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Weaponization of Data for Governmentality

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WEAPONIZATION OF DATA FOR GOVERNMENTALITY

By

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ABSTRACT

Weaponization of Data for Governmentality

by

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Who is a citizen? Who is a threat to public safety? Who is worthy of protection? What it means to be a valued body in the United States has been written into code, where the state and corporations have embraced an algorithmic approach to national security. Algorithms, previously praised for their neutrality, have been taking a neoliberal turn.

This thesis will examine how data is used by the state as a governance practice, specifically looking at how such practices have left certain communities more precarious and vulnerable than others. My aim is to show how the weaponization of data is the materialization of a white nationalist, neoliberal agenda that has changed the way we act and are controlled as subjects in a digital, democratic environment. In this thesis, I will analyze the President Trump's executive order on extreme vetting, with a particular focus on the Department of Homeland Security's request for information on data analytic services. I am interested in examining the precarity of a body when it is digitized and how that digital data can be used as a weapon in this larger project of governmentality via surveillance. I will lean on the theoretical frameworks of Judith Butler, Isabel Lorey, and Michel Foucault to demonstrate this neoliberal governmentality as well as to examine the formation of the subject based on these theorists. Additionally, I will also analyze how the state has used fear and constant crisis perpetuate precarity.

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INTRODUCTION

"In a world of asynchronous threats, it is too dangerous for there not to be some way to identify you. We need a [verified] name service for people. Governments will demand it."

- Eric Schmidt, then CEO of Google, on privacy and internet anonymity[1]

During a 2010 interview with CNBC at an industry conference, Eric Schmidt exposed not only the limitations of freedom and privacy in the digital age, but also the data-sharing partnership between the government and industry in a mass surveillance project for national security. Eight years later, this partnership has grown seamlessly, fostered by the marketplace and socio-political reality. Specifically, digital surveillance as we know would not be the same without the development of the "big data" market, the subjectivity of citizens as consumers and content producers, and the rhetoric of fear and crisis that has become the American sense of reason.

As a native born American, I did not realize the amount of information the state department collects and requires of its non-immigrants and immigrants until my husband, a Canadian, began applying for his permanent residency. This includes immunization data, biometrics, including fingerprints, photographs for facial recognition, work experience, previous addresses, and various types of social and political affiliations. The application form and fee have changed numerous times since we have started the process. While inconvenient, this does not come to us as a surprise as developments on President Donald J. Trump's immigration policy seems to come out weekly. Just months before this thesis was submitted, it was announced that

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[1] Bianca Baker, "Eric Schmidt On Privacy (VIDEO): Google CEO Says Anonymity Online Is 'Dangerous,'" *Huffington Post*, August 10, 2010

the Department of Homeland Security would start collecting social media data from all immigrants entering the U.S., as well as green card holders and naturalized citizens. Keeping up with the Trump Administration's immigration proposals, ranging from the availability of H1-B visas, new travel restrictions, the bleak future of DACA recipients in this country, to the courts' rulings against the Administration's actions, has been a dizzying experience. Like a tennis match, the nation watches this Administration attempt to make its mark as it runs against public protest, judicial rulings, and partisan battles.

The amount of data that we produce is almost unimaginable, but its powers must be understood as it is essential to our subjectivity as modern Western citizen-consumers. It has been nearly fifteen years since a Harvard student and his roommate launched what is now known to be one of the most powerful media technology companies in the world, Facebook. While not the first, Facebook has reshaped and continues to reshape the way people interact online, from content creation and sharing to trolling and cyberbullying. This has created a treasure trove of data and companies like Facebook found a way to monetize something that users were giving away for free with consistency. Traditional industries such as marketing and insurance were propelled into the digital age once they learned the power of aggregated data, amorphously referred to as "big data." Companies figured out that by analyzing data points from various sources could help target their audience with great accuracy. Back in 2012, mega retailer Target unknowingly exposed a teenage girl's pregnancy to her father just by analyzing her purchases, and even was able to narrow down her delivery date.[2] Trend analyses are conducted to determine future behaviors, or in this case, future births. Watching the market benefit from data generously

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[2] Charles Duhigg, "How Companies Learn Your Secrets," *New York Times*, February 16, 2012. Target's marketing department, in conjunction with its statistician, has developed a "pregnancy prediction" model to help target their female customers.

provided by consumers, the state has become intrigued and now determined to find a way to apply big data towards its own objectives.

Critical discussions on digital surveillance and data privacy have now become a part of the public consciousness, no longer exclusively discussed by legal scholars or technology aficionados. Consumers and citizens have come to realize the great repercussions of sharing personal information online, as innocuous as that information may be. Television shows like "Black Mirror" is perfect example of art imitating life, or a fear of a certain life. While we tend to think about surveillance as how it affects us as individuals, the real power of this type of mass digital surveillance is how it controls and organizes us as certain types of bodies. I could go into the various social constructions of identity such as gender, race, and sexuality, but I prefer to take this discussion a step further, and see how surveillance has organized us into various levels of precarity. The notion of precarity, as discussed by Judith Butler and Isabel Lorey, is more useful in this context because I am interested in which bodies are the most vulnerable and how that correlates to which bodies the state finds most threatening.

The twenty-first century subject has developed into a highly networked subject, in which notions of being is not singular or distinct but interconnected and continuous, what Jean-Luc Nancy refers to as "singular plural of being."[3] At the same time, we also become more precarious and this precarity, as proposed by Judith Butler,[4] is a shared condition that links all of us together. This development is anchored by market and technological advances, particularly the creation of the algorithm. The main point of my thesis is to show how the algorithm has changed us ontologically. Who are we in the digital age? How has the state defined what it means to be a citizen, an immigrant, or a terrorist? These definitions are important to consider as they have

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[3] Jean-Luc Nancy, *Being Singular Plural* (Stanford: Stanford University Press, 2000).
[4] Judith Butler, *Precarious Life* (New York: Verso Books, 2004).

been translated into technical requirements, rules and protocols that an algorithm follows to categorize and analyze its data.

The constant state of fear and being at war has created at national atmosphere where citizens must be willing to be surveilled for the name of national security. This has provided expansive power to the executive branch. In this thesis, I will analyze the President Trump's executive order on extreme vetting, with a particular focus on the Department of Homeland Security's request for information on data analytic services. I am interested in examining the precarity of a body when it is digitized and how that digital data can be used as a weapon in this larger project of governmentality via surveillance. I will lean on the theoretical frameworks of Butler, Isabel Lorey, and Michel Foucault to demonstrate this neoliberal governmentality as well as to examine the formation of the subject based on these theorists. Additionally, I will also analyze how the state has used fear and constant crisis perpetuate precarity.

In order to provide context to this analysis, I will begin with the history of U.S. immigration policy, to show the development of its expansion and how law is used as a tactic, in the words of Foucault. I will then zoom in on the executive actions of the Trump administration to show how it attempts to widen the measure of control and surveillance as it relates to immigration.

I will finally end with a discussion on how Butler and Lorey contributes to the discussion on political resistance as it relates to precarity. Both theorists work under the notion that precarity is a shared condition because of the very nature that we cohabitate. This ontological notion renews our thinking as governed subjects and as activists.

Focusing a thesis on a timely topic has its limitations. There is obviously a huge global humanitarian crisis as it relates to the current migration surge, which this paper will not be able

to address appropriately. This crisis does have its own technological grievances that require a much wider geopolitical scope. Instead I will limit my focus on precarity of immigration as it relates to the U.S.'s nationalistic approach on deterring illegal immigration and terrorism through its proposed vetting system. Additionally, immigration and national security are very active topics for the Trump administration. For the parameters of this thesis I will limit my discussion on relevant developments from Trump's inauguration until November 2017.[5]

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[5] This limited scope means that recent developments in DACA, Facebook congressional hearing, the Cambridge Analytics investigation, among other recent events, are not considered in this thesis. While this is unfortunate, the level of activity in this space only demonstrates the constant scholarly attention required as we continue to consider the effects of digital technology as governed subjects.

