

MODERN IMPERIALISM:
CANADIAN RENDITIONS TO TORTURE AND
THE PRODUCTION OF IMPUNITY FOR
SOVEREIGN RACIALIZED STATE VIOLENCE

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ABSTRACT

This dissertation focusses on four Muslim Canadian men, Ahmed Elmaati, Abdullah Almalki, Maher Arar and Muayyed Nureddin, and how their renditions to torture were organized by Canadian state officials and explained to the public through the *Arar Commission Report* (2006) and the *Iacobucci Inquiry Report* (2008) in ways that makes racism compatible with liberal values. This dissertation traces in a Foucaultian sense diverse forms of power, such as sovereign-discipline-governmentality, through which Islamic fundamental terrorist identities were imprinted onto the bodies of these four men. I conceptualize torture as a form of sovereign racialized violence that was organized around the men's citizenship rights and Canada's national narrative as multicultural liberal democracy. The torture to coerce false confession included individual, group and national identity transformations that were reproduced at a discursive level through the government inquiries. In fact, the men's bodies became the referential sites for producing political legitimacy for racially repressive laws and policing practices symbolic of cultural ordering. I contend that Canadian renditions to torture constitute a form of modern imperialism whereby white settler domination in Canada was reproduced through practices such as racialized policing, criminalization without evidence, indefinite detentions and deportations, that were legitimized through the transnational organized production of Islamic fundamentalist terrorist identities. The production of the four men as Islamic fundamentalist terrorists operated through sovereign forms of racialized state violence as well as (self) disciplinary processes that de-territorialized torture from the Canadian geopolitical context to Syria and Egypt and included the men in the process of rendition and torture. Through the outsourcing of torture, 'the Orient' is Orientalized and the narrative of Canada as a multicultural liberal democracy can be sustained while simultaneously implementing racially repressive laws as necessary practices in the fight against Islamic fundamentalist terrorism.

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TABLE OF CONTENTS

| | |
|--|-----|
| Abstract | ii |
| Acknowledgements | iii |
| Abbreviations and Acronyms | iv |
| INTRODUCTION: RENDITIONS TO TORTURE TO COERCE FALSE CONFESSIONS | 1 |
| “I Am Not a Terrorist” | 1 |
| Background: The United States Program of Extraordinary Rendition | 5 |
| Analytical Context | 14 |
| Critical Race Feminist Theorizations of Torture | 17 |
| Investigating Canadian Renditions to Torture | 21 |
| Chapter Organization | 24 |
| CHAPTER 1: CONCEPTUAL FRAMEWORK AND METHODS | 27 |
| Conceptual Framework | 27 |
| Intersectionality | 29 |
| Power/Knowledge and Sovereignty-Discipline-Governmentality | 30 |
| Sovereign Power | 32 |
| Disciplinary Power | 35 |
| Biopolitics | 40 |
| Governmentality | 41 |
| Racialization | 48 |
| Canadian White Settler Colonialism and Multiculturalism | 55 |
| Colonization, Racialization, Criminalization and Deportation | 59 |
| Data Sources | 63 |
| Commissions of Inquiry | 65 |
| The Arar Commission of Inquiry (2004–2006) | 68 |
| The Iacobucci Inquiry (2006–2008) | 73 |
| Methods: Foucauldian Discourse Analysis and Stuart Hall’s Politics of Representation | 76 |
| CHAPTER 2: CANADIAN BACKGROUND | 83 |
| The Gentle Giant and the Giant Empire | 88 |
| George W. Bush: The Spectre of Islamic Fundamentalist Terrorism | 94 |
| Jean Chrétien: The Biopolitics of “Racializing Crime and Criminalizing Race” | 95 |
| Canadian Risk Figures: Islamic Fundamentalism and American Imperialism | 98 |
| The Legalization and Financing of the “Criminalization of Race” | 106 |
| The “Security Budget” and Racialized Policing | 108 |
| The <i>Criminal Code</i> | 110 |
| The <i>Immigration and Refugee Protection Act</i> and Security Certificates | 114 |
| Conclusion | 119 |
| CHAPTER 3: CANADIAN RENDITIONS TO TORTURE | 121 |
| The Production and Distribution of Racial T/Lies | 129 |
| Ahmad Abou-Elmaati | 132 |
| Abdullah Almalki | 134 |
| Maher Arar and Monia Mazigh | 135 |
| Muayyed Nureddin | 136 |
| Canadian Citizenship Rights as a Liability | 142 |
| Ahmad Abou-Elmaati | 142 |
| Abdullah Almalki | 146 |
| Maher Arar | 149 |

| | |
|--|-----|
| Muayyed Nureddin | 151 |
| The Politics of Pain | 152 |
| Ahmad Abou-Elmaati | 154 |
| Abdullah Almalki | 158 |
| Maher Arar | 160 |
| Muayyed Nureddin | 161 |
| False Confessions as Evidence | 165 |
| Conclusion | 167 |
| | |
| CHAPTER 4: THE ARAR COMMISSION: LIBERAL SELF-REFLECTIVE RACIALISM AND CANADIAN RESPECTABILITY | 174 |
| The Politics of Inclusion | 179 |
| The Struggle over Racism and Complicity in Torture | 184 |
| Arar’s Legal Team | 184 |
| Intervenors: CAIR-CAN, CAF, and MCCO-G | 187 |
| Intervenors: The Redress Trust, APT, OMCT, AI, ICLMG, and BCCLA | 190 |
| Intervenors: LUO, the Polaris Institute, the Council of Canadians, OPP, OPS Services, and CLC | 192 |
| Liberal Self-Reflective Racism: The Production of Racial Innocence | 195 |
| Claiming Arar as a Model Minority Citizen | 198 |
| Deficiency Discourses and Liberal Acceptability | 204 |
| Other Responsibilization | 208 |
| Conclusion | 213 |
| | |
| CHAPTER 5: THE IACOBUCCI INQUIRY: GOVERNANCE THROUGH SECRECY AND EXCLUSION | 216 |
| The Mandate | 218 |
| The Politics of Exclusion | 225 |
| Governance through Secrecy | 236 |
| The Sovereign Power to Rule | 242 |
| Conclusion | 249 |
| | |
| CONCLUSION | 252 |
| | |
| BIBLIOGRAPHY | 270 |

