not one but split, not sovereign but dependent, not an absolute origin but a function ceaselessly modified" (FL 67).

The chain that Foucault refers to in the above quote is the network of relations, among parents and children, teachers and students, patients and doctors, and so on. We must note that power is not an additional dimension that is added on to the relation, but is immanent in the relation itself. As Foucault states, "relations of power are not in a

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[6] Nietzsche states: "A quantum of force is equivalent to a quantum of drive, will, effect more, it is nothing other than this very driving, willing, effecting, and only owing to the seduction of language … which conceives and misconceives all effects as conditioned by something that causes effects, by a 'subject,' can it appear otherwise. … But there is no such substratum; there is no 'being' behind doing, effecting, becoming; 'the doer' is merely a fiction added to the deed." (1989: 45)

position of exteriority with respect to other types of relationships (economic processes, knowledge relationships, sexual relations), but are immanent in the latter" (HS: 94).

Thus, if we are to understand the relation between patient and psychiatrist in Foucauldian terms, we cannot simply speak in terms of the latter having power over the former. An example from Foucault's own work may clarify this point. While in his earlier works related to medicine there was the negative view of power, in later works like the *History of Sexuality* Foucault shows that the relation between the psychiatrist and the patient is not exactly the antithetical model of the former 'having power over' the latter. Rather, there are "*perpetual spirals of power and pleasure*" (HS: 45, emphasis in the original). As sexuality became an object of study under the medical or more accurately psychiatric gaze, the confessions of the patient "renewed the questioner's curiosity" (44) while "so many pressing questions singularized the pleasures felt by the one who had to reply" (45). Power and pleasure added to each other in the doctor-patient relationship since "pleasure spread to the power that harried it; power anchored the pleasure it uncovered" (45). Foucault shows that this is true of all confessions, and true in the context of an array of spaces like the home, the school, or the clinic.

Instead of a top down or center to periphery model of power it is thus more useful to visualize it in the form of capillaries. In Foucault's words:

> In thinking of the mechanisms of power, I am thinking rather of its capillary form of existence, the point where power reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives. (P/K: 39)

Thus power is intimately connected with our lives, being embedded within certain networks of relations. Just as there is no central point, neither are the capillaries ever

reified; instead they are constantly moving, arising and dying out at certain locations at

different times, hence unstable. Foucault asserts that

> Power's condition of possibility… must not be sought in the primary existence of a central point… it is the moving substrate of force relations which, by virtue of their inequality, constantly engender states of power, but the latter are always local and unstable. (HS: 93)

Power can thus be better conceptualized as certain effects that are mostly transitory,

operating within every relationship, and not located or centralized.

What then about those figures of authority who do seem to *have power over*

others? For Foucault, the answer to this question lies in the different relative positions

and in the fact that both the person who is exercising power and the person on whom it is

exercised are subjected to the same technologies of power:

> One doesn't have here a power which is wholly in the hands of one person who can exercise it alone and totally over others. It's a machine in which everyone is caught, those who exercise power just as much as those over whom it is exercised. …Power is no longer substantially identified with an individual who possesses or exercises it by right of birth; it becomes a machinery that no one owns. Certainly everyone doesn't occupy the same position; certain positions preponderate and permit an effect of supremacy to be produced. (P/K: 156)

Thus, as Foucault clarifies, even though power is not a thing someone can possess,

different relative positions can produce differential effects of power. According to

Foucault, institutions that seem to exercise a certain kind of power over us "are only the

terminal forms that power takes," and in general, diffuse relations of power get

crystallized "in the state apparatus, in the formulation of the law, in the various social

hegemonies" (HS: 92-3). However, it is also true that power is usually most visible to us

in the form of the legal or state apparatuses. Foucault claims that the reason for this is that

power hides itself otherwise. The legal and state "rituals" are visible while "the deployments of power [are] reduced simply to the procedure of the law of interdiction," the effects of power working behind masks (HS: 86). Foucault offers a "general and tactical reason for this that seems self-evident: power is tolerable only on condition that it mask a substantial part of itself" (HS: 86). There is a necessary secrecy involved in the operations of power, and indeed, in the appearance of sexuality as something secret, our attention is drawn away from the various mechanisms of power that undergird it.

I should also point out that by differentiating his conception of power from the sovereign model of power, Foucault does not imply that it is "derivative or in some sense illusory phenomena" (Gordon 2000: xxv). Foucault's emphasis lies elsewhere, to show the new forms or modes of relations of power that can no longer be explained only by the previously existing sovereign model of power. The relation between the patient and the psychiatrist is one such example. Foucault identifies the

> new methods of power whose operation is not ensured by right but by technique, not by law but by normalization, not by punishment but by control, methods that are employed on all levels and in forms that go beyond the state and its apparatus. (HS: 89)

Foucault wants to show how "power 'comes from below,' that is, that global and hierarchical structures of domination within a society depend on and operate through more local, low-level, 'capillary' circuits of power relationship" (Gordon 2000: xxiv-v). Foucault's Nietzschean influence is most obvious at this point. From the earlier archaeological analysis, Foucault shifts into a more genealogical analysis, dealing with archives as well as non-discursive practices, including "institutions, political events, economic practices and processes" (AK: 162). Instead of a grand sovereign imposing

power from above, Foucault is interested in the "local, low-level" circuits of power, evoking Nietzsche's "*pudenda origo*," that signifies "complex, mundane, inglorious origins" (Gutting 2003: Section 3.2).

Instead of focusing on sovereign power, Foucault traces the appearance of "disciplinary power" which is based on surveillance and has a new economy inscribed within it, moving away from the "absolute expenditure of [sovereign] power" to that which entails "minimum expenditure and maximum efficiency" (SMD: 36). Such an economy of power evokes the notions of self-discipline and self-governance as we shall see later.

Not only does Foucault draw our attention to the limitations of the sovereign model of power, he rejects the juridical model as well since the latter is closely linked to the former. Furthermore, the juridical model "presupposes that the individual is a subject with natural rights or primitive powers; … and finally, it makes the law the basic manifestation of power" (SMD: 265). However, this assumes the existence of an autonomous individual which Foucault shows to be a problematic notion. Therefore, according to Foucault, we should study power "in terms of technology, in terms of tactics and strategy (FL: 207) instead of considering it within the framework of law.

The "Panopticon" that Foucault describes in *Discipline and Punish* is a good example of diffused, agency-less power. The pan-opticon literally refers to the "gaze" that is all encompassing, under which everything is made visible. The Panopticon was conceived by Jeremy Bentham, a philosopher and social reformer of the late eighteenth century, as a mechanism of observation in prisons. The plan included a central tower in a courtyard surrounded by prison cells. Each cell was visible from the tower and thus a

guard standing in the central tower could easily observe each inmate. However, inmates could not see each other, and neither could they see if there was actually a guard in the tower because of the lighting arrangement. As a result, prisoners always felt the gaze on them, regardless of someone actually being in the tower. The disciplinary gaze was thus internalized and power operated without there being a physical locus in the form of a guard.