I.   Theories on Precarity, Neoliberalism, and Governmentality

This thesis will engage with theories on precarity, neoliberalism, and governmentality and how the three come together to create our current political reality. These theoretical engagements will allow me to analyze the Trump administration's extreme vetting initiatives as a biopolitical measure to control the population, which has perpetuated the normalization of precarity and insecurity.

"Precarity," a term popularized in Europe in the early 2000's by the labor movement, was originally used to describe insecure living and working conditions, due to unstable work brought about by the neoliberal market. Workers in postindustrial societies were losing their bargaining power to management, which was strengthened by neoliberal pressures to increase competition. The "precariat," workers under these market conditions, are subjected to low pay, intermittent work, suffering from cuts to welfare programs, high cost of living, and restriction in mobility (moving across borders). The neoliberal changes to labor market policy in Europe, as well as the U.S., has perpetuated income inequality, now at record levels.

With limited opportunities at home, workers have looked elsewhere. Migration seems to be the only answer to escape not only poverty, but also violence and persecution. The notion that the migrant body is a precarious body is not a new one. In a world of highly protected borders, yet globalized economy, the notion of moving bodies demonstrates insecurity and vulnerability. There has been expansive scholarship on the migrant experience and how bodies are exploited by neoliberal economy and policies, while abandoned by the welfare state, leaving them to live in the shadows. In 2015, we began to see a surge in refugees from Libya crossing the Mediterranean Sea to reach Europe, a perilous journey that has resulted in thousands of deaths.

Bodies remain in physical danger. We continue to see this migration crisis, the worst since

World War II, unfold with migrants escaping war torn nations such as Syria, Myanmar, Mali,

Eritrea, as well as Latin American countries. For those who survive the journey, another set of

risks are presented once they reach their host nation, including racism, poverty, and deportation.

These risks seal their precarious condition.

In 2004, scholar Judith Butler began to investigate the precarious life from a much

broader perspective, detaching from its original focus on labor. In the immediate years after the

attacks of September 11, she examined how precarity has seeped in everyday life for everyone.

For Butler, precarity is a condition that all humans suffer from, not just migrants or temporary

workers. All lives are vulnerable and subject to destruction because all lives are connected and

interdependent. She refers to the precariousness of life as a "social ontology," arguing that the

act of being is always a social process, not an individual one. The body is a site that is acted upon

and reacts to its surrounding. Butler does not argue whether this dependency or shared condition

is detrimental or beneficial, but instead looks at this ontological change as a starting point for

revitalizing political activism. We will revisit this idea of precarity as a political tool as non-

dominant form in the second half of this thesis.

While we are all precarious, Butler recognizes that we are not equally precarious; certain

parts of the population are more vulnerable than others. Precarity is a "politically induced

condition in which certain populations suffer from failing social and economic networks of

support and become differentially exposed to injury, violence, and death."[6] The "differential" is

crucial to Butler's undertaking of precarity. It speaks directly to the political slogan, "Black

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[6] Judith Butler, *Notes Toward a Performative Theory of Assembly*, (Cambridge: Harvard
University Press, 2015), 33.

Lives Matter." The very utterance of mattering by a particular group demands recognition that they are not receiving, while others are. If precarity is about our exposure to suffering, then we first must be seen as alive and a life. Which lives are recognizable? Who is worthy of protection in this neoliberal world that has become more open to risks? Precarity is a shared condition, but it is differentially distributed, which protection is also differentially distributed. How are they to be protected and by whom? Since the twentieth century, the state has been primarily responsible for the welfare of its population. Programs were created to ensure a certain standard of living that would sustain a productive and protected citizenry. We will revisit this question of protection in the next sections as we engage with this thesis' central focus on digital surveillance.

Butler evokes Michel Foucault's investigations on power when describing precarity as "politically induced." Precarity has become the way in which power is maintained and how knowledge is formed; it is a tool of the hegemony, but it is a process that is always in motion, not a static object. In order to fully follow the shift in socio-political ontology created by precarity, I will apply Foucault's genealogy of the modern state.

Foucault's notion of power rests on its productivity; he did not merely see it as a repressive or coercive force, but as a process that produces the way we understand our reality. In other words, it produces knowledge and truth. In his examination of the penal system, described in *Discipline and Punish: The Birth of the Prison*, he traces the transition from sovereign power to what he calls "disciplinary power," found in the administrative and social systems, such as hospitals, schools, prisons, and military, developed in the eighteenth century in Europe. He looks at these systems as disciplines, a mechanism of power that regulates a person's body to the most minute detail, ultimately creating what Foucault calls "docile bodies." The western subject has

been conditioned to function, "through strict regimen of disciplinary acts," as students, soldiers, patients, and prisoners. The body and life were managed by the organization of space (e.g., how a classroom is built), time (*e.g.*, the time you are expected to be at work or school), and daily practices (*e.g.*, how to use a rifle as a solider, or how to sit at a desk in school). Foucault also points out that such disciplinary institutions have created individual bodies for the purposes of training, observation, and control. With repetition and surveillance, coercive force is no longer requires to control a population. Under disciplinary power, individual bodies have been conditioned and have learned to act accordingly.

In his later works, Foucault developed his theories on power mechanisms with a move away from individual bodies to a focus on population. In his 1977-1978 lectures on *Securities, Territory, and Population*, Foucault described governmentality as the ways in which political power maintains and controls populations, specifically the culmination of governmental departments that develop and enforce policies and legislation for the larger project of sustaining the welfare of its population. Governmentality in the modern, Western, liberal state relies heavily on biopower,[7] which is the policies and procedures that manage life (births, deaths, reproductions, health, and movement), succinctly stated as "the power to make live and to let die." As the walls of medieval towns come down, and the movement of people and goods became a global phenomenon, the state reformed itself as a security apparatus, reconceptualizing how to protect its territorial borders and of its population for capitalism. For Foucault, security is "organising circulation, eliminating its dangers, making a division between good and bad circulation, and maximizing the good circulation by eliminating the bad."[8] It becomes a method of categorizing the "good" and the "bad," which is done through calculations and statistics,

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[7] Biopolitics was first introduced in Foucault's previous work, *History of Sexuality Volume 1.*
[8] Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-1978* (Basingstoke: Palgrave Macmillan, 2007), 18.

managed and analyzed by the various departments of the government. This makes "its dangers" measurable and predictable.

In order for data and numbers to be meaningful, there needs to be a benchmark for what is considered "normal" and sustainable. In Foucauldian terms, neoliberalism, the guiding "regime of truth" of the modern Western state, has shaped reality and knowledge of what is normal and sustainable. Actuarial studies of the population have been deployed to support the neoliberal agenda of economic freedom and domestic security. This is what we are seeing in the current governmentality through big data. Statistics is the way of knowing in this type of governmentality, and has become a means of identifying, measuring, and developing solution to problems regarding the population. Such data includes biometrics, census data, medical history, credit scores, employment records, and much more. The list has grown exponentially as we have entered the big data age.

The larger project of neoliberal governmentality has also created a new citizen as subject. In Foucault's previous ideas on disciplinary power, we see how technologies of power have regulated individuals to become subjects, whether it is a student, worker, patient, prisoner, or soldier. In response to globalization and capitalism, we see how governmentality has also changed the population-subject. The state's goal is now to maintain the welfare of its population so it is able to function effectively in the global market.