ABBREVIATIONS AND ACRONYMS

| | |
|----------------|--|
| AI | Amnesty International |
| APT | Association for the Prevention of Torture |
| <i>ATA</i> | Anti-terrorism Act (2001) |
| BBC | British Broadcasting Corporation |
| BCCLA | British Columbia Civil Liberties Association |
| CAF | Canadian Arab Federation |
| CCLA | Canadian-Muslim Civil Liberties Union |
| CAIR-CAN | The Canadian Council on American Islamic Relations |
| CBSA | Canadian Border Security Agency |
| CCR | Centre for Constitutional Rights |
| <i>Charter</i> | <i>Canadian Charter of Rights and Freedoms</i> |
| CIA | Central Intelligence Agency |
| CIC | Citizenship and Immigration Canada |
| CPIC | Canadian Police Information Centre |
| CLC | Canadian Labour Congress |
| CNN | Cable News Network |
| CSIS | Canadian Security and Intelligence Services |
| DFAIT | Department of Foreign Affairs, Development and Trade |
| FBI | Federal Bureau of Investigation |
| FINTRAC | Financial Transactions and Report Centre of Canada |
| HRW | Human Rights Watch |

| | |
|-------------|---|
| ICRA | Independent Complaints and National Security Review Agency for the RCMP |
| INSRCC | Integrated National Security Review Coordinating Committee |
| ICLMG | International Civil Liberties Monitoring Group |
| <i>IRPA</i> | Immigration and Refugee Protection Act (2001) |
| LUO | Law Union of Ontario |
| MCCO-G | Muslim Community Council of Ottawa—Gatineau |
| MSNBC | Microsoft and the National Broadcasting Company |
| NDP | New Democratic Party |
| NGO | Non-governmental organization |
| OMCT | World Organisation against Torture |
| OPP | Ontario Provincial Police |
| OPS | Ottawa Police Service |
| PBS | Public Broadcasting Service |
| RCMP | Royal Canadian Mounted Police |
| PMO | Prime Minister’s Office, Office of the Prime Minister |
| REDRESS | The Redress Trust |
| SIRC | Security Intelligence Review |
| SMI | Syrian Military Intelligence Services |

INTRODUCTION

RENDITIONS TO TORTURE TO COERCE FALSE CONFESSIONS

I am here today to tell the people of Canada what has happened to me.

There have been many allegations made about me in the media, all of them by people who refuse to be named or come forward. So before I tell you who I am and what happened to me, I will tell you who I am not. I am not a terrorist. I am not a member of al-Qaeda and I do not know anyone who belongs to this group. All I know about al-Qaeda is what I have seen in the media. I have never been to Afghanistan. I have never been anywhere near Afghanistan and I do not have any desire to ever go to Afghanistan.

Maher Arar, November 4, 2003

“I Am Not a Terrorist”

On November 4, 2003, following over a year of detention and torture in Syrian prisons and almost one month after his return to Canada, Maher Arar, a Muslim-Canadian citizen, spoke publicly about his ordeal for the first time. While in prolonged detention in Syria, he endured physically violent encounters with Syrian Military Intelligence (SMI) officers. His proclamation—“I am not a terrorist”—refers to those encounters, in which he was tortured to elicit a false confession. This confession transformed him from who he is—“a father and a husband,” “a telecommunications engineer and entrepreneur,” and “a good citizen”—into what the Canadian state would like him to be: a terrorist (Arar 2003). Arar detailed his experiences of detention in the U.S. and his deportation, detention and torture in Syria, processes that I refer to as forms of sovereign racialized violence¹ that amounted to what has come to be known as

¹ Throughout this dissertation I use the phrase ‘sovereign racialized violence’ with reference to “Western” states as bureaucratic apparatuses that have a monopoly – the sovereign power – in inflicting violence with impunity

renditions to torture. He described how the detailed questions about his business, bank accounts, family, friends and places of worship that he was asked during interrogations in the U.S. and during torture sessions in Syrian prisons could have only come from Canada. For example, he stated that while in detention in New York “they (the Federal Bureau of Investigation; FBI) were consulting a report while they were questioning me, and the information they had was so private – I thought this must be from Canada” (ibid.). In his statement to the press, Arar further revealed that while he was in Syria’s Sednaya prison he encountered an acquaintance, another Canadian citizen: Abdullah Almalki. Arar told the public that Almalki “had also been in a grave like I had been – except that he had been in it longer. He told me that he also had been tortured – with the wire and the cable. He was also hanged upside down” (ibid.).

In addition to Arar and Almalki, between 2001 and 2004, two other Muslim-Canadian citizens, Ahmad Abou-Elmaati, and Muayyed Nureddin, were also detained and tortured in Syria and Egypt. During these detentions, the four men were tortured to force them to falsely implicate themselves and each other in terrorist activities. The bodily pain inflicted on all four men was used to transform them from men innocent of terrorism to members of a Canadian Islamic fundamentalist terrorist sleeper-cell connected to al-Qaeda.