It is interesting to note that the panoptic itself was never constructed; however, the phenomenon of panopticism can be found in almost all aspects of society. As Foucault elaborates, surveillance is not only confined to prisons – it also operates in schools, factories, hospitals, workshops, army barracks, and myriad other spaces. While earlier power was visible and tangible, in the form of the sovereign king, we now have disciplinary societies where power is invisible but its effects are felt on every one. Under such panopticism,

> There is no need for weapons, physical violence, material constraints. Just a gaze. An inspecting gaze, a gaze which each person feeling its weight will end up by interiorising to the point of observing himself; thus each person will exercise this surveillance over and against himself. (Foucault cited in Farrell 2004: 104)

We can argue that for the invisible gaze to be effective, it has to be supported by visible physical constraints as well, especially in the context of the prison. In other words, only the "inspecting gaze" may not be enough. Foucault does not address this issue adequately, preferring to emphasize only how the principle of the panopticon is more prevalent in our societies, in sharp contrast to the extremely violent and highly visible modes of punishment that were exercised in earlier times. Also, for Foucault, the power

that is wielded by the use of weapons is not exercised within relations of power but through relations of violence.[7]

While we may thus comprehend how Foucault distances his analysis of power from the sovereign model – whether we agree with it or not – another problem still remains: that of understanding the prohibitions that exist in actuality. For Foucault, prohibitions are just one of the multiple possible effects of power. What is important to realize is that "the interdiction, the refusal, the prohibition, far from being essential forms of power, are only its limits: the frustrated or extreme forms of power. The relations of power are, above all, productive" (FL: 220). And Foucault considers this analysis of "effects of power and the production of 'truth' " to be his primary project. Foucault explicates that power relations

> do not simply play a facilitating or obstructing role with respect to knowledge; they do not merely encourage or stimulate it, distort or restrict it; … so the problem is not just to determine how power subordinates knowledge and makes it serve its ends or how it superimposes itself on it, imposing ideological contents and limitations. No knowledge is formed without a system of communication, registration, accumulation, and displacement that is in itself a form of power, linked in its existence and its functioning to other forms of power. No power, on the other hand, is exercised without the extraction, appropriation, distribution, or restraint of a knowledge. At this level there is not knowledge [*connaissance*] on one side and society on the other, or science and the state, but the basic forms of "power-knowledge" ["*pouvoir-savoir*"]. (EW1: 17)

In other words, power and knowledge work together, supporting and drawing from each other. To put it differently, "Foucault's view is that mechanisms of power produce

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[7] See for example Foucault's (1982) discussion of slavery in 'Subject and Power.' Foucault states, "slavery is not a power relationship when man is in chains. (In this case, it is a question of a physical relationship of constraint.)" (SP: 221).

  Of course Foucault can be criticized on this, and Agamben (1998) does criticize him in this context. But at the present moment, for the purpose of my analysis I would like to remain within the Foucauldian framework, simply because any violent exercise of power is not really relevant in my biopolitical analysis, as will become clear later.

different types of knowledge aimed at investigating and collecting information on people's activities and existence. The knowledge gathered in this way further reinforces exercises of power" (Farrell 2005: 101). To explain further, we can understand it very simply as that observation or study of something gives us knowledge about the object, that in turn can be used to control the object and subject it to power, and this exercise of power in turn can lead to greater knowledge of the subject.

The focus on children's sexuality around the nineteenth century clearly illustrates this point:

> [a]t the crossroads of body and soul, of health and morality, of education and training, children's sexuality became at the same time a target and an instrument of power. A specific "children's sexuality" was established: it was precarious, dangerous, to be watched over constantly. (FL: 216)

Thus teachers and parents, doctors and administrators became the guardians of children's sexuality, preventing or attempting to prevent the child's moral and physical degeneracy that was supposed to be a consequence of childhood masturbation. However, Foucault demonstrates that the objective of such vigilance was not merely prohibitive. Instead, the objective "was to constitute, through childhood sexuality suddenly become important and mysterious, a network of power over children" (FL: 216). In other words, the enormous amount of surveillance and control that went into it can be interpreted as power gaining a foothold in the local, low-level domain that we discussed earlier. It can be viewed as an advance of the mechanism of power, a mechanism that would pave the way for ubiquitous and intense observation and administration later on. Foucault states,

> the extraordinary effort that went into the task that was bound to fail leads one to suspect that what was demanded of it was to persevere… relying on this support,

power advanced, multiplied its relays and its effects… all around the child, indefinite *lines of penetration* were disposed. (HS: 42, emphasis in the original)

This deployment of lines of penetration is one of the primary operations of power that Foucault identifies. And according to Foucault, it is the sexuality of the adults that is ultimately called into question by the intense focus on child sexuality. Thus we see the intensification of the power/knowledge circuit and the production of objects of study. Next I will turn our attention to the main focus of my thesis: the question of biopower.

The Rise of Biopolitics

According to Foucault, through an emphasis on medicine and an intense focus on the body and sexuality came the state level apparatus that made life its primary concern. Foucault contrasts it to the earlier periods where the monarch had power over death. Now it was life that was the locus of interest. The sovereign's "'power of life and death' was in reality the right to *take* life or *let* live" (HS: 136). However, as the mechanisms of power underwent transformation, "life-administering power" came to replace the sovereign's power over death. We now had a different kind of power,

> whose highest function was perhaps no longer to kill, but to invest life through and through. … the old power of death that symbolized sovereign power was now carefully supplanted by the administration of bodies and the *calculated management of life*. (HS: 139-40, emphasis added).

What exactly does this "calculated management of life" imply? At one level, it refers to the "numerous and diverse techniques for achieving the subjugation of bodies and the control of populations" or what Foucault refers to as "bio-power" (HS: 140). In a larger context, this "power to *foster* life or *disallow* it to the point of death" (HS: 138) has

implications that reach out in many directions and involve numerous issues such as birth

control and euthanasia. Foucault states,

> As soon as power gave itself the function of administering life, its reason for
> being and the logic of its exercise…made it more and more difficult to apply the
> death penalty. How could power exercise its highest prerogatives by putting
> people to death, when its main role was to ensure, sustain, and multiply life, to put
> this life in order? (HS: 138)

I now examine more closely this important role of power "to ensure, sustain, and multiply

life."

This focus on life was not only due to a change in the attitudes of the bourgeoisie,

but also shaped by the developments taking place in the fields of medicine and

agriculture. As Foucault points out, in earlier times there was always a strong "pressure

exerted by the biological on the historical" in the form of epidemics or famines – in

general, there always was the threat of death (HS: 142). However, developments during

the eighteenth century in economic and agricultural productivity and resources that

outstripped population growth finally "allowed a measure of relief from these profound

threats." And,

> In the space for movement thus conquered, and broadening and organizing that
> space, methods of power and knowledge assumed responsibility for the life
> processes and undertook to control and modify them. (142)

> It was the taking charge of life, more than the threat of death, that gave power its
> access to the body. (143)

And ultimately, "power and knowledge assumed responsibility for the life processes" in

order to maximize or optimize life. Various interventions modified or regulated the

population at an optimal level, drawing from the discourses of statistics and demography,

which in turn led to intensified studies of the entire population. The biopolitical

mechanisms included statistical estimates and forecasts that were used to modify the

necessary variables at the level of populations:

> The mortality rate has to be modified or lowered; life expectancy has to be increased; the birth rate has to be stimulated. And most important of all, regulatory mechanisms must be established to establish an equilibrium, maintain an average, establish a sort of homeostasis, and compensate for variations within this general population and its aleatory field. In a word, security mechanisms have to be installed around the random element inherent in a population of living beings so as to optimize a state of life. (SMD: 246)

How does this management of life play out in actuality? There are only too many

examples – such as immunization policies or those affecting birth rates – that support

Foucault's thesis on this point.