German political theorist Isabell Lorey's work on precarity, underpinned heavily by Butler's formative thoughts, engages directly with Foucault's notions of governmentality and biopower. Lorey developed the "three dimensions of the precarious," which are precariousness, precarity, and governmental precarization. Lorey's *precariousness* follows Butler's, described as an inherent condition shared by all humans and non-humans. Precariousness is unavoidable

because it is a shared condition, thus it is social. Citing Butler, Lorey defines it as a "socio-ontological dimension of lives and bodies."[9] *Precarity* is the category of order that denotes the different distribution of precariousness. It is the social ordering based on inequality, which also recognizes the "being-with" between those in all levels of the hierarchy. The third dimension, *governmental precarization*, is the one I will engage with the most in this thesis. It describes the process in which the state has normalized precarity as a governing tactic, creating a "neoliberal government of insecurity."[10] This process requires the *minimum* amount of social safeguarding, meaning not the usual protection practices of the liberal welfare state such as nationalized healthcare. Instead, the neoliberal state "limits itself to discourses and practices of police and military safeguarding...operat[ing] with disciplinary control and surveillance techniques."[11] By minimizing the social safeguarding, precarity increases, which justifies the maximum effort in domestic security. Lorey uses the migrant as an example. To avoid being declared a security risk, migrant others must demonstrate their assimilation to the collective that is minimally safeguarded. This balance of finding the minimum level of protection (which is equivalent to the most tolerable level of social vulnerability) with the maximum measures for domestic security keeps chaos and crisis just at the surface, a bubbling threat we are always preventing.

Neoliberalism as a Biopolitical Governmentality

Neoliberalism has been widely understood as an economic doctrine, popularized by President Ronald Reagan and U.K. Prime Minister Margaret Thatcher in the 1980's, that stresses the deregulation of the financial markets and entrepreneurship. In order for us to critically evaluate neoliberalism as our political reality, we must expand our analysis to how neoliberalism

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[9] Isabel Lorey, *State of* Insecurity (London: Verso Books, 2012), 11.
[10] Ibid., 65
[11] Ibid., 64

regulates governmentality. In true Foucauldian form, it is helpful to understand "neoliberalism" as a political rationality or "regime of truth," rather than an ideology or a policy framework, as expressed by Wendy Larner.[12] It is an apparatus of knowledge and power that constructs how we understand our social and political reality and how we ultimately become "to be," as population-subjects. Under neoliberalism, we have internalized certain social norms and expectations that informs how we conduct ourselves. The ability to diffuse power to the population whereby an individual is responsible for him/herself is a nuanced characteristic of governmentality, which has also been described by Foucault as the entanglement between the government of the state and the technologies of self-government. Self-governance is also a particularly neoliberal trait, in which individuals are determined to act accordingly as a means of staying in the game, the "game" being the economy. While the notion of neoliberalism is still tied to economics, what is important to realize is that our conduct and well-being as a population are based entirely on economic relations.

While it may seem like that reduction of the welfare state due to the rise of neoliberalism would lead to the disappearance of biopolitical governmentality or control, that is not the case. As Larner notes, there may be "less government" but that does not mean there is "less governance."[13] When it comes to poverty, neoliberalism's main concern is *absolute* poverty, a condition that would not allow its population to function as economic subjects. The neoliberal state will provide enough assurances for its population to remain right above this absolute poverty line. It expects relative poverty; in fact, it is reliant on it, more familiarly termed as "income inequality." In the neoliberal era, we are witnessing the normalization of inequality, or

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[12] Wendy Larner, "Neo-liberalism: Policy, Ideology, Governmentality", *Studies in Political Economy* 63 (Autumn 2000): 6.
[13] Ibid., 12.

precarity, which operates under the guise of economic competition. It has traditionally been sustained by legislative efforts such as tax reform, trade agreements, and the deregulation of various markets such as healthcare and internet service providers. In the era of enhanced precarity, such as the current state of war, we are now seeing how precarity has been normalized through national security-related measures. While additional acts of governmental control and surveillance have been implemented, these measures require the participation of the free market (as we will see in the Request for Proposal process conducted by the DHS for data analytics services in the third section), which feeds off of inequality. The cycle of precarity continues.

The Neoliberal Population-Subject

Like all power mechanisms according to Foucault, neoliberal governmentality produces a certain type of subjectivity, via the biopolitical technologies of power. By controlling the ways of sustaining life such as healthcare, employment, and housing (or in the neoliberal context, deregulating such necessities and leaving them in the hands of the free market), it has advocated for competition as the guiding principle for human behavior. In order to compete, population-subjects must become entrepreneurs of their own lives, self-motivated by competition. While it remains hands-off in the actually caring for its population, the neoliberal state has instead pushed a message of self-care to its population. It teaches us *how* to remain healthy and employed members of society, demonstrated by anti-drug public service announcements and state-run job fairs. It also instructs us to be vigilant, particularly in terms of crime. An example of this is the "If you see something, say something" nationwide campaign by the Department of Homeland Security.[14] This campaign aims to raise public awareness of the signs of terrorism and how to

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[14] This campaign was originally implemented by the New York City Metropolitan Transportation Authority in 2002, in response to the September 11 attacks.

report suspicious activity to law enforcement. Partnering with the American sports economy for television advertisements, as well as designing posters, billboards, and digital signage, this far-reaching campaign produces the population-subject as an integral part of the larger security and surveillance apparatus, in addition to being an economic subject. By becoming an appendage of the U.S.'s security mission, the fear of "another attack" has become our duty to help prevent, and a part of the larger national project of being a citizen.

How have neoliberal governmentality and precarity produced the "migrant" as a subject? Alongside what it means to be a citizen versus a non-citizen (immigrant or nonimmigrant), it is my contention that the differentially distributed precarity between the two types of subjects is crucial to recognize not in attempt to equalize the distribution, but to see the power at work that is creating the division and how to renew the discussion on political activism based on this ontological shift. When comparing precarity, we are essentially asking who is worthy of protection? The "who" part of this question breaks down to two factors: (1) the types of subjects (citizen and non-citizen), as previously mentioned; and (2) the new subjectivity for both types of subjects as produced by the neoliberal regime of power, by a governmentality driven by crisis and fear, and new means of biopower, via digital surveillance and data analytics. In the post-9/11, post-industrial world, our lives have been defined by heightened vulnerability and aggression. We are always under attack, at risk, or exposed, whether it is illegal immigration, natural disasters, terrorism, or a market crash. This constant state of crisis and fear is our new reality and our precarity as a governing tactic has been normalized, as asserted by Lorey.

For the purpose of this thesis, I will examine at the vulnerability of citizens and non-citizens in the U.S. under Trump's executive order on extreme vetting. Specifically, I will analyze the government's procurement of data analytical services as a neoliberal technology of

biopolitical control. I will begin with a history of U.S. immigration policy, to demonstrate the

neoliberal reality that has shaped the current policies and procedures.

II.   Migrating with Precarity

(History of the United States' Neoliberal Immigration Policy)

While reviewing the U.S.'s history of immigration policy and legislation related to

national security,[15] I will analyze its neoliberal framework, how it creates new subjects through

its policies, and how Lorey's observation on governmental precaritization can be applied.

In order to have a full grasp of the nationalistic project in question, we must revisit the

U.S.'s history of neoliberal immigration policy. One of the first federal immigration laws passed

by the United States Congress was the Chinese Exclusion Act of 1882, setting off an exclusionist

and racist trajectory in U.S. immigration policy. The Chinese Exclusion Act was the first federal

legislation to restrict the movement of people based on race. The Act was also in response to the

pressures Congress faced from the anti-Chinese labor unions, such as the Workingman's Party.

Chinese immigrant workers provided cheap labor during the big industrial boom of the

nineteenth century, making it difficult for American workers to compete with their low wages.

The precarity of the American worker, caused by immigrant laborers, is a theme that will appear

throughout American immigration history. The Chinese Exclusion Act also set up another

prevalent narrative still active today, which is the threat to American culture and values.