In government sources and in some legal scholarship, Arar is the only Canadian citizen who has been referred to as a victim of the United States’s program of extraordinary rendition (Barnett 2008; Henderson 2006). Broadly located within the post-9/11 Global War on Terror, the United States extraordinary rendition program was organized by the American Central

through war for example, and other politically legitimated forms of social control such as criminalization, detention and deportation.

Intelligence Agency (CIA) as a “global spider web of unlawful interstate transfers” (Marty 2006). It kidnapped and illegally transferred thousands of Muslim men from locations across the world to spaces that were either under U.S. military occupation, such as Cuba, Afghanistan, and Iraq, or to nation-states such as Egypt, Syria, and Morocco known for human rights violations. Here, “outsourced torture” (Mayer 2005) took place, torture that worked to re-define these Muslim men, who came from diverse cultural, national, and geopolitical backgrounds, as members of one universalized category: Islamic fundamentalist terrorists.

The circumstances under which Arar was detained first in the United States and then in Syria, and the circumstances of the other three Muslim-Canadian citizens who were also detained and tortured in Syria and Egypt, are the central focus of this research study. I use the *Arar Commission Report into Actions of Canadian Officials in Relations to Maher Arar* (including Factual Background Volume 1, 2, and the related Analysis and Recommendations [2006])² and the *Iacobucci Inquiry Report into Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin* (2008)³ as my primary empirical sites to examine how renditions to torture were organized by Canadian officials and how the conduct of Canadian officials was explained to the public.

I also draw on a variety of secondary resources such as print and online media reports and selected speeches given by then Liberal Prime Minister Jean Chrétien between September 12 and September 24, 2001 as well as Canadian legislation (specific sections of the *Criminal Code of Canada* and the *Immigration Refugee Protection Act*). I analyse the political rationalities that justified the legal and budgetary shifts within which Canadian renditions to torture emerged.

² Hereafter referred to as the *Arar Commission Report*.

³ Hereafter referred to as the *Iacobucci Inquiry Report*.

The *Arar Commission Report* (2006) and the *Iacobucci Inquiry Report* (2008) are the only *public* documents that have revealed some of Canadian state officials' conduct that was previously cloaked in secrecy. As they are highly censored government documents, I utilize secondary sources including the *Toope Report* (2005); (semi-) autobiographical books such as *Dark Days* (Pither 2008) and *Hope and Despair* (Mazigh 2008)⁴ that help to trace some of the details surrounding four processes of sovereign racialized violence amounting to Canadian renditions to torture. Particularly I am interested in the policing practices that labelled these men as terrorist suspects; the circumstances that led to the men's departure/deportation from Canada, their detention in Syria and Egypt; and the content of torture. My analysis is guided by three overarching questions: (a) What processes, practices, and forms of power were deployed between 2001 and 2004 to produce terrorist identities? (b) How were race, gender, class, and heteronormativity central to the reconfiguration of men innocent of terrorism to Islamic fundamentalist terrorists connected to the al-Qaeda movement? (c) How was Canadian state officials' conduct explained to the public in two inquiry reports: the *Arar Commission Report* (O'Connor 2006a), including the *Factual Background Volume 1 and Volume 2* (O'Connor 2006b, 2006c), and the related *Analysis and Recommendations* (2006d); and the *Iacobucci Inquiry Report* (Iacobucci 2008)?

I examine transcripts of initial submissions to the inquiries by Elmaati, Almalki, Arar, and Nureddin as well as stake holding parties that were granted intervenor status in the inquiries such as Amnesty International, the Canadian Council on American Islamic Relations, the

⁴ These three data collection sites are semi-autobiographical accounts detailing the men's ordeal. The *Toope Report* was ordered by Judge Dennis O'Connor to determine if the four men were in fact tortured. In the report the men give testimony about their detention and torture in Syria. For *Dark Days*, Pither interviewed Elmaati, Almalki and Nureddin and in *Hope and Despair*, Monia Mazigh, Arar's wife narrates what happened from her point of view.

Canadian Arab Federation, and other organizations. Initial submissions are important sites that may reveal the ways in which participants and stakeholders' discourses are integrated in the inquiry process that ultimately contribute to the explanatory discourses of the final public reports.

In order to contextualize how renditions to torture were organized in the Canadian context, in the next section, I draw on interdisciplinary academic literature and European parliamentary reports to provide an overview of how the U.S. program of extraordinary rendition was organized.

Background: The United States Program of Extraordinary Rendition

The CIA initiated the rendition program in the 1970s, to evade extradition agreements and protocols (Barnett 2008, 11–12).⁵ In the 1980s, during President Ronald Reagan's administration, renditions were expanded within the broader framework of the War on Drugs. From its inception, the United States's program of extraordinary rendition was designed to circumvent extradition treaties—the sovereign power of nation-states to detain and deport individuals. Under the rendition program, foreign criminals and fugitives wanted by the United States were brought into its geopolitical territory for evidence-based investigations and trials (Barnett 2008, 11; Henderson 2006, 188–9). In 1992, George H. W. Bush (Bush Sr.) specified further directives for the rendition program, including local police agencies. He stated: “if extradition procedures were unavailable or put aside, the United States could seek the local policing agency's assistance in a rendition, secretly putting the fugitive on a plane back to

⁵ Extradition is the formal legal process, regulated by interstate treaties, through which a person residing in one juridical and geopolitical territory is surrendered to another nation-state to face criminal charges and trial. The person in question may be apprehended and placed in custody pending an extradition hearing (Barnett 2008).