Foucault observes that "a power whose task is to take charge of life needs

continuous regulatory and corrective mechanisms" (HS: 144). Such mechanisms call for

a "judicial institution [that] is increasingly incorporated into a continuum of apparatuses

(medical, administrative, and so on)" that regulate life. This continuum of apparatuses

and institutions was highly evident in the recent case of Theresa (Terri) Schiavo of

Florida, a 41-year-old brain-damaged woman. Though she had been brain dead for fifteen

years, there was a bitter and prolonged feud between her husband and her parents over

her right-to-life as opposed to her right-to-end-life. As John Parry (2005), a legal scholar,

comments, "the questions of whether Schiavo was already 'dead,' or as good as dead, or

whether, if she was still 'alive,' her life was worth living, were debated around the

country" (874). In the legal battle that ensued, numerous doctors – the medical "experts"

with the right to speak – testified about Schiavo's health condition. The entire legal,

administrative and state machinery was involved, right from the lower courts to the

Supreme Court, through to the passing of a relevant Bill in Congress, and the President's signing it into a law.

Further, Parry (2005) analyzes certain court cases dealing with the issue of legislating marijuana use for pain relief as well as end of life decisions employing the Foucauldian biopolitical framework. Mentioning the Schiavo case, he states that the point is not whether she "had already died in some obvious and objective sense," precisely because "if death is subject to regulation, then so too is the definition of death itself" (875n).[8]

Though this is not a criminal case, we can see the play of Foucault's "juridico-medical discourse" that ultimately decided Terri's fate. "After her injury, she could only exist—and could only die—within a matrix of pervasive and invasive legal and medical regulation" (Parry 2005: 874). We can also relate this case to Foucault's comments on the death of the Spanish dictator Francisco Franco in the context of his lectures on biopolitics:

> Thanks to a power that is not simply scientific prowess, but the actual exercise of the political biopower established in the eighteenth century, we have become so good at keeping people alive that we've succeeded in keeping them alive when, in biological terms, they should have been dead long ago. [… Franco] fell under the influence of a power that managed life so well, that took so little heed of death, and he didn't even realize that he was dead and was being kept alive after his death. (SMD: 248-49).

The parallel is interesting to note. Terri was "a woman who suffered a heart attack 15 years ago, who essentially died but was resuscitated, though not entirely"[9] and it is solely

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[8] See Kaufman and Morgan (2005) for a detailed discussion of how the distinction between life and death is reworked in legal and medical discourses.
[9] Matt Conigliaro (no date) *Abstract Appeal: The Terri Schiavo Information Page*
Retrieved on September16, 2006 from <http://abstractappeal.com/schiavo/infopage.html>

medical technology that kept her alive all these years. After considering the doctors'

reports that there was no hope of recovery, and without intending to be cynical, one can

perhaps say that in the enormous legal and state apparatus that went into high gear to

'save' Terri's life is reflected Foucault's words that "death is power's limit, the moment

that escapes it; death becomes the most secret aspect of existence, the most "private"

(HS: 138) and thus we try to avert it by whatever means necessary.

To conclude my explication of the Foucauldian framework, we saw that around

the seventeenth and eighteenth centuries there emerged multiple discourses around the

body. The will to knowledge made sexuality an object of intense observation and study.

Various truths were produced within the discourses which made possible the control and

regulation of individuals, 'individuals' being the vehicle for the exercise of power,

subjects of relations of power. The mechanisms of power were unlike sovereign power,

which through the techniques of surveillance of bodies exercised control and modified

their actions, giving rise to what Foucault calls disciplinary power. Foucault then traces

another development: through the growth of modern medicine, it was now possible to

regulate the population in order to maximize life itself. Techniques for maximizing life

worked through the dense networks of power-knowledge around the body, giving rise to

biopolitics.

We also considered the case of Terri Schiavo where there was an intense battle to

prolong 'life,' involving a range of juridical and medical apparatus, and where death

itself could not be defined, could not be determined except within the biopolitical

framework. But ultimately it is life itself that is the primary focus of biopolitics. The case

of Melissa Ann Rowland, as we shall see, is exemplary of biopolitics. But before we

analyze this particular case, in the next chapter I will briefly review some of the existing

literature that employ a Foucauldian framework to analyze events and developments in

discourses surrounding health, clinical practices, and reproduction.

CHAPTER 2

THE MEDICALIZATION OF MATERNITY

Foucault mentioned more than once that he intended his theorization to be applied or utilized, and not just to be read. In Foucault's words,

> I would like my books to be a kind of tool box which others can rummage through to find a tool which they can use however they wish in their own area … I would like [my work] to be useful to an educator, a warden, a magistrate, a conscientious objector. I don't write for an audience, I write for users, not readers. (Foucault 1974: 523-4)

Thus what Foucault emphasizes was the active use of his work for analysis. Even if we are not simply an 'audience,' our interaction with theory, especially philosophical work, remains mostly at the level of "conventional scholarly practices of commentary, exegesis, interpretation and criticism;" however, keeping in mind Foucault's words above, to use them as 'tool box' might be a "more fruitful and interesting way of approaching [Foucault's] texts" (Dean 1996: 209). And there exists a large body of work that uses the specific tool box of biopolitics. I shall look at a sampling of this literature that relates to a biopolitical analysis of social reality.

As we saw in the previous chapter, issues of life and death are now included in political thinking. Also included under such 'biopolitics' are all issues that fall within the spectrum of life and death and relate to humans as living bodies. In the existing literature, some of the major focus areas subjected to biopolitical analysis have been those of

reproduction, medicine, health and hygiene.[10] While these are some obvious areas of study, there are also studies that use biopolitics to study crime-related issues – representing a shift from the framework of discipline and punishment – and I include one of these to show just how prevalent the use of Foucauldian biopolitical lens is, and also how widespread the regulation of our lives are.

The analysis of crime prevention in Denmark by Christian Borch (2005) is one such example. While previously eugenic measures had been undertaken to reduce the perceived antisocial population through the regulation of reproduction,[11] Borch describes how crime prevention tactics now target schools and communities to intervene "early enough… and efficiently" (97). Government recommendations encompass all aspects of living in the neighborhood from "glass facades" to decorated staircases to many others in order to discourage crimes. And the local population is viewed as "[taking] on the identity of (actual or potential) crime victims" (99) that changes almost everything from "our health, our identities, the way we live, the number of storeys in dwelling areas, the pitches of roofs, the way we move, how and to what extent we interact, the relations to our neighbours and to the local environment (community) in general, the way we play, etc., etc." (102). Borch argues that such intense focus on nearly every dimension of daily life is a reflection of "totalitarian biopolitics."

Just as there is an all-encompassing nature to the preventive strategies outlined above, there are similar techniques at work in the world of professional athletes to control the problem of drug use. As Park (2005) argues, there is a "global culture of surveillance"

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[10] See for example Armstrong (2005) and Elbe (2004) who discuss cancer and AIDs respectively employing a Foucauldian lens.