Immigrant laborers were constantly othered, omnipresent in American culture such as political

cartoons and during political rallies. Racist ideology fueled the idea that Chinese and other

immigrant groups did not share American beliefs and living among them is a threat to American

livelihood. Using law as tactic for governmentality, the legalization of such exclusionary

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[15] The U.S. has an expansive and complicated history of enacting legislation related to immigration and national security. This section is by no means an attempt to provide a comprehensive overview of that history, but my objective here is to provide linkages to the neoliberal and nationalistic developments in these laws.

practices was the state's attempt to protect its population, by minimizing its precarity and maximizing its working privileges.

The U.S. experienced its first mass immigration during the early years of the twentieth century, and started a more robust procedure for immigration. Congress passed several legislations regarding standards for entry such as literacy tests and medical examinations. It also centralized the immigration and naturalization process under the newly formed Federal Naturalization Service. Prior its creation, individual states and courts were responsible for handling the process. The centralized enforcement began the collection and verification of immigration records, ensuring legal admission into the U.S. World War II shifted the U.S.'s position on immigration policy, viewing it more as a national security issue rather than an economic one. This is particularly noted when an executive order moved the Immigration and Naturalization Service (INS) from the Department of Labor to the Department of Justice in 1940. The U.S.'s entry into the war increased the INS's duties, which included recording and fingerprinting every non-American, operating internment camps, and increased border patrol operations. The geopolitics of this time had long-term implications on the organizational structure of federal enforcement departments.

The post-war years forced INS to deal with new responsibilities related to the U.S.'s new position as a global superpower. This included providing relief for refugees of World War II through The Displaced Persons Act of 1948 and Refugee Relief Act of 1953. Illegal immigration also became a growing concern, particularly at the U.S.-Mexican border. INS strengthened its border patrol by creating a deportation program, controversially named "Operation Wetback" in 1954. Additionally, during the McCarthy era of the Cold War, there was increased attention towards public safety, specifically criminal aliens, subversives, and Communists, which led to

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the deportation of such peoples. In the 1980's, the INS adapted to new global reality of the ease

of modern international travel and changes in migration patterns.[16] Richard Nixon's "war on

drugs" set limitations on immigration from Latin America.

The legacy of discrimination continues as we have most recently seen the preferential

treatment in visa programs, the admissions of refugees, and the outright attempt to ban visitors,

immigrants, and Green Card holders from Muslim and Arab nations. These immigration policies

do not exist in a vacuum. They are a reflection of how the U.S. responds to global events and

maintain their hegemonic position in the greater neoliberal framework. Probably no other single

event has had such an impact on immigration law enforcement than the attacks of September 11,

2001. These attacks, the largest of its kind on U.S. soil, has had such a rippling effect not only on

national security and border control, but also on the nation's growing complacency with racist

political rhetoric, as portrayed on the 2016 presidential campaign trail.

The attacks of September 11 initiated the U.S.'s war on terror, having severe

consequences on its immigration policy, in the name of national security. This drastic shift in

focus happened swiftly, as the executive branch was operating under wartime command.[17] The

logic of emergency and crisis created a language of fear and speculation, which linked

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[16] Changes in migration patterns during the 1980's includes the diversification of migrant nationalities, increase in work-related (both labor and skilled workers) and family-linked migration, and greater inflow of asylum seekers during the Kosovo crisis. More on these trends during this time period can be found in here:
Organisation for Economic Co-Operation and Development, *Trends in International Migration: Continuous Reporting System on Migration*. Paris, 2001.
https://www.oecd.org/migration/mig/2508596.pdf (accessed on November 2017).
[17] There has been formative scholarship in examining President George Bush's executive power during this state of emergency as the return of sovereign power. Italian theorist Giorgio Agamben connect's Foucault's theory on biopower to sovereign power, claiming that there is a connection between the two develops in a "state of exception." For a discussion on power under "state of exception, see Giorgio Agamben's *Homo Sacer: Sovereign Power and Bare Life*, section "Life that Does Not Deserve to Live." For the purposes of limiting the number of administrations under investigation, I will not discuss Bush's term in this thesis.

immigration directly to terrorism. This new directive exposes a shift in governmentality, utilizing legislative and bureaucratic means to establish new ways to manage the population. In less than two months after the attacks, Congress passed the **U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism Act of 2001 (commonly known as the USA PATRIOT Act[18]), signed into law by President Bush on October 26, 2001. The Act's full name clearly shows the technologies of power and surveillance intended to control movement into the U.S. The Patriot Act was not enforced until December 31, 2005 and it went through several amendments, but the key provisions that survived included enhanced surveillance authority for federal officials covered under the Foreign Intelligence Surveillance Act (FISA), originally passed in 1978. This included the ability to search property without the consent or knowledge of the owner or occupant; the ability to freeze financial assets of suspected terror groups and individuals, including "lone wolves";[19] the enhanced ability to acquire tangible records; as well as the ability to implement "roving wiretaps." A roving wiretap removes the need for a surveillance order if a device that was tapped was lost or damaged. It also gives power to federal authorities to expand their investigation to anyone who comes into casual contact with a suspected terrorist.

These expansive powers bestowed upon the enforcement agencies came hand in hand with one of the largest restructuring of the government since World War II. To meet the high demands of their new mission, the INS was disbanded in 2003, under the Homeland Security Act of 2002, and was replaced by the newly formed Department of Homeland Security (DHS). This new department was now responsible for the management of 22 diverse agencies and bureaus. (*See Figure 4 for organization chart.*) It also included three new agencies, Customs and Border

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[18] This Act will be referred to as the "Patriot Act" going forward for brevity.
[19] A "lone wolf" is an individual who commits terrorist acts but has no explicit connection to a foreign power or terrorist organization.

Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).[20] These new agencies replaced the legacy of the INS. DHS, at this new capacity, established its mission in a six-point agenda, which covered:

1. Increase overall preparedness, particularly for catastrophic events
2. Create better transportation security systems to move people and cargo more securely and efficiently
3. Strengthen border security and interior enforcement and reform immigration processes;
4. Enhance information sharing with our partners
5. Improve DHS financial management, human resource development, procurement and information technology
6. Realign the DHS organization to maximize mission performance.[21]

The main objective of realigning DHS in this manner was to "increase its ability to prepare, prevent, and respond to terrorist attacks and other emergencies. These changes are to better integrate the Department and give department employees better tools to accomplish their mission."[22] The procurement of data analytics services for immigration enforcement, to be examined in the next section, demonstrates the DHS's objective of optimizing technologies and tool to satisfy their mission.

Politics of Precarity and Preemption

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[20] "CBP prevents drugs, weapons, and terrorists and other inadmissible persons from entering the country. ICE enforces criminal and civil laws governing border control, customs, trade, and immigration. USCIS oversees lawful immigration to the United States and naturalization of new American citizens."
U.S. Citizenship and Immigration Services, *Overview of INS History*, (Washington D.C., 2012). https://www.uscis.gov/sites/default/files/USCIS/History%20and%20Genealogy/Our%20History/INS%20History/INSHistory.pdf (accessed on November 14, 2017).
[21] U.S. Department of Homeland Security, *Department Six Point Agenda*, https://www.dhs.gov/department-six-point-agenda (accessed on November 15, 2017).
[22] ibid.