America or some third country for trial” (G. H. W. Bush as quoted in Grey 2006, 136). George Tenet, a former CIA director, indicated that during the 1990s, under President Bill Clinton’s Democratic government, renditions became specialized CIA counterterrorism activities (Tenet as quoted in Barnett 2008, 11). In 1994, Islamic militants became the target of CIA counter-terror projects, and the United States systematically began to transfer suspected Islamist terrorists to foreign countries such as Egypt (Grey 2006, 130–2). Michael Scheuer, the program’s chief of staff from 1995 to 1997, noted that during the Clinton administration the CIA specifically focused on Osama Bin Laden and organized Sunni extremists residing in Afghanistan and Egypt (ibid.). According to Scheuer terrorists were brought to the United States to be prosecuted and tried under criminal law; some terrorist suspects were sent to other countries where they were also wanted for criminal activities. For example, in the context of a series of bomb attacks on U.S. embassies in Tanzania and Kenya, Egypt became a partner in a program for the detention of Egyptian citizens apprehended by the CIA outside of Egypt (Grey 2006, 135).

After the 9/11 terrorist attacks on the World Trade Center and the Pentagon, the Republican administration under President George W. Bush⁶ and Vice-President Dick Cheney altered the governance, organization, and purpose of the rendition program. Folded into broader national security strategies, which became known as the Bush Doctrine, the focus of the rendition program shifted from targeting specific Islamic militant groups to tracking and kidnapping Muslim and Arab men who were identified as potential terrorist suspects living as

⁶ Hereafter, “Bush.”

“enemy aliens” inside “Western”⁷ nation-states.⁸ Directives to the CIA included preemptively apprehending and transporting Muslim men from across the world to prisons outside of the United States (Grey 2006, 149–50). According to statements made by CIA officers, the program intended to administer “enhanced interrogation methods”—that is, torture—with the goal of extracting knowledge about possible terrorist plots (ibid.).⁹

The CIA secretly transferred thousands of Muslim men¹⁰ from countries all over the world to prisons located in U.S. extraterritorial spaces such as Cuba, Afghanistan, and Iraq (Grey 2006, 38–39).¹¹ When the CIA could no longer handle these vast number of captives, “hundreds of prisoners were transferred across the world to face interrogation and imprisonment in foreign

⁷ Throughout this dissertation, I place “Western” and “Eastern” in quotation marks to indicate that “the West” and “the East” is a divide that is socially constructed and located in ongoing colonial and imperial relations.

⁸ The Bush Doctrine was governed by the concept that Islamic fundamentalist terrorism operates through fragmented sleeper-cell operatives who live in disguise in “Western” countries, after having received terrorist training in “Eastern” countries. The Bush Doctrine presents sleeper-cell operatives as Islamic fundamentalists who inherently hate the United States and such liberal democratic principles as (gender) equality, freedom, and democracy. The Bush Doctrine justifies preemptive actions to prevent terrorist attacks including preemptive warfare, unilateralism rather than international collaboration in fighting Islamic fundamentalist terrorism on a global scale, and promotion of regime change in so-called “terrorist-harboring” countries (Lafeber 2002).

⁹ In 2004, for example, Khaled El-Masri, a German citizen of Lebanese descent, testified in front of the European Committee on Legal Affairs and Human Rights that on December 31, 2003, while travelling by bus to his vacation destination in Macedonia, he was interrogated by border agents and transported to a hotel in Skopje (Macedonia). Confined in a hotel room over the course of three weeks, he was beaten and raped by six to eight hooded men. He was asked to falsely confess to involvement in terrorist activities in connection with the al-Qaeda movement. On approximately January 23, 2004, El-Masri was shackled, drugged, and transferred to Afghanistan, where he was continuously tortured; his torturers demanded that he confess to being involved with a German group linked to the 9/11 hijackers (Marty 2006, 24–26). Similarly, at the Guantanamo Bay Detainee Treatment and Trials Congressional Hearing on May 20, 2008, Murat Kurnaz, a German resident of Turkish descent, recounted that he was kidnapped by the CIA while on vacation in Pakistan. He was transferred first to Kandahar, Afghanistan, and then to Guantanamo Bay, Cuba. Over the course of five years of confinement, Kurnaz was continuously tortured to elicit the false confession that he was part of a German Islamic terrorist group connected to al-Qaeda (Kurnaz 2008).

¹⁰ The extraordinary rendition program mostly targeted Muslim men from “Western” and Eastern” nation-states. In some cases, Muslim women were also held in captivity, to elicit false confessions from the men by threatening them with the torture of their sisters or wives.

¹¹ In some instances, the geopolitical territories in which torture took were occupied by the United States—they were spaces outside the United States but under U.S. military jurisdiction.

lands” (150) such as Egypt, Morocco, Syria, and Pakistan. These men became known as “ghost detainees.”¹²

In Guantanamo Bay (Cuba), Bagram (Afghanistan), and Abu Ghraib (Iraq), detainees were incarcerated in grave-like cells in filthy environments. They experienced the following torture practices: semi starvation, foul water, sleep deprivation, waterboarding, hot and cold treatments, beatings, restraints, shackles, and enforced prolonged standing in constrained stress positions. Other torture practices included hooding, dogging¹³, hanging, and being beaten with barbed wire. Detainees were burned by cigarettes, cut with broken glass, and had phosphoric liquid poured on to their bodies; they were subjected to humiliation and their assumed commitment to Islam religion was desecrated; they were forced to expose their genitals and were arranged into homosexualized poses. These torture practices in spaces organized by the Bush administration outside the United States produced a pattern of what Razack (2008), borrowing from Agamben’s work, referred to as camp-like conditions. Muslim men were “evicted from law” and rendered into “place[s] where the rule of law no longer applies and where . . . nothing committed against the camp’s inmates [could] be considered a crime” (Razack 2008, 61).