[11] as happened for instance in Sweden; see my discussion of Rose (2001) below.

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in the context of "governing doped bodies" (175). Park suggests that the "governance of the health of the social body in the form of sport is a prime instance of the arts of government" (177). He shows how The World Anti-Doping Agency regulates the activities of the athletes, including the conduct of "unannounced, out-of-competition testing among elite athletes" in the name of maintaining their health and promoting ethics in sports (179). Park attempts to understand the problem in terms of a Foucauldian analytics of governmentality that has "the strategic management of the population as [its] ultimate end" (175). Thus it is not a biopolitical analysis as such that Park undertakes, but rather one based on the closely related Foucauldian notion of governmentality.

While biopolitics implies the technologies for managing populations including life and reproduction, governmentality might be defined as the management of populations through the triple axes of health, security and wealth. According to Foucault, the art of government calls for the addition of the "competitive state (economically and militarily)" to the principle of a welfare state (EW1: 70). However, Foucault uses the term governmentality in a very general manner, where it almost becomes an umbrella term that includes how the "conduct of individuals or of groups might be directed: the government of children, of souls, of communities, of families, of the sick" (EW3: 221). We can thus conclude that the concept of biopolitics falls within the broader general framework of governmentality.

Moreover, As Lemke (2001: 191) clarifies, the term governmentality connects the idea of "governing ('*gouverner*') and modes of thought ('*mentalité*')" or political rationality. In other words, the term 'governmentality' highlights the workings of a rationality or a justification for the exercise of power. On the one hand, subjects are

supposed to be free, but on the other hand, there are increasing tendencies to monitor and regulate the actions of Foucauldian subjects. Thus, intervention by the government is possible or allowable on the basis of an economy of governance, as Foucault specifies, and this operates with maximum efficiency in the regime of liberalism. According to Foucault, the most efficient and economical strategies of governance arise in the form of self governance.

This governing of the self is most clearly brought out in a study by David McGillivray (2005), who explores the problems of health, especially wellness, in terms of governmentality. Within the particular domain of the workplace, McGillivray describes the recent developments that introduce techniques of wellness to produce "fitter, happier, [and] more productive" bodies (125). Corporate "wellness initiatives" include "material resources (e.g. gyms)" (132) as well as encouraging general lifestyle changes. McGillivray points out that "discourses of health promotion, focused on both societal regulation (i.e. alleviating major health risks) and self-surveillance (i.e. individual responsibility for health maintenance) represent the perfect bedfellow for employers concerned with minimizing the burden of employee healthcare costs" (131-2). The objective of the organizational initiatives relating to wellness is to urge the subjects "to govern their own productive capacities" (125), echoing Foucault's notion of governmentality where one governs oneself in addition to being governed by others. McGillivray thus moves away from a positivistic or functionalist approach to the issue of workplace health promotion and employs the framework of governmentality.

Let us now review the literature that relates to reproduction in general and pregnancy in particular.

The Regulation of Reproduction

The older project of eugenics, and more recently, the human genome project have been analyzed from the biopolitical perspective by Nikolas Rose (2001). Rose identifies eugenics as one of the two major strategies of twentieth century "state-sponsored" biopolitics, the other being hygienic strategies that linked state level health concerns to the individual modes of action. While hygienic strategies were aimed at improving health through town-planning, or through instilling 'good habits' at home and at schools, eugenic strategies focused on the site of reproduction.

Rose describes the "pastoral eugenics" that was undertaken in Sweden from 1935 to 1975 as an example. The program covered a total of 62,000 women, most of them coerced into it; the objective of the program being to reduce the family-size "of those with a history of anti-social behavior." Those women who were seen as "anti-social, sexually active and without good judgement" (23n) were sterilized involuntarily under this program. It is interesting to compare these characteristics to Foucault's description of the moral monster who has both unnatural and criminal traits in him/her (AN: 81). The person is viewed as a pervert and exists at the margins of society. Foucault shows that eugenics as a "medical theory which was scientifically lacking and improperly moralistic" (HS: 118) justified the regulation of a population in the name of "biological responsibility" to the species. It was believed that "sexual perversion resulted in the depletion of one's line of descent" (HS: 118) and thus through eugenic techniques, the risk of potential future afflictions had to be minimized.

Rose (2001) points out that while the Swedish program of sterilization is a particular example of "negative eugenic measure" (4), there are "positive eugenic

measures" like policy incentives and family allowances as well. Nevertheless, the

regulatory technologies are clearly evident in both. Rose also introduces the notion of

"ethopolitics" within biopolitics, which as he explains are

> the self-techniques by which human beings should judge themselves and act upon
> themselves to make themselves better than they are. … In advanced liberal
> democracies, biological identity becomes bound up with more general norms of
> enterprising, self-actualizing, *responsible personhood*. (Rose 2001: 19, emphasis
> added)

It is important to note the words "responsible personhood." In terms of reproduction and

pregnancy, we can relate this to the responsible mother who, as we witnessed in the

previous chapter, is responsible not only for her child's health but the health of the

population as well.

Rose's analysis highlights the ubiquity of biopolitics in contemporary society so

much so that in a way, it has become difficult to even think about certain issues outside

this frame of reference. He gives the examples of "natural foods" and "natural

childbirth." As Rose states, "even choosing not to intervene in living processes becomes

a kind of intervention… Our very ideas of what it is to be a normal human being have

been made possible by historically specific institutional and technical developments, not

least by biopolitics itself" (19). Childbirth is an especially significant site for biopolitical

techniques as it is the process that is central to the production of life – the main focus of

biopower. Thus we find dense networks of power-knowledge that keep a pregnant

woman under constant surveillance through various means. I shall now discuss four

studies that focus specifically on pregnancy.

Four Studies on Pregnancy

Lorna Weir (1996) undertakes a review of recent developments in the government of pregnancy. Weir identifies three axes of change within the discourse of pregnancy: the first relating to the fetus, another to antenatal risk management and the third to the liberal governance of pregnancy. Weir highlights that "the foetus does not exist in most jurisdictions as a legal person, but it is an object of government" (373). She argues that the "public foetus" is both an object and an effect of biomedical technologies. Through numerous medical examinations a variety of "physiological and pathological properties" are conferred upon the fetus.

Weir studies these developments through the Foucauldian lens and states that the "struggles to govern pregnancy consistently with patient autonomy/freedom" operate within the political rationality of liberalism (373). Weir's objective is to shift the feminist focus from medical technologies to the "means by which the conduct of pregnancy is organized" (375). She believes that the framework of liberalism can provide us with a more significant analysis of the continued medicalization and pathologization of women's bodies. Weir shows that just as the fetus is an object within biomedicine, the "pregnant body has become the subject" of various medical interventions (379). In other words, we can say the fetus is an object of knowledge while the pregnant woman is a subject of power; however, Weir herself does not connect her work explicitly to Foucault's notion of power-knowledge. A biopolitical analysis based on a Foucauldian understanding of power might give us a more powerful tool to understand the medical discourse of pregnancy and the role of the pregnant woman within it, as I will show in the next chapter. Moreover, Weir documents that until a few decades back, medical

knowledge of the foetus was mostly "mediated through the speech of pregnant women" (376) in sharp contrast to the present where various scientific discourses like "cytogenetics, biochemistry and molecular biology" provide us with the said knowledge. The implication of this development becomes clearer once we realize that "'truth' is [now] centered on the form of scientific discourse" (EW3: 131), within which the speech of a pregnant woman cannot be considered as a "serious speech act" (Dreyfus and Rabinow 1982: xxiv). However, Weir does provide us with a useful medical history of the subjectification of the fetus.