As we have reviewed the drastic growth in legislation in relation to immigration as a national security concern, it is important to consider the logic to these legislative and executive actions. The attacks of September 11 threw the U.S., and the rest of the world, into a new geopolitical space. George W. Bush declared the war on terror and justified all of the nation's legislative enactments, as well as government restructuring and military and intelligence missions, as a means to prevent another attack. In a speech to the graduating class of the United States Military Academy, he stated:

> If we wait for threats to fully materialize, we will have waited too long. We must take the battle to the enemy, disrupt his plans and confront the worst threats before they emerge. In the world we have entered, the only path to safety is the path to action. And this nation will act.[23]

He plainly stated a new doctrine of preemptive action, which would become the defining feature of the administration's foreign policy. By the time of this speech, the U.S. had already invaded Afghanistan, followed by the war in Iraq a year later. According to the Bush administration, we are only safe if we act *preemptively*. To be safe, we must defend ourselves against threats before they even materialize. The doctrine of preemption created a directive of knowing something before it happens because not knowing is chaos and fearful. This logic, or "regime of truth" to incite Foucault, also claims that the unknowable can be known. Military actions as attempts to safeguard the population, in other words governmentality, have been determined based on this logic. But Mark B.N. Hansen, a theorist who focuses on phenomenology of the digital revolution, claims that this type of logic on preemptive action has essentially provided even more power than expected. In order to act intelligently, before knowing what is going to happen, the state must collect as much information as possible, as we have seen in the amendment of various surveillance related legislation. But information alone does not tell us who will become a terrorist.

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[23] President George W. Bush, "The National Security Strategy of the USA- Address to the Nation." http://www.whitehouse.gov/nsc/nss.html (accessed on November 14, 2017).

Predictive analytics promises to close the gap between the known and unknown. What we have to remember, however, is that algorithms are skewed when you already know what you are looking for. The algorithm is a tool that is ruled by a certain type of regime of truth. Many studies have been performed on the accuracy of such surveillance data, most notably programs for predictive policing. It has been proven the very focus of the types of crime the software captures are indicative of its biased analysis. For instance, such tools do not focus on white collar crime like securities fraud. Instead, they focus on "nuisance crimes" like vagrancy, panhandling, and the selling or consuming of small amounts of drugs. These crimes are prevalent in poor neighborhoods. If a software is only going to look at certain crimes, crimes that are highly racialized and are demonstrative of systemic racism and inequality, then that software is going to recommend additional surveillance for that particularly area. Cathy O'Neil, data scientist and author of *Weapons of Math Destruction*, discusses the pernicious feedback loop of such analytical data. Along with the raw data that is collected from monitoring, the analysis that is a product of that data is new data that justifies more action, in this case, additional policing.

Who are the precarious?

Neoliberalism has perpetuated the precarious lives that I am investigating in this paper. In the nationalist narrative, immigrants represent the threat to national security and economic security. The state's surveillance efforts have been focused towards their lives, exposing them to a different level of precarity than citizens. In other words, in effort to protect the citizenry, non-citizens, labeled as threats, are made vulnerable. Their vulnerability lies in the fact that their lives can be uprooted at any time based on an algorithm-based decision process that has been cited to be highly problematic. Thinking about the precarious in the immigration and national security

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context is exemplary of how precarity is differentially distributed but connects all of us, and of how our reality and knowledge is produced by the neoliberal framework, maintained by governmentality and biopolitical means. This is where we see that precarity and protection are two sides of the same coin, the coin being a tool of governmentality. Precarity has pinned us against each other but in reality, American citizens and immigrants are both precarious. Precarity is not nationality specific in this war on terror.

Neoliberal technology

Neoliberalism thrives on inequality and instability, which is why precarity is always in production. Being vulnerable or unstable is a condition induced by fear and anxiety, an affective method used in neoliberal regimes. This has been outlined in Naomi Klein's *Shock Doctrine*, which examines the ways in which disaster capitalism is motivated by uncertainty. How is this precarity produced? To uncover this, I will examine the proposed technological methods of the Department of Homeland Security (DHS). DHS has opened up a Request for Information on data analytical services to the private sector, which demonstrates a biopolitical mode of governmentality that embraces the neoliberal market's accessibility to and exploitation of digital technology in the regulation and surveillance of populations. Governing has become rooted in market-driven calculations, where proxies become rule.

III.   Understanding the Algorithm as a Frame

"The digital language of control is made up of codes indicating whether access to some information should be allowed or denied. We're no longer dealing with the duality of mass and individuals. Individuals become "dividuals," and masses become samples, data, markets, or "banks."

- Gilles Deleuze, "Postscript on Control Societies"[24]

To facilitate the fight against terrorism, government infrastructural systems have been put in place, which includes bureaucratic structures and computational teams to collect and analyze information on potential terrorists, both citizens and non-citizens. Our cultural and social lives have found a dexterity moving between the offline and online worlds, and government surveillance has followed us going back and forth. Under the Obama and now Trump administrations,[25] we have witnessed how precarity has transversed to the digital realm. The traces of information that we leave behind as citizens and consumers has entered the hands of government and private corporations, which is now being used against us. This is what many scholars and government surveillance critics refer to as the "weaponization of data."

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[24] Gilles Deleuze, "Postscript on Control Societies," *Negotiation 1972-1990*, trans. Martin Joughin (New York: Columbia University Press, 1995): 180.

[25] A complete discussion on post-9/11 U.S. immigration policy would require examinig the executive orders and legislative changes during the Bush administration. In effort to focus on the big data surveillance practices of the state, we will instead truncate our area of interest to the first and second Obama administration, and the current Trump administration.

In the following section, I will delve into the particular technology of governmentality, which is the use of big data with the help of private corporations. I borrow Butler's language of the "frame"[26] as a way to describe how our reality has been shaped.

DHS history of using social media for vetting

The use of social media information for monitoring of applicants for immigration benefits started with the Obama administration, propelled by the December 2, 2015 terrorist attack in San Bernardino, California. In an address to the nation following the attack, President Barack Obama expressed the growing challenges of fighting terrorism in the age of the Internet and social media.

> As groups like ISIL [Islamic State of Iraq and the Levant] grew stronger amidst the chaos of war in Iraq and then Syria, and as the Internet erases the distance between countries, we see growing effort by terrorists to poison the minds of people like the Boston Marathon bombers and the San Bernardino killers...That's why I've ordered the departments of State and Homeland Security to review the visa waiver program under which the female terrorist in San Bernardino originally came to this country. And that's why I will urge high-tech and law enforcement leaders to make it harder for terrorists to use technology to escape from justice.[27]

In less than two weeks after the shooting, on December 15, 2015, 25 senators sent a letter to the Secretary of Homeland Security, requesting that the Department of Homeland Security immediately expand social media background checks, focusing on possible connections to terrorism, as part of the screening for visa determinations for visitors and immigrants. In this instance, "mak[ing] it harder for terrorist to use technology to escape from justice" meant surveilling that technology, social media in particular, and making assessments based on the data collected. Under the request of Congress, DHS established a task force to review the

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[26] Butler's *Frames of War* uncovers how photographs have framed our reality of war and how that affects how we grieve for the lives lost or debilitated.

[27] President Barack Obama, "Address to the Nation." https://obamawhitehouse.archives.gov/the-press-office/2015/12/06/address-nation-president (accessed December 1, 2017).

Department's current use of social media data and make recommendations on how optimize its use. The recommendation was to develop the capability to conduct systematic social media screening of applicants, department-wide.

The task force shortly thereafter began pilot programs to expand social media screening of applicants. Prior to the San Bernardino attack, the U.S. Citizenship and Immigration Services' (USCIS) review of social media was limited. The purpose of the pilot was to examine the feasibility of using social media screening with an automated tool and determine whether such a tool would be effective in uncovering useful information for adjudicating applications[28]. While the pilot had an objective, it failed to define any benchmarks that would determine if the pilot was a success or failure. In the February 27, 2017 report to the Office of Intelligence and Analysis (OIA),[29] which outlined the task force's finding and recommendations, the Office of Inspector General (OIG)[30] recommended that OIA coordinate with USCIS and ICE in implementing "a plan to evaluate the performance of social media screening pilots *that includes features such as well-defined, clear, and measurable objectives and standards* [emphasis added] for determining pilot performance to help ensure DHS develops an effective social media screening program."[31] The program as it currently stood would not survive the OIG's standards.