Gregory (2007) points out that through a presidential Military Order (Military Order of November 13, 2001), “legal protections were withdrawn” at Abu Ghraib and Guantanamo Bay, and laws of war were invoked that made it “possible to detain and try suspects” (Gregory 2007, 214). In the immediate aftermath of the 9/11 terrorist attacks, wartime logic was used to extend the power of the United States president. Torture practices conceptualized as wartime measures

¹² The phrase “ghost detainee” refers to captured Muslim men whose identities and whereabouts were concealed by the CIA in order to avoid interference from nation-states acting on behalf of their citizens, lawyers hired by family members, and human rights organizations such as Amnesty International.

¹³ Dogging is a torture method used by U.S. (female) military personnel at Guantanamo Bay. Muslim men were de-humanized and humiliated by unclothing them and putting them like dogs on a leash.

were inflicted on Muslim and Arab-looking men at the will and order of “the sovereign”—the Commander-in-Chief—George W. Bush. For example, on February 7, 2002, Bush issued a memorandum to the effect that “none of the provisions of Geneva apply to our conflict with al-Qaeda in Afghanistan or elsewhere throughout the world.” In the same memorandum, Bush stated: “I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war” (Bush 2002, quoted in Gregory 2007).

The United States government invented a new legal subject: “unlawful combatant”. Defining Muslim male detainees as “unlawful combatants” meant that Geneva Conventions—specifically, the Conventions of August 12, 1949, Chapter 1, and Articles 3–5, which ensure the proper treatment of prisoners of war upon capture and during detention— could be suspended (ICRC 1949a). The formation of this new legal subject played a key role in rendering the torture of detainees legal—the law now provided impunity for those who ordered and administered torture. With the introduction of the term “unlawful combatant” by Bush’s legal team, the United Nations (1984) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, the United States Code prohibiting torture (18 U.S. Code 8 §2340), and procedural guidelines such as habeas corpus, all ceased to apply to alleged terrorists. Muslim and Arab-looking men captured as sleeper-cell operatives, as members of the counterinsurgency against the United States military invasion of Iraq, and as members of the Taliban in Afghanistan, were folded into this category.

In 2004, the Bush administration could no longer suppress allegations by whistleblowers and investigative reporters of excessive interrogation practices.¹⁴ Videotapes and photographs of torture at Abu Ghraib were leaked to the press, creating public outrage around the world. The public spectacle of torture triggered a set of explanations by U.S. officials such as then Secretary of State Condoleezza Rice. Discourses on the “risk of terrorism” attached to Muslim male bodies, and discourses of “national security” were combined with notions of “emergency” and “exception” to justify liberal suspensions of the rule of law, due process, and, as noted above, international conventions against torture (Agamben 2005, 1–15; Altheide 2006; Engele 2004; Gearty 2002). In particular, torture practices such as prolonged standing and waterboarding (redefined as *water treatment*) became legalized in the name of truth-finding missions undertaken to prevent future terror attacks against the “West”. The United States Department of Justice and Office of Legal Counsel (OLC)—the Bush administration’s legal team, instructed by Attorney General John Ashcroft (2001–2005)—redefined acts that would previously have been prohibited as torture, as legally sanctioned practices (Barnett 2008, 17–18).

At the time, six memos were issued that interpreted laws against torture in ways making relevant torture practices legal (Cole 2009).¹⁵ Three memos, one issued in August 2001 (Bybee to Gonzales) and another two in August 2002 (Bybee to Gonzales 2002 and Bybee to Rizzo 2002) “were motivated by the desire to protect Cabinet-level officials and CIA agents from prosecution” (20). The memos show the legal manoeuvres to circumvent the Geneva

¹⁴ In 2003, organizations such as Human Rights Watch (2003) accused the United States military of using torture at Guantanamo Bay. In January of 2004, army reservist Joseph Darby leaked two discs with photographs of torture to the American Army Criminal Investigations Command. This triggered an internal investigation into abuses at Abu Ghraib and resulted in the Taguba Report, which was later leaked to the press. A series of press releases then occurred, most notably an April 28, 2004 episode of the CBS program *60 Minutes II*, and a series of articles published by Seymour Hersh (2004a, 2004b) and by Jane Mayer (2005) in *The New Yorker*.

¹⁵ These so-called “torture memos” were de-classified on April 22, 2009.

Conventions so that international rights did not apply to terror suspects and Taliban operatives. Significantly, these memos redefined torture. Statutory terms defining torture as “severe pain and suffering” and “prolonged mental harm” were reinterpreted; for example, severe pain was reinterpreted as “equivalent in intensity to the pain resulting in organ failure, impairment of bodily function or even death” (quoted in Cole 2009, 21). Cole refers to the last three memos, issued between 2004 and 2005 (Brandbury to Rizzo 2005), as “the Cover-Up Memos” (25). These memos did not work to legalize torture but were more “an exercise in public relations than in law” (ibid.).

Torture practices that could not be legalized, such as dogging, rape, hanging, beating with barbed wire, burning of skin with cigarettes, and cutting of skin with broken glass were depicted by the Fay Inquiry¹⁶ as having been committed by only “a small group of morally corrupt and unsupervised soldiers and civilians” (Strasser 2004, quoted in Razack 2008, 65). Political officials explained these specific, illegal torture practices as administered by a few individual bad apples within the military, or else committed by the employees of corporations contracted to provide services to the United States military were not be held accountable by military courts. The torture inflicted on men transferred by the CIA to prisons located in “Eastern” countries was explained to the public as having occurred despite diplomatic assurances, the result of circumstances beyond the political reach of the United States government (Gonzales 2005, quoted in Henderson 2006, 17; Huq 2006, 26–27).