Lealle Ruhl's (1999) study focuses on the pregnant woman. Ruhl examines the various discourses around maternity including medical advice on diet, exercise, lifestyle and personal habits, as well as the popular advice manuals aimed at pregnant women. Ruhl brings into sharp focus the element of self-regulation and shows how the discourses serve to produce a "responsible" pregnant woman (95). From a Foucauldian standpoint, she asserts that the medical discourse of risk surrounding pregnancy hides certain "moral regulatory impulses" behind it, and also implicitly equates the notion of responsibility to "the capacity to behave rationally" (96). In other words, we can surmise that within the highly medicalized discourse of maternity, not taking "proper care" of oneself would imply that the pregnant woman is not quite rational. Melissa Ann Rowland's refusal to heed the doctor's advice and her abuse of drugs during pregnancy can then be interpreted as irrational and irresponsible acts which is exactly how the media framed it as we will find out in the next chapter.

Ruhl draws our attention to the significant fact that "the subject of risk reduction is not the pregnant woman; the effort here is not to reduce maternal risk during

pregnancy, but rather to reduce possible risks to the foetus due to maternal behaviour" (95). Ruhl associates this development to the "proliferation of [medical] technologies" that makes it possible for us to "see (metaphorically and literally) the foetus as a distinct being, vulnerable and dependent, yes, but separate from the mother" (113). According to her, this perception has led to a specific concern for the fetus that was not as prevalent earlier. Ruhl asserts that this concern surfaces in an extreme form in the "medical discussions of the 'advantages' … of caesarian sections over vaginal delivery" (113). In other words, a caesarian section is considered beneficial for the welfare of the fetus; the fetus becoming a distinct subject of study as a result of advanced diagnostic technologies.

Ilpo Helén (2004) takes up this strand of advanced medical technology and shows how it affects antenatal care, especially in the context of selective abortion. She analyses abortion as an illustration of "vital politics" – the new form of biopolitics that Rose (2001) introduces. For Rose, vital politics operates at the molecular level through the apparatuses of biotechnology (20-22). Helén contends that there is an "ethical split" in the care of the fetus: the reproductive health care system has a "technical responsibility" in diagnosing the fetal health while the pregnant woman is given the "ethical responsibility" of deciding whether or not to have an abortion in case a pathology is discovered (2004: 37).

According to Helén, the medical discourse around pregnancy has shifted to "dispersed practices of constant monitoring and *modulation*" from the earlier disciplinary mode of "corrective and normalizing interventions" (30, emphasis in the original). By modulation, she refers to the "moulding of living conditions" through the management of risks and uncertainties. Risk minimization has a large role to play which

works through predictive diagnostic techniques. Helén shows that advanced genetic or molecular technologies have shifted the medical focus to "specific *molecular* elements that are considered biologically fundamental" (34, emphasis in the original). In this "geneticized" discourse of pregnancy, the pregnant woman becomes the peculiar subject who is provided with a choice, "and is also compelled" to exercise that choice (38). Invoking Rose (2001), we can say that in such cases even "non-intervention" becomes a kind of intervention. While such developments in biotechnology impose a certain responsibility on the pregnant woman, the question of drug use during pregnancy also relates to the concept of responsible motherhood.

Roe Sybylla (2001) examines the issue of pregnant drug users and critiques the liberal-humanist approach to the problem. She advocates a feminist perspective of ethical care drawing upon Foucault's understanding of freedom. Sybylla realizes the charged nature of the particular problem she has chosen, and given that, she correctly points out the necessity of questioning "what it is we take for granted at the most fundamental levels" (69). Sybylla situates her critique against a particular analysis of pregnant drug users by Iris Marion Young which she problematizes as liberal-humanistic. As Sybylla points out, the liberal discourse reverts back to "the status quo [by accepting at a fundamental level] the state's right to intervene" (69). The question is only of deciding on the ethical form of intervention, while intervention itself "as a part of modern rationality" is not challenged. Thus Sybylla emphasizes the need to "interrogate the conceptual framework" that formulates the question of ethics (71). Yet, while Sybylla accuses Young of discounting "the incisive points of Foucault's analysis" (69), she herself strays

dangerously close to doing the same. An example will clarify my point. Considering the

notion of "human," Sybylla states:

> To define what humans are and to prescribe what they should aim to be and do….is
> unsatisfactory to thinkers of many different persuasions. However, my objection goes
> further: it is to the very notion of defining human beings in this essential and
> ahistorical way. (71-2)

Thus Sybylla seems to go towards a Foucauldian understanding of "human," but without

developing this line of thought any further, she falls back into a certain kind of

humanism. Continuing from the above quote, Sybylla expresses her objection to such

essential and ahistorical definitions of humans by saying that

> Not only does this deny difference, but, because humans are complex and amazing
> beings, such efforts to define them closely inevitably diminish and limit their
> possibilities. (72)

Instead of a promised Foucauldian critique, we are thus left with a modified version of

liberal humanism. Ultimately, Sybylla's position appears to be more Levinasian than

Foucauldian as she calls for empathy toward pregnant drug users, empathy understood as

"a sensitive, intelligent, and responsive openness to what the other says" (73).

Thus we find that even though the above studies grapple with issues that are quite

similar to my problem – that is, to think differently about maternity and pregnant women

– and invoke Foucault to a lesser or greater extent, none of them explore the connection

between power and knowledge, preferring to remain with a critique of knowledge alone.

Yet as Foucault shows us,

> truth is a thing of this world: it is produced only by virtue of multiple forms of
> constraint. And it induces regular effects of power… 'Truth' is linked in a circular
> relation with systems of power that produce and sustain it, and to effects of power
> which it induces and which extend it–a 'regime' of truth. (EW3: 132).

If we are to carry out a Foucauldian analysis, we must understand this circularity of power and knowledge. And though the analyses above refer to governmentality, I argue that a biopolitical analysis is better suited to understanding the medicalization of maternity, since firstly, governmentality is too broad a concept to be useful as a "tool box," and secondly, power takes a back seat in this notion, according to Farrell (2005). Farrell comments that the "term [governmentality] mutates in [Foucault's] work into a discussion of freedom, truth and the subject, and ways of guiding one's own and others' conduct, leaving discussions of power behind" (107).