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[28] It is important to note that when during the launch of the task force, the OIA stated that neither the private sector nor the U.S. government had the capabilities for a large-scale social media screening. Since then, DHS submitted a report titled "Social Media Analytics Capability Testing: Independent Assessment" on January 6, 2017, claiming that some technological advancements have been made that would help with such a large-scale effort. However, this report was not received in time for the OIG's recommendations report.

[29] This is one of the 22 bureaus under the DHS.

[30] While not directly under the DHS, the OIG is responsible for performing audits, investigations, and evaluations, to establish policy recommendations for decision-makers and the public.

[31] United States Office of Inspector General, "DHS' Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-term Success," OIG-17-40 (Redacted version) (Washington, D.C., 2017). https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-40-Feb17.pdf (accessed on November 5, 2017).

Even before the advent of social media, the U.S. government has always understood the power of collecting information, as seen in the passage of the Foreign Intelligence Surveillance Act of 1978 (FISA).[32] The post September 11 administrations and Congress signed and enacted a slew of legislation that continue to expand the surveillance powers of intelligence agencies, often under fire by civil liberty and privacy advocates. Using "law as tactic," as described by Foucault as a technology of governmentality, administrations have set up certain parameters where the end justifies the means. Butler expands on this, stating that "the operations of governmentality are more the most part extra-legal without being illegal."[33] In a tactical move, just weeks before leaving office, President Barack Obama signed Executive Order 12333, a Reagan-era executive order that will give the National Security Agency (NSA) almost unlimited authority to intercept communications abroad. It will also allow the NSA to share its data, gathered without warrant, court orders, or congressional approval, with 16 other agencies, including the FBI, DEA, and DHS.[34] This order ultimately provides the data the Trump administration needs to initiate its extreme vetting program.

What is Extreme Vetting Initiative?

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[32] This Act provides guidelines for physical and electronic surveillance and the collection of foreign intelligence information between "foreign powers" and "agents of foreign powers" suspects of terrorism or espionage. It has been criticized by various civil liberty organizations, such as the Electronic Frontier Foundation and Electronic Privacy Information Center, as being too broad, making it susceptible to abuse. In a 2006 testimony on "Modernization of the Foreign Intelligence Surveillance" before the House Permanent Select Committee on Intelligence, Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit stated that FISA "retains value as a framework for monitoring the communications of known terrorists, but it is hopeless as a framework for detecting terrorists." The full testimony can be found here: https://fas.org/irp/congress/2006_hr/071906posner.pdf This Act has been repeatedly amended, most notably under the Patriot Act as previously mentioned.
[33] Judith Butler, *Precarious Life*, (London: Verso Books, 2004): 94.
[34] Alex Emmons, "Obama Opens NSA's Vast Trove of Warrantless Data to Entire Intelligence Community, Just in Time for Trump," *The Intercept,* January 13, 2017 https://theintercept.com/2017/01/13/obama-opens-nsas-vast-trove-of-warrantless-data-to-entire-intelligence-community-just-in-time-for-trump/ (accessed on November 14, 2017)

This initiative of enhancing the screening procedure of non-U.S. citizens entering the

country was one of the rally cries of the Trump campaign. In a campaign rally in Youngstown,

Ohio in August 2016, candidate Trump laid out his extreme vetting policy, which promised to

weed out terrorists or those that "have hostile attitudes towards our country or its principles – or

who believe that Sharia law should supplant American law." This plan was widely criticized

during the election, accusing Trump of banning an entire religion from entering the U.S. under

the guise of national security. Since its beginnings, it has gone through[35] and continues to go

through several transformations from an amorphous, racist Muslim ban to various biopolitical

attempts to capture any information that may provide intelligence on a visa applicant's

adjudication.

On January 27, 2017, Trump administration issued Executive Order 13769: Protecting

the Nation from Foreign Terrorist Entry into the United States[36] – otherwise known as the

"Muslim ban." The order called for the implementation of a process to evaluate, for visa

applicants, "the applicant's likelihood of becoming *a positively contributing member of society*

[emphasis added] and the applicant's ability to make contributions to the national interest." The

early days of the executive order included barring entry of people coming from seven Muslim-

majority nations, Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen. After several defeats in

federal court system on the constitutionality of Executive Order 13769, the Trump administration

was forced to withdraw. That order was later replaced by Executive Order 13780[37], under the

same title of Executive Order 13769, on March 6, 2017, which Trump referred to as the "watered

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[35] As previously mentioned, this initiative is currently underway. There have been changes to the
extreme vetting initiative during the writing of this thesis, but for analytical purposes, I have
limited the discussion to policy developments prior to November 2017.
[36] Exec. Order No. 13769, 3 C.F.R. (2017).
[37] Exec. Order No. 13780, 3 C.F.R. (2017).

down, politically correct version"[38] of the previous order. On May 6, 2017, the Department of

State (DOS) proposed a new form, DS-5535 "Supplemental Questions for Visa Applicants," *(See*

Figure 2 for snapshot of form) to collect additional information from all visa applicants "who

have been determined to warrant additional scrutiny in connection with terrorism or other

national security-related visa ineligibilities."[39]

Industry Day July 18-19, 2017

On June 12, 2017, ICE announced that it would host an "Industry Day," in effort to

engage with potential vendors on an anticipated procurement as part of the "Extreme Vetting

Initiative." In its Statement of Objectives, ICE stated that it was looking to "obtain contractor

services to establish an overarching vetting contract that automates, centralizes and streamlines

the current manual vetting process while simultaneously making determinations via automation

if the data retrieved is actionable."[40] This objective would address various Executive Orders,

such as "Protecting the Nation from Foreign Terrorist Entry into the United States," which aims

to "strengthen our immigration system with the goal of preventing terrorists or any other party

looking to defraud the immigration system from entering the United States." The documents

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[38] Cathleen Decker, "Trump vows to appeal ruling against his revised travel ban -- or perhaps resurrect the first ban," *Los Angeles Times*, March 15, 2017 http://www.latimes.com/politics/washington/la-na-essential-washington-updates-trump-vows-to-appeal-ruling-against-his-1489626832-htmlstory.html (accessed on November 14, 2017)

[39] This form was approved under an "emergency" basis. The DOS has since moved to extend the approval of the form for a three-year period, after its emergency approval period ends. NAFSA: Association of International Educators, "Form DS-5535, Supplemental Questions for Visa Applicants," http://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/Form_DS-5535,_Supplemental_Questions_for_Visa_Applicants/ (Accessed on November 17, 2017).

[40] U.S. Immigration & Customs Enforcement, "Extreme Vetting Initiative: STATEMENT OF OBJECTIVES," June 12, 2017, https://www.fbo.gov/utils/view?id=533b20bf028d2289633d786dc45822f1 (accessed on November 5, 2017).

posted on the federal business opportunities site included a background on the various units that

would be responsible for the extreme vetting initiative, details of the requirements, sign-in sheets

from the two Industry Days, Q&A with vendor participants, as well as the complete slide

presentation from the National Security Investigations Division. These documents portrayed a

lofty goal of obtaining a data analytic type service that would allow DHS to collect, research,

analyze, and populate data in various law enforcement databases, as well as provide "lead

generation" of potential non-immigrants overstaying their visas. The requirements specifically

note the need for "social media exploitation," which requests the contractor to leverage open

source/social media data to expand DHS's investigative scope. In the Q&A document, in

reference to the "social media exploitation" task, one industry participant asked:

> **Question:** Certain social media sites have made their APIs private, such as Facebook. Can the vendor assume that the Facebook reference was just for illustration purposes?"

> **Answer:** No, the Contractor shall analyze and apply techniques to exploit publicly available information, including social media website such as Facebook.

It is apparent that DHS has no intention of leaving a stone unturned, even if site like Facebook

put protections in place to safeguard their users' data.