However, despite these domestic political and legal manoeuvres, including the redefinition of torture to create impunity for U.S. state-sanctioned violence, the program of

¹⁶ The Fay Inquiry was a military inquiry led by Major General George R. Fay in 2004 to investigate the actions of military intelligence specialists in relation to the abuses at Abu Ghraib (Danner 2004, 404–8).

extraordinary rendition could not have materialized without the active participation of transnational corporations, and of policing agencies and individual border agents in “Western” and “Eastern” countries. The CIA organized a “global spider web of secret detentions and unlawful inter-state transfers” (Marty 2006) by eliciting the participation of individuals, corporations, and nation-states through financial incentives.¹⁷ In particular, the participation of “Western” and “Eastern” nation-states was crucial for the renditions to torture program. However, the participation of nation-states was hierarchically organized around “culture clash theories,” which represents a form of Orientalism (Said 1978) whereby “the West” is produced as culturally superior and “the East” is produced as culturally inferior. The participation of various “Western” European nation-states reflected a certain hierarchy among what Razack (2008) called the “family of white nations” (5). American imperialism facilitated de-territorialized torture while depending on Italy, Sweden, Britain, and, particularly, Germany¹⁸ as

¹⁷ For example, individual border agents and bus drivers in Pakistan and Macedonia became entrepreneurial vigilantes in the capture of Murat Kurnaz as well as Khaled El-Masri, two Muslim-German citizens who had been labelled “terrorist sleeper-cell operatives.” In an interview with *The New York Times* on January 8, 2012, Kurnaz stated: “the United States distributed thousands of flyers” promising that anyone who handed over Taliban or al-Qaeda suspects would receive “enough money to take care of your family, your village, your tribe for the rest of your life” (Kurnaz 2012). The CIA paid a \$3,000 bounty to the border police agent who handed Kurnaz over to the CIA; he had been travelling as a German tourist in Pakistan. While the rendition program was organized by the CIA, some of the flights in question were operated by privately owned aviation companies. Between 2001 and 2007, the CIA leased airplanes and contracted private pilots to transport Muslim and Arab-looking males from countries across the world to “black sites” (Huq 2006, 25). While the CIA outsourced rendition flights to a variety of private contractors, it largely depended on U.S. airplane and pilot contractors Jeppesen Dataplan Inc., located in San Jose, California, and Stevens Express Leasing Inc., located in Cordova, Tennessee (Pareene 2011). Furthermore, in Cuba, Afghanistan, and Iraq, prison infrastructure was built based on the idea that the captured men constituted tiered security risks; specific interrogation facilities were built around high-value detainees who were assumed to possess knowledge about future terrorist attacks. Halliburton received \$11 billion in government contracts to rebuild and expand existing prisons in Cuba, Iraq, and Afghanistan. One contract, worth \$37 million, was given to Halliburton via the United States Navy; Halliburton built new prison camps within the existing prison structure at Guantanamo Bay, rebuilt the notorious Abu Ghraib prison in Iraq, and built a new prison in Bagram, Afghanistan (Dauphin 2008).

¹⁸ For example, German policing agencies already had a working relationship with the CIA, dating back to the Cold War when the threat of Communism was considered the West’s most pressing problem (Kagel 2007, 2). After the 9/11 attacks, the German government allowed rendition flights to stop over in Frankfurt/Main and at the United States military airbase in Ramstein to refuel rendition flights, and to connect with other flights that were collecting Muslim men from all over Europe and transporting them to Afghanistan, Iraq, and Cuba (Marty 2006, 6). Furthermore, local German police agencies participated in the surveillance of Muslim communities and the labelling

allies. These states provided the means by which rendition flights could pick up detainees, or stop over in European countries such as Germany on their way to Iraq and Afghanistan. “Western” states also became crucial collaborators in supplying the United States with information about possible terror suspects. State policing bureaucracies became participants in collaborative efforts to racially profile, police, and hand over terror suspects to the CIA. They worked hand-in-hand with the CIA, defining Muslim men as terror suspects and sleeper-cell operatives, and providing information about their whereabouts. These European governments handed over members of their so-called undesirable populations to the CIA, while leaving the illiberal and illegal practices of kidnapping, inter-state transfers and deportations, detentions, and torture to the United States.

In addition to transporting Muslim men to Cuba, Afghanistan, and Iraq, the CIA transferred an unknown number of Muslim and Arab men to prisons in so-called developing countries such as Lithuania, Romania, Poland, Syria, Pakistan, Egypt, Libya, Jordan, and Morocco—countries known for their “poor human rights records” (Barnett 2008, 12). The governments of Romania and Poland, for example, were drawn into the rendition program through promises of economic development if they allowed the CIA to use their prison facilities as torture chambers (Goetz and Sandberg 2009). The then Egyptian President Muhammad Hosni El Sayed Mubarak admitted that, by mid-2005, Egypt had received “sixty to seventy terrorist suspects through the post-9/11 U.S. rendition program” (Huq 2006, 32). During this same period,

of Muslim men as Islamic fundamentalist terror suspects. In fact, Germany did not need much incentive from the United States to racially profile and label Muslim males as terrorists. Immigrants with Islamic background had been considered the most pressing problem in Germany and “Western” Europe prior to 9/11 (Fekete 2006; Fekete and Webber 2004). Anti-Muslim racism portraying Muslim populations as culturally inferior and unwilling to integrate into “Western” secular liberal democracies governed German media representations and state policies long before 2001 (Cesari 2010, 1–6, 9–25). Particularly in Germany, a nation-state with a history of policing and criminalizing of young male Muslims, American conceptions of the Muslim/Arab male as an “enemy alien inside” were quickly integrated into mainstream discourses (Shooman and Spielhaus 2010, 198–228).