Lastly, let us consider some very particular developments in medical practices relating to pregnancy. In the context of the increasing focus on fetal welfare, Weir draws our attention to medical practices that include

> the forced obstetrical treatment of pregnant women, involuntary confinement of pregnant women regarded as engaging in behavior violating foetal health needs and the *maintenance of dead pregnant women* or women near death on life-support systems. (Weir 1996: 386, emphasis added)

Weir describes these practices as "violations" of the freedom conferred on pregnant women within the liberal regime. However, through the lens of a biopolitical analysis, we can understand the extreme practice of "maintaining" dead pregnant women as in keeping with the objective of maximizing life. It is no longer a matter of conferring freedom on pregnant women, rather in a biopolitical regime the pregnant women are nothing but "vehicles" for the exercise of power whose ultimate aim is to maximize life. The preservation of a fetus through whatever means can then be interpreted as one local strategy of biopolitics.

Let us therefore turn our attention to Melissa Ann Rowland whose case exemplifies Foucault's discussion of biopower and thus helps us understand how life itself is at the center of our current politics.

CHAPTER 3

THE MONSTER MOTHER

> The hysterization of women, which involved a thorough medicalization of their bodies and their sex, was carried out in the name of the responsibility they owed to the health of their children, the solidity of the family institution, and the safeguarding of society.
>
> (Foucault, *History of Sexuality*)

> The individual is not to be conceived as a sort of elementary nucleus, a primitive atom, a multiple and inert material on which power comes to fasten or against which it happens to strike, and in so doing subdues or crushes individuals. The individual is not the vis-à-vis of power; it is, I believe, one of its prime effects. In other words, individuals are the vehicles of power, not its points of application.
>
> (Foucault, *Power/Knowledge*, mod.)

Foucault, while discussing his analytics of power, included a "methodological precaution" that we should take up the study of power "at its extremities, in its final destinations, [at] those points where it becomes capillary… in its more regional and local forms and institutions;" rather than examine its central points or nodes (P/K: 96). In this chapter I undertake such an analysis of power at its very local mode of operation through a study of the case of Melissa Ann Rowland. Melissa was arrested over the death of the fetus she was carrying and was subsequently released on probation. My objective is to bring into focus the operations of power-knowledge that make Melissa into a subject of power through the objectification of her pregnancy in the medical discourse. Just as Foucault highlighted the "threefold question of truth: truth of fact, truth of opinion, and truth of science" (PR: 210) in his analysis of Rivière, I will now analyze Melissa's case from a similar perspective.

This, then, is the "truth of fact:" In January 2004, Melissa, a woman from Utah, was advised more than once by her doctor to have a caesarean section. However, Melissa delayed the operation. Later, one of the twins she was carrying was delivered stillborn. She was charged with criminal homicide and arrested in March 2004, and was finally acquitted on probation and recommended to a rehabilitation program on account of her "mental illness."

The "truth of opinion" is that Melissa refused the surgery because she did not want a scar, according to a nurse who had overheard her. Melissa denied this statement saying that she had already had two C-sections. The prosecutor accused her of "depraved indifference to human life." The public opinion around Melissa labeled her as "selfish, whimsical, disturbed, evil, mad, idiot, …." (Pollitt 2004)[12] closely echoing Pierre Riviere's reception after his parricide a hundred and fifty years back. Public opinion was fed by a "mug shot" of Melissa that was widely televised and was available on the Internet. As one reporter remarks, "the media has dutifully run photos of Rowland in a pinkish prison jumpsuit; hair splayed out in all directions [and under harsh lighting]...fulfilling any spectator's notion of what a mother with 'depraved indifference to human life' might look like." (Mickey Z 2004). The image can be found archived in an internet site under the classification "criminal/psychos."[13] This is an interesting characterization when seen in the light of the double portrait of Rivière – as a criminal or

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[12] I refer to various newspaper articles retrieved online for information on Rowland. Since most of the information I quote appear in several articles, I have not cited each specific reference. Instead I give a list of all the articles referred to under a separate section in References.

[13] www.mugshots.com/Criminal/ psychos/Melissa+Ann+Rowland.htm

as a madman. However, while there was a prolonged debate over Rivière's madness, public opinion easily labeled Melissa mad-criminal simultaneously.

The "truth of science" offers a lot of "expert" opinions. Melissa should have agreed to the surgery as soon as the doctors recommended it, since they are the experts. They are the "medicine men" and as Foucault mentions, this spectacular attention to life and to body was made possible in the first place by the development of medicine. Further, Foucault characterizes the contemporary liberal regime as where the exercise of power is most efficient. This operates through the governing of the self, though with the help of certain experts. In other words, there is "a [presupposition of the] willingness to turn to experts for advice in the decisions, both large and small, that are entailed in the conduct of the enterprise of one's life" (Rose and Miller 1994: 60). In such a context, Melissa's unwillingness to "turn to experts" is an instance of resistance to such subtle mechanisms of power that then sets in motion the not-so-subtle disciplinary techniques.

But then there are "truths" about Melissa herself, and it is worth showing the parallels with the Rivière case that Foucault describes, even though the crimes are not comparable. The psychiatrists in Pierre's case found it necessary to draw up an account of his entire life starting from his childhood continuing right up to his crime, making his life story an object of psychiatric study. There were a lot of "bizarre" behaviors narrated by witnesses (PR: 234).

In Melissa's case, we are told that her mother was retarded, that Melissa herself has a history of mental disturbance, that she was estranged from her family, that she was institutionalized at the age of 12, gave birth to twins at the age of 14, that she has suicidal tendencies and has attempted suicide twice. She has a history of substance abuse and

there are accusations of child abuse as well. We find here the perfect example of a "hysterical woman, " with "a pathology intrinsic" to her (HS: 104). The image of Melissa as a mad woman is confirmed over and over again through the circulation of her photograph as well as the circulation of discourse surrounding her. One newspaper article puts it in these words: "in the public eye, Rowland is a monster mother: sexual, selfish, whimsical." Thus she seems to be the epitome of the "new personage" discovered by psychiatry that Foucault describes – "then these new personages made their appearance: the nervous woman, the frigid wife, the indifferent mother – or worse, the mother beset by murderous obsessions" (HS: 110). We hear stories of how Melissa "punched" her daughter for having taken a candy bar at a store, we read reports of alcohol and drugs found in the blood of her newborn daughter, and hear rumors that she had already sold the twins to an adoption agency even before giving birth to them.

Thus Melissa's case strikingly illustrates one of the "great strategic unities which… formed specific mechanisms of knowledge and power centering on sex" (HS: 103), relating to the hysterization of the female body. In Melissa we find certain technologies of power-knowledge that make the female body a subject of power and an object of knowledge. As Foucault notes, the hysterical woman – being described as a body "thoroughly saturated with sexuality" – enters the discourse of medicine and psychiatry to be observed, studied, controlled, and subjected to medical intervention. Specifically, Melissa's subjectivity is highlighted in her role of a "Mother," which is "the most visible form of this hysterization" – the mother who has the "biologico-moral responsibility" to guarantee the life of the child as well as to guarantee the continuation of the social body (HS: 104).

Melissa's case is also interesting because it is in the medical, legal and public discourses surrounding her that we simultaneously find the features of criminality, abnormality, and danger. Melissa the subject is at once a mad monster mother. Foucault explains how in the disciplinary society, the technologies of discipline operate through the mechanism of normalization, not through the code of law. And normalization is a feature of the clinical discourse, not of the legal one.