Through executive orders and presidential proclamations, a wide net has been casted for

surveillance. In the era of big data, there are more sources of information than ever before. As

neoliberal subjects, encouraged to practice our freedom as consumers, identifiable information

about ourselves have floated from social media sites, to data brokers, to corporations who

purchase such data for optimizing their marketing campaigns. As Wendy Chun has described it,

"surveillance is co-produced trans-nationally by corporations and states."[41] Big data, and the

social culture around the constant production of data, has exacerbated the neoliberal agenda. It

has created a whole new market of selling and analyzing data, mostly used for trend analysis.

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[41] Wendy Hui Kyong Chun, "Big Data as Drama," *ELH* 83, no. 2 (Summer 2016): 377.

Data, something that is created freely, is now a $130 billion market[42]. The digital nature of data

makes it easy to receive and process, at least in comparison to paper. Its true power lies its

potentiality for predicting the future. With big data being free, fast, and future-predicting, it

becomes the ideal neoliberal, biopolitical tool, especially when it is partnered with the algorithm.

      As a tool of governmentality, the algorithm works under very clear rules and protocols,

reading the data so it makes sense. What are we looking for? The ever-emerging threat to our

national security or public safety. Data lacks value if it is not actionable. In the context of DHS's

search for data analytics services, lead generation is the actionable item. This is how they would

initiate new investigations of potential illegal immigration. The task of "lead generation" is

where the precarity lies. By implementing software such as LeadTrac, DHS always already

assumes there is a violation, such as overstaying one's visa. Now, this might be a safe bet, but it

is important to note the assumptions that the algorithm is operating under. How does code pick

up "derogatory information" or determine if an applicant will be "a positively contributing

member of society"? In response to the extreme vetting initiative, a group of 54 esteemed

practitioners and scholars in the use of machine learning, data mining, and other advanced

techniques the DHS is seeking, have co-signed a letter gravely warning the dangers of using such

algorithmic practices for determining entry into the U.S. and has urged the DHS to reconsider the

program[43]. The letter stated:

> According to its Statement of Objectives, the Extreme Vetting Initiative seeks to make
> "determinations via automation" about whether an individual will become a "positively

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[42] Scott Ferguson, "Big Data , Analytics Market to Hit $203 Billion in 2020," *Information Week*, October 4, 2016 https://www.informationweek.com/big-data/big-data-analytics-market-to-hit-$203-billion-in-2020-/d/d-id/1327092? (accessed on November 20, 2017)

[43] Technology Experts Letter to the Honorable Elaine C. Duke, Acting Secretary of Homeland Security, November 16, 2017 https://www.brennancenter.org/sites/default/files/Technology%20Experts%20Letter%20to%20DHS%20Opposing%20the%20Extreme%20Vetting%20Initiative%20-%2011.15.17.pdf (accessed on November 5, 2017).

contributing member of society" and will "contribute to the national interests." As far as we are aware, neither the federal government nor anyone else has defined, much less attempted to quantify, these characteristics. Algorithms designed to *predict these undefined qualities could be used to arbitrarily flag groups of immigrants under a veneer of objectivity* [emphasis added]. Inevitably, because these characteristics are difficult (if not impossible) to define and measure, any algorithm will depend on "proxies" that are more easily observed and may bear little or no relationship to the characteristics of interest.[44]

The immigrant community, an already vulnerable population, would be subjected to additional scrutiny with a technique that has been proven to be problematic. These experts plainly state that there is no way to objectively determine one's ability to contribute to society based on algorithms. They warn against the use of proxies as truths. One example given was the applicant's wealth being a proxy of how much he/she can contribute or be a burden to society. Such a program would be riddled with false positives.

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[44] ibid.

IV.   The Algorithmic #Resistance

Fortunately, there has been a vocal resistance from the private sphere, as well as academia and civil liberty advocates, urging the state to abandon the extreme vetting initiative. Butler and Lorey also provides us with theoretical considerations as it relates to precarity and activism. According to both thinkers, the notion of precarity is not repressive or coercive. It can actually be productive as a tool of resistance. Butler relies on her most notable work on performativity and ties it to her recent work on precarity as a way to find this space of resistance. She wants to move away from representational politics (in this case, the identity of the migrant) and instead see the relationality of precarity to be the connective tissue that can affect political change. In *Notes Toward a Performative Theory of Assembly*, Butler states:

> Assembled creatures such as these depend upon a set of living and institutional processes, infrastructural conditions, to persist and to assert together a right to the conditions of its persistence.[45]

She sees an opportunity of alliance between populations that may not have a lot in common with precarity, a shared condition that ties all of us, as a mediating term. She sees ontology as a becoming, a process, like performativity, which is why she rejects the basis of identity or representational politics. Her approach to "law as tactic" is also speaks to her rejection of identity politics or rights-based activism. Like Foucault, Butler does not see law as the source of power, so to base activism on rights, which have been historically distributed based on identity, justifies a power that law does not essentially have.

Lorey shares similar thoughts on the potentiality of precarity as a political resistance tool. The precarious activists "seek to connect different experiences and concentrate not only on the frightening, threatening side of precaritization, but also on the entire web of governmental

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[45] Judith Butler, *Notes Toward a Performative Theory of Assembly*, (Cambridge: Harvard University Press, 2015), 18-19.

precaritization, thus pursuing a perspective on the potentialities of resistance and the invention of

the new at the same time."[46] Lorey is waking us up from being fearfully frozen, the preferred

condition the state keeps its subjects so they are governable. She is urging us to breakdown the

walls of differences imposed by neoliberal governmentality, acknowledge its productive powers,

and come together through our shared condition of precarity to create a new interdependency that

does not rely on the precarity of some for the protection of others.

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[46] Isabel Lorey, *State of Insecurity* (London: Verso Books, 2012), 108.

CONCLUSION

In the spirit of neoliberalism, the state has outsourced its responsibilities as a protector of the population's well-being to the private sphere. It has delivered a message of individual freedom, but at the same time, has not let go of the apparatus of control and surveillance. The state is able to act on its biopolitical control because it has maintained a delicate balance of freedom with insecurity. This insecurity has been perpetuated by the current rhetoric of fear and crisis. While the population knows how to care for itself as individuals, it will allow the state to run its surveillance programs for the greater good of national security. This neoliberal balance is what allows the Trump administration to justify the use of technologies of biopolitical control, even if there is evidence that such a technology would be unsuccessful. By limiting and monitoring the movement of the non-citizen population, the state continues to feed on the fear of its citizen population. By using precarity and protection together, the state creates a division that attempts to pin the two populations against one another. And it has worked to some extent as we have seen anti-immigration sentiments and white nationalist riots increase since Trump's inauguration. Racists rhetoric had driven the Trump campaign and now his administration has attempted to bring that racism into policy, under the guise of national security. The moniker "Muslim ban" plainly indicates the initiative's racist nature. The technological tools meant to enforce this initiative will not be able to escape the bias as well. The already precarious migrant is made increasingly more precarious by exposing him/her to a problematic algorithmic governance.

Theorists like Butler and Lorey provides us with the counter-hegemonic potential when thinking about precarity. They propose a new framework to understand how we can think about political resistance with precarity as the focus for alliance, not as a condition of fear. We saw this

collective resistance come together during the initial roll out of the Muslim ban. Americans

protested at various airports to denounce the apparent discrimination against a single religion.

While the state has followed us to the digital realm, a once fantasy and democratizing world now

precaritized, the physical and public space of assembly finds a renewed power in the resistance.