the Egyptian government received approximately \$50 billion from the United States government to assist Egyptian military and security forces in combatting terrorism and Islamist threats (ibid.). In 2002, Pakistan's President Pervez Musharraf received an aid package of \$600 million to restart U.S.-Pakistan military cooperation (Carothers 2003, 85). Under the guise of preventing terrorist attacks, the United States government gave military aid to countries such as Egypt to house American detainees considered terror suspects. Such financial aid given to the military apparatus facilitated the violent repression of political dissent. In the name of freedom and democracy—the very values that were supposedly undermined by Islamic fundamentalist terrorism and particularly by the al-Qaeda movement—the United States government aided some of the most authoritarian regimes in the Middle East, and facilitated the repression of political, religious, and cultural liberties by providing aid to military and police apparatuses overseas.¹⁹

Analytical Context

In addition to journalistic, non-governmental, and government investigative reports,²⁰ the socio-legal literature has greatly contributed to shedding light on how the United States program of extraordinary rendition was organized by the CIA. Most authors use case studies and draw on experiences of victims of the American rendition program—such as Egyptian citizen Hassan

¹⁹ For example, in the post-9/11 context, the Bush administration increased military aid to Israel from \$60 million in 2000 to over \$6 billion, distributed over the next decade (Sharp 2008). The production of Muslim men as Islamic fundamentalist terrorists and threats to international security has had political ripple effects across the world (Carothers 2003, 89–90). Post-9/11 anti-terrorist campaigning was used by Russian and Israeli political leaders to justify their long-standing campaigns of colonial and imperial violence against Chechnya's post-independence movements, which sought to sever ties with Russia, and Palestinian resistance against the Israeli occupation. Further, during the Bush regime, the political relationship between the United States and Israel was based on a common threat to national security: Muslim terrorism. Israel's expansionist warfare was bolstered through increased military aid from the United States government (ibid).

²⁰ I have used interdisciplinary academic literature, investigative reports by journalists such as Stephen Grey (2006), and reports from the Council of Europe by Dick Marty (2006) in the introduction, providing an overview how the United States program of extraordinary rendition was organized.

Nasr, Yemeni citizen Saeed Mohammed, and German citizen Khaled el-Masri—to outline the ways in which the kidnappings, transfers, indefinite detentions, and torture have violated a variety of international and domestic laws. Barnett (2008) and Satterthwaite (2007) illustrate how victims of renditions to torture have been excluded from U.S. domestic laws and liberal legal principles such as habeas corpus and the rule of law. Other legal scholars have condemned the illegal transfers, indefinite detentions, and practices of torture as violations of international conventions and domestic legal prohibitions against torture including the *International Covenant on Civil and Political Rights* and the *Convention Relating to the Status of Refugees* (Barnett 2008; Henderson 2006; Huq 2006; Paust 2007; Satterthwaite 2007; Silva 2009; Weaver 2006).

Most legal scholars suggest that the CIA program of extraordinary rendition administered by U.S. state agents has violated the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture [CAT] 1987).²¹ Weissbrodt and Bergquist (2006) show how a variety of human rights outlined in the *Universal Declaration of Human Rights* (1948)²² Articles 1 through 13 have been violated. They cite Article 5: “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or

²¹ For example, they cite Article 1 of the Convention defining torture as: . . . any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Article 2 requires “to take effective measures to prevent it in any territory under its jurisdiction.” Article 3 prohibits states from returning, extraditing or *refouling* any person to a state “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

²² Human rights is a “Western” concept that has a long historical legacy going back to the nineteenth century, following the French Revolution (1789) and the Bill of Rights of the United States Constitution (1791). A significant period for the creation of universal human rights was the period after the Holocaust. The United Nations (1948) Universal Declaration of Human Rights included “crimes against humanity” to be able to lay charges against state agents who authorized and organized torture and genocide, and hold them criminally responsible. It has since developed to include equality rights based on race, ethnicity, nationality, class, gender, and sexuality (Article 2); rights to property (Article 17); to social security (Article 22); labour rights (Article 23) and education (Article 26).

punishment” and Article 9: “no one shall be subjected to arbitrary arrest, detention or exile.” The *Universal Declaration of Human Rights* promotes the notion that individuals, irrespective of citizenship, have fundamental and irrevocable rights such as the right to be free from torture.

The legal approaches above draw attention to the problem that Muslim men under discussion in this dissertation, in Arendt’s (1968) sense, were excluded from the right to have rights (292–94). Since most legal scholars have operated under the assumption that Muslim men have been excluded from “Western” rights regimes, they suggest that the commonsensical solution to rights violations is to uphold and reassert (inter)national human rights and civil liberties. Including Muslim men in universal rights regimes symbolizes a recommitment of “Western” nation-states to liberal rights such as international human rights laws and conventions against torture.

While targeting Muslim men is explicit in the organization of the rendition program, these approaches have silenced the role racism plays in the organization of renditions to torture. In fact, the idea that international human rights and national and international conventions against torture triumph over the practices of sovereign racialized state violence affirms the notion that the illegal transfers, indefinite detentions, and use of torture are aberrations from liberal rule in exceptional times. These scholarly works perpetuate the notion that “Western” liberalism is a form of governance “incompatible with racism” (Fitzpatrick 1987, 119), and torture. These forms of sovereign racialized violence are depicted as temporary misjudgements by otherwise democratic, multicultural, human rights-supporting regimes that embrace liberal rule based on principles such as equality, due process, habeas corpus, and in the universalism of rights.