In *Discipline and Punish*, Foucault traces the genealogy of the modern notion of a crime – which is no more a crime committed against the sovereign king, but against the society as a whole. The criminal is thus framed as an antisocial element, dangerous and monstrous. This development is also tied up to psychiatry's entry into the legal discourse. Foucault's finds that the modern criminal justice system has to constantly refer to "something other than itself," it has to be "redefined by knowledge" of the human sciences (DP: 22). This function gives rise to a new object of study, the criminal, and exercises its power differently from what is found in the juridical or sovereign system. As Foucault demonstrates, from the focus on the offense and the relevant penalty, the intervention of the psychiatric discourse into the criminal justice shifts the latter's focus to a third, as yet unconsidered aspect: the 'criminal.' At this point, the crime itself becomes unimportant, nothing more than "a shadow," a signaling event, that warns us about the existence of "a dangerous element," which is the only thing that is "now of importance, the criminal" (EW3: 178). And thereafter the consequent action does not deal with the conformity of the criminal to legal codes but rather measures the monstrosity or the abnormality of the criminal in terms of a deviation from the "norm." Hence arises the

need to reform and rehabilitate the criminal rather than punishing him/her to serve as an example for potential offenders.

In Melissa's case we find that both poles of the technologies of power, the disciplinary and the biopolitical, converge. As Foucault clarifies,

> [the biopolitical] technology of power does not exclude … disciplinary technology, but it does dovetail into it, integrate it, modify it to some extent, and above all, use it by sort of infiltrating it, embedding itself in existing disciplinary techniques…. Unlike discipline, which is addressed to bodies, the new nondisciplinary power is applied not to man-as-body but to the living man, to man-as-living-being; ultimately, if you like, to man-as-species. (SMD: 242)

Thus disciplinary technique is not replaced by biopower or biopolitics; rather biopolitics gets its support from the existing disciplinary technologies. In Melissa's case, on the one hand, there is the disciplinary or the "body-organism-discipline-institutions" pole as Foucault puts it that individualizes Melissa and serves to discipline her, giving rise to an "anatomo-politics of the human body" (SMD: 250). On the other hand, the prosecution's emphasis on her "depraved indifference to human life" brings out the hysterical mother who is the vehicle for the exercise of biopower. Her apparent indifference to life itself puts her in circulation within biopower or the "population-biological processes-regulatory mechanisms-State," that is the second pole of "biopolitics" (SMD: 250).

Related to the above is the implication of Melissa's action as "antinatural and irrational." According to Foucault, "the monstrous crime [...that is] both antinatural and irrational, is the meeting point of the medical demonstration that insanity is ultimately always dangerous" (EW3: 189). In Melissa's case, through repeated references to the problem of her drug abuse, her previous counts of child endangerment, and her suicidal

tendencies, this dangerous aspect is highlighted. Melissa is shown to be a danger to herself and her children.

Ultimately, it is Melissa's sentencing that exemplifies Foucault's analysis most clearly. While Melissa was initially charged with murder that carried five years to life imprisonment, she was actually sentenced to eighteen months' probation for lesser counts of child endangerment and was also ordered into a drug treatment program. In other words, we find two different responses to Melissa: one "expiatory" and the other "therapeutic" – which Foucault identifies as the two poles of society's response to "pathological criminality," (AN: 34). Again, what is important to note is the aspect of danger: if only a criminal, the expiatory response would suffice, and if only mad, then only the therapeutic would be called for. In Foucault's words, "this continuum with its therapeutic and judicial poles, this institutional mixture, is actually a response to danger" (AN: 34).

We should note that even though Melissa is not imprisoned, under both the poles of the technologies of power that we saw above there is a different kind of exercise of power and subjectification of her, as she is put under constant observation that is a different kind of surveillance. The "infinite lines of penetration of power" that we discussed in the first chapter is made visible in the case of Melissa through a Foucauldian biopolitical analysis. In the context of infantile sexuality, Foucault shows the formation of a complex apparatus around the child that is the "entire watch-crew of parents, nurses, servants, educators, and doctors, all attentive to the least manifestations of [the child's] sex" (HS: 98). Similarly, we now have around the pregnant woman the entire watch-crew of doctors, nurses, diagnosticians, police, judges, prosecutors, psychiatrists, social

workers and family members who are all attentive to her least "infractions." In the

modern disciplinary society, Melissa is thus subjected to what Foucault identifies as

"gentle punishment" through the "multiple mechanisms of 'incarceration'" (DP: 308).

Through a discussion of cases like Rivière and Rowland, we get a "glimpse into

the … psychiatrization of law, the medicalization of crime, and the therapeutization of

justice" as Szasz accurately states (Backcover of "*I Pierre Rivière having*

slaughtered…"). And all these converge under the "regulatory control" of biopolitics. As

Foucault demonstrates, biopolitics signifies

> the entry of life into history, that is, the entry of phenomena peculiar to the life of
> the human species into the order of knowledge and power, into the sphere of
> political techniques. (HS: 141-42)

Melissa's case exemplifies this subjectification of life through the apparatuses of power-

knowledge. The public discourse around Melissa was divided between those who

demonized her as the monster mother deserving punishment, and those who were

sympathetic toward her, reading her past as an outcome of social conditions of poverty,

absence of child support and other social factors, thus viewing her as someone in need of

treatment rather than punishment. However, in discussing her case here, my intention has

not been to portray Melissa in either a sympathetic or a condemning light. Rather, my

purpose has been to complicate the apparently obvious or "normal" ideas about the

relationships among medicine, criminality, maternity and the role of government so as to

critique the assumptions that frame the above two views of Melissa. My aim was to

foreground the numerous local, tactical and low level networks of power that constantly

operate around us, monitoring, regulating, and even producing us as subjects within particular discourses making us both the effects and the instruments of power-knowledge.

We found that the lines of penetration of power that Foucault identified seem to reach deeper and wider than ever before. The murder charges and subsequent media coverage took Melissa by surprise since her decision to delay an operation on her body seemed to be her "private business." Yet we should not be surprised by it once we have the theoretical tools to analyze the situation: it is death that is "most private," the most secret, and the "limit" of power. "Now it is over life, throughout its unfolding, that power establishes its dominion" (HS: 138).

CONCLUSION

Philosophy's question… is the question as to what we ourselves are. That is why contemporary philosophy is entirely political and entirely historical. It is the politics immanent in history and the history indispensable to policies.

(Foucault, *Telos*)

But, after all, this was the proper task of a history of thought, as against a history of behaviors or representations: to define the conditions in which human beings 'problematize' what they are, what they do, and the world in which they live.

(Foucault, *Uses of Pleasure*)

While the foregoing discussion has provided us with a Foucauldian analysis of biopower, now we have to consider the significance of such analysis. If networks of power are all around us, then what is the point of such analysis since it seems we cannot escape power? Before I can answer these questions, we might take a look at criticisms of Foucault's analysis that bring up similar questions.

One of the most common charges against Foucault is that he does not provide a normative theory in place of all that he critiques. Jurgen Habermas and Nancy Fraser criticize Foucault along these lines. For Fraser, Foucault's work raises questions that it is "structurally unequipped to answer" (Fraser 1989: 27) and I will address this charge below. Habermas finds Foucault to be contradictory, ambiguous, universalizing, and most of all, conflating the two notions of knowledge and power by the use of the term power-knowledge. Habermas states,

There is some unclarity, to begin with, regarding the problem of how discourses – scientific and non-scientific – are related to practices: whether one governs the other, whether their relationship is to be conceived as that of base to superstructure, or on

the model of a circular causality, or as an interplay of structure and event. (Habermas 1990: 243).