Figure 1. President Donald J. Trump's tweet from October 31, 2017

Source: https://twitter.com/realDonaldTrump/status/925534445393928199
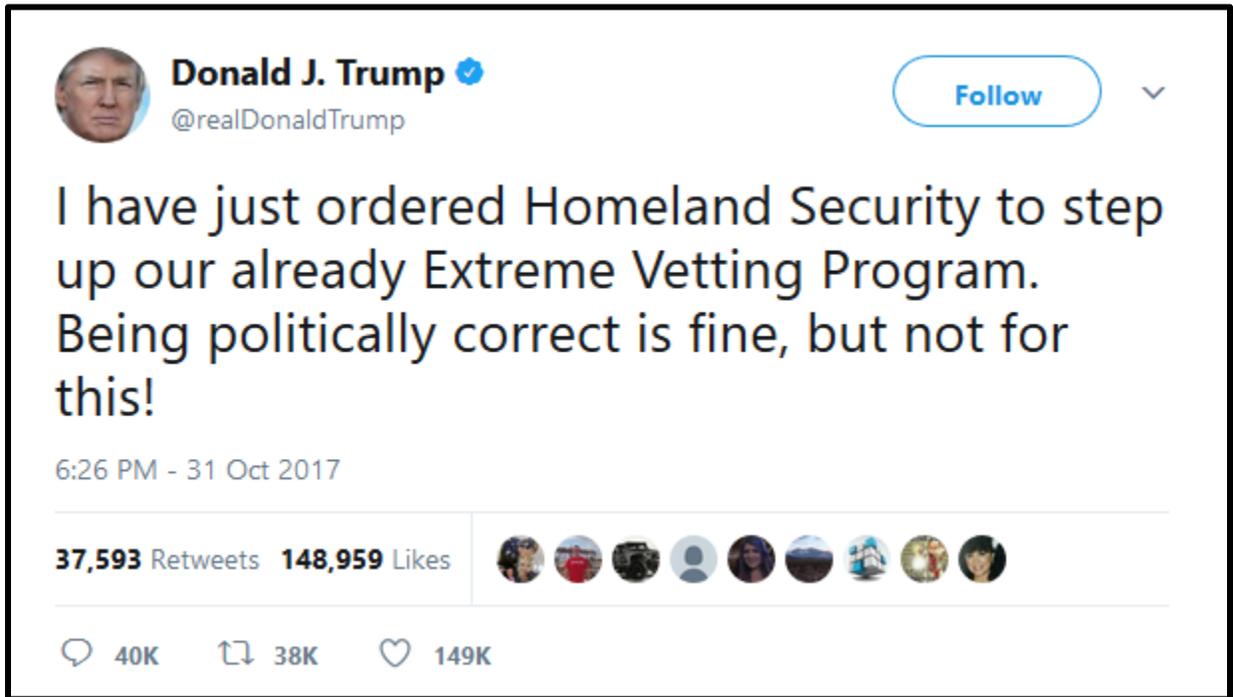
Figure 2. Snapshot of Form DS-5535, "Supplemental Questions for Visa Applicants"

Along with social media information, the form also requests names of all living or deceased

siblings, children, and spouses, as well as 15 years of biographical information including

Social Media	
Please provide your unique user name for any websites or applications you have used to create or share content (photos, videos, status updates, etc.) as part of a public profile within the last five years.	
Social Media Platform	Social Media Identifier (*Name/Handle*)

DS-5535   Page 2 of 3

addresses, employment, and travel history.

Source: http://www.nafsa.org/_/File/_/amresource/DS5535.pdf

Figure 3. Snapshot of Industry Day Sign-In Sheets

There is a total of five pages for July 18, 2017 and a total of seven pages for July 19, 2017.

Attendees included major government contractors and data analytics services providers such as

IBM, Deloitte, Capgemini, and Booz Allen Hamilton.

Source: https://theintercept.com/2017/08/07/these-are-the-technology-firms-lining-up-to-build-trumps-extreme-vetting-program/

Figure 4. Snapshot of Industry Day slides

Figure 5. Organization Chart of the U.S. Department of Homeland Security/cabinets

Source:
https://www.dhs.gov/sites/default/files/publications/17_1219_DHS_Organizational_Chart.pdf
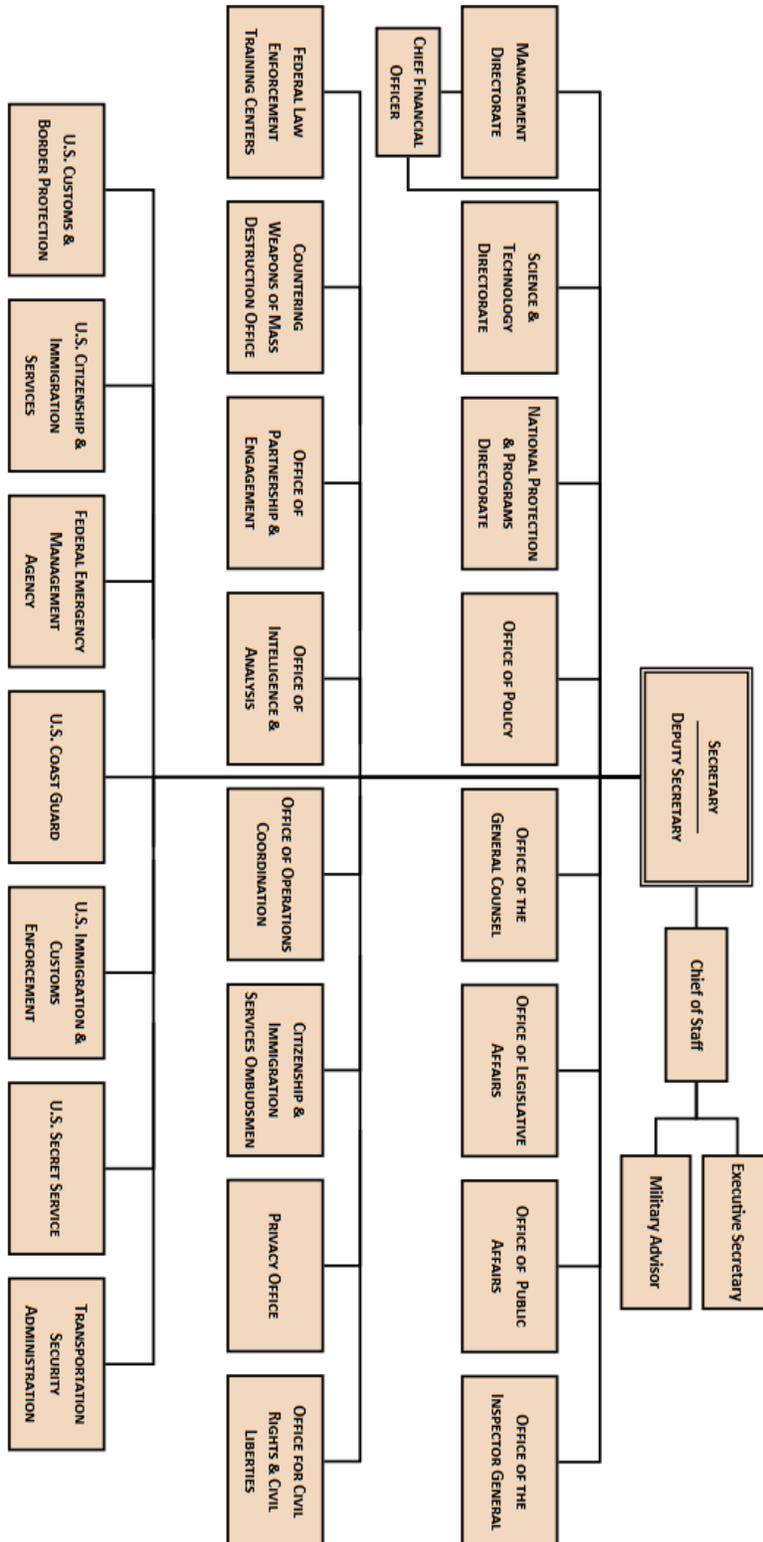
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