Critical Race Feminist Theorizations of Torture

In contrast with most legal scholars who represent sovereign racialized state violence (such as torture) as external to “Western” liberalism, critical race feminists have argued that the exclusion of Muslim and Arab men from “Western” rights regimes must be understood as a form of gendered racial violence, rooted in ongoing colonial relations operating alongside and through liberalisms of the “West” (Grewal 2005, 197–8; Razack 2008, 5; Thobani 2007, 179–213). Razack (2008) analyzes the preemptive criminalization and preventative detention of Muslim male non-citizens in Canada as the result of legalized exclusions operating within liberal legalistic frameworks rather than temporary lapses into illiberality, or a sign of the demise of liberalism, multiculturalism, and democracy. These practices, Razack argues, are characteristic of ongoing colonial relations that have been legalized and institutionalized through the production of knowledge that relies on race logics, rather than evidence, in criminalizing Muslim and Arab-looking men as Islamic fundamentalist terrorists (Razack 2008, 27–29).

Razack (2008) draws on Agamben, who uses Foucault’s concept of biopolitics to discuss how, in modern liberal societies, sovereign power and the violence accompanying it, need to be legitimized and legalized. For Agamben “the state of exception appears as a threshold of indeterminacy between democracy and absolutism” (Agamben 2005, 3). Razack uses Agamben’s work to understand how discourses of “states of exception” work to legitimize racialized state violence such as indefinite detentions. She argues that the torture of Muslim men symbolizes the political position that Agamben has described through the figure of the “homo sacer” (Agamben 8). *Homo sacer* is the figure who remains under the power of a law that mandates his exclusion from that law. This subject of sovereign power is stripped of his qualifications as a legal subject,

expelled from cultural life and the political community, and can be killed with impunity.²³ No longer a subject of law, he is rendered as “bare life” into a space of lawlessness similar to “the camp” within which the sovereign power of the state and state violence can be applied at will (Razack 2008, 59–82).

Post-9/11, discourses of “monster terrorist” (Puar and Rai, 2002) have been attached to the Muslim and Arab-looking male body to legalize “the eviction of Muslims from Western law and politics”. Razack states that, “if the state is able to preserve an appearance of tolerance at all, it is only able to do so because the collective punishment of all Muslims is understood as reasonable, a necessary move to preserve “Western” civilization” (Razack 2008, 50). Razack also draws on Hannah Arendt’s (1968) concept of “race thinking,” to consider about how historically lingering forms of racism have been taken up by the Canadian white settler colonial state to become full-fledged governing doctrines of state bureaucracies (Razack 2008, 8–9). She uses an interlocking analysis that recognizes how structures of oppression such as racism, classism, and (hetero)sexism are constitutive of each other in the production of identities (Razack 2008, 107–144; 2005, 11–31). Representations of “Muslim man as Islamic fundamentalist terrorist” underlie a specific form of race thinking: sleeper-cell logic. Sleeper-cell logic is underwritten by a gendered Orientalist ideology in which Muslim men, who live in the West and who have seemingly adopted “Western” values, “come from a culture in which religion, and not rationality” produces an inherent potential to terrorist violence and Islamic extremism (Razack 2008, 29). This form of race thinking supplies “the governing logic of several laws and legal processes” and justifies “the expulsion of Muslims from political community, a casting out that

²³ Agamben’s (1995) discussion of homo sacer rests on the distinction between *bios* and *zoe*. *Bios* is the life that is qualified by rights, whereas *zoe* is life deprived or devoid of rights—“bare life.”

takes the form of stigmatization, surveillance, incarceration, abandonment, torture and bombs” (5).

In addition to Razack, other American and Canadian critical race feminists²⁴ use intersectional analysis to show how the racialized masculinity of Muslim and Arab-looking men as terrorists is produced in media representations. Most of these analyses draw on post-colonial scholars such as Fanon (1963) and Said (1978) to show how, post-9/11, discursive formations of anti-Muslim racism constitute a form of colonial violence operating on a level of knowledge production whereby physical traits and religion became markers of cultural Otherization (Said 1978), inferiorization, and dehumanization (Fanon 1963, 7–8). These scholars show how “New Orientalism” is underwritten by intersecting/interlocking racial, sexual, and gendered ideas that promote “culture clash” theories of “West” versus “East” to justify local colonial and imperial projects within the broader framework of the “Global War on Terror.” For example, critical race feminists such as Razack (2008), Puar (2007), and Grewal (2005) have analyzed how in media representations liberal concepts and principles such as multiculturalism, anti-homophobia, and gender equality, which emerged from discourses of resistance, have been taken up and folded into the discursive regimes of anti-Muslim racism. Puar and Rai (2002) investigate how the construction of Muslim men and/or men who look like Arabs as “monster terrorists” in dominant media representations are produced through gendered notions of “sexual perversity” and “failed heterosexuality”. These representations operate “as a screen for otherness” and as an index that is organized around civilizational mores portraying the West (and particularly the United States) as exceptionally democratic, free, and humane (117).

²⁴ Including Arat-Koc 2005, 32–49; Grewal 2005, 203–217; Jiwani 2005, 50–68; 2010, 59–86; Puar and Raj 2002; and Thobani 2007, 234–6.

Puar (2007) uses Foucault's (2003) concept of *biopolitics*, through which he argues that in modern liberal societies sovereign power such as the taking of life needs to be legitimized through the protection of life (149–50). Puar shows how discourses of *exception* and *monster terrorist* serve

. . . to rearticulate the devitalization of one population sequestered for dying—Iraqi detainees accused of terrorist affiliations—into the securitization and revitalization of another population, the American citizenry. Effectively