Thus Habermas attempts to attribute causality to Foucault's analysis. As Jason Cato (2002) points out, this "false" attribution of causality is due to a "misreading and misunderstanding of some of Foucault's most important insights and qualifications regarding power" (1). Cato clarifies that "Foucault does not want to implement power as an historical *deus ex machina*, nor does he intend his conception of power to extend beyond a particular domain" (3).

It is true that Foucault does not offer a "theory" of power, as he himself admits. However, in keeping with his genealogical project, Foucault is not interested in critiquing any particular model of power only to immediately replace it with his own model. Had he done so, he would have been contradicting his own critical undertaking. Thus to say that Foucault does not provide an alternative model or normative account cannot be a pertinent criticism of Foucault. As Paul Bové (2000: ix) points out,

> thinkers such as Habermas and Nancy Fraser [try] to oblige Foucault to answer questions about issues raised within the very systems of discourse that… come from the very "mind-set" [Foucault] was trying to critique.

While we can thus contest the criticism put forward by Habermas and Fraser, there does appear in Foucault's analysis a sense of all encompassing power, from which there seems to be no escape. And in addition to this, if individuals are nothing but subjects of power, then the notion of "woman" itself becomes problematic, as does the possibility of resistance. As Margaret McLaren (2004: 214) points out, for certain feminists there is thus no basis "for an emancipatory or libratory politics" in Foucault's work.

To address this issue adequately, we have to note what Foucault himself says about the possibility of resistance and freedom. As we have already seen, power is not a thing but relations, and thus there are only "local and unstable" effects of power (HS: 93). The force relations that "engender states of power" (HS: 93) also can give rise to points of resistance.

> Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power…the strictly relational character of power relationships. . . . depends on a multiplicity of points of resistance: these play the role of adversary, target, support, or handle in power relations. These points of resistance are present everywhere in the power network. (HS: 95)

Power is thus not a totalizing or universalizing force. Though one cannot stand outside the network of power, there is the possibility of a "local critique" (Cato 2002: 11).

And most importantly, as "power is tolerable only on condition that it mask a substantial part of itself" (HS: 86), unmasking the workings of power-knowledge leads to the possibilities of desubjectification, of a resistance to power. If the mechanisms of power are made visible, power loses much of its hold on us. There occurs a demystification. And within the network of power relations Foucault identifies a "field of possibilities" that are available to us. For Foucault, power is

> exercised only over free subjects… subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realized. Where the determining factors saturate the whole there is no relationship of power. … consequently there is no face to face confrontation of power and freedom… [but] freedom may well appear as the condition for the exercise of power. (SP: 221)

Thus at the very core of power relations "are the recalcitrance of the will and the intransigence of freedom" (SP: 221-2), opening up for us avenues of resistance.

57

However, we must note that this resistance is not the kind of revolutionary struggle that Marx imagines. For Foucault, there is no "locus of great Refusal" but only the "plurality of resistances, each of them a special case" (HS: 96). They can be possible or improbable, necessary or spontaneous or even those resistances that are "quick to compromise" (HS: 96). Neither is resistance passive or reactionary.

As a feminist, McLaren finds Foucault's genealogical work a valuable resource for feminist politics (2004: 215). She reads resistance as a "form of situated social criticism" (218) and interprets freedom as the constitution of new forms of subjectivity. Understanding the processes of subjectification as the operations of institutions and practices makes possible the constitutions of different subjectivities. Further, Dreyfus and Rabinow highlight the liberatory aspect in Foucault's work on biopower most clearly. According to them,

> when [Foucault] shows that the practices of our culture have produced both objectification and subjectification, *he has already loosened the grip*, the seeming naturalness and necessity these practices have. The force of bio-power lies in defining reality as well as producing it… Through interpretive analytics, Foucault has been able to reveal the concrete, material mechanisms which have been producing this reality, while he describes with minute detail the transparent masks behind which these mechanisms are hidden. (1982: 203, emphasis mine)

In other words, all that we usually take as normal or necessary can be seen through the Foucauldian lens as accidental play of forces, thus releasing the hold they have on us as reified or totalizing forces.

In the sovereign or the related juridical model of power, the possibility of resistance is minimized from the beginning. One either "has" power or does not. One is either the oppressor or the oppressed. In contrast to this, a Foucauldian understanding of

power already loosens these binary relations. Within the capillary networks of power, one can simultaneously undergo and exercise resistance as well as power. As Foucault says, "as soon as one can no longer think things as one formerly thought them, transformation becomes both very urgent, very difficult, and quite possible" (1988: 155).

Through the Foucauldian interpretation of the case of Melissa Ann Rowland, I attempted to unmask the not-so-visible techniques of biopolitics that produce the pregnant woman as a subject of power. The unmasking makes it possible to think differently which is a primary task of philosophy. Specifically, such a critique helps in reformulating the problem as one of subjectivation. Secondly, my analysis provides a way of thinking about such problems without referring to the problematic notion of rights: one, this makes it possible to avoid the quagmire of fetal versus maternal rights; and two, it also avoids the problem of individual rights that derive their meaning from the sovereignty of the state (SMD: 37), which in turn assumes the existence of autonomous individuals.

As we have seen, new biopolitical techniques have arisen during the last two centuries whose operations are very different from the sovereign exercise of absolute power. Thus a biopolitical framework is most fruitful for analyzing current social issues, especially in understanding pregnancy because it is so immediately tied to the production of life – the central issue of biopolitics. The medicalization of childbirth is also a part of the biopolitical exercise of power. A biopolitical analysis thus explains the intense focus on life processes and the heightened concern for fetal welfare. Finally, my work fills the gap in existing literature by explicitly addressing the issue of power-knowledge in understanding pregnancy, and by explaining the conjunction of legal and medical

discourses that regulate it. It opens up the possibility of a feminist reappropriation of the subject as a "function ceaselessly modified" (FL 67) within the biopolitical play of forces, once the lines of biopower are unmasked.

I have explicated the Foucauldian biopolitical framework at length; however, my discussion does not include the philosophical ideas that preceded biopolitics. For example, Sinnerbrink (2005) finds an anticipation of the notion of biopolitics in Heidegger's notion of *Machenschaft* or machination which reflects the theme of a "convergence between biological existence, technology, and sociopolitical power relations" (240). On the other hand, Vilarós (2005) interprets the notions of *nomos, nahme* and *name* in Schmitt's work as a precursor to Foucauldian biopolitics. Further, there are other theorists such as Giorgio Agamben (1998), and Negri and Hardt (2003) who use the term biopolitics in their works, but as scholars (Rabinow and Rose 2006; Sinnerbrink 2005) have pointed out, these theorists' conceptions of the term are not exactly analogous to Foucault's own.

The current social reality seems to be saturated with debates around abortion, interpretation of fetal "life," and the definition of the limits of life. Biopolitical frames of research are increasingly relevant under these circumstances. A critical feminist analysis of these issues can benefit from a Foucauldian approach as I have laid out in my thesis.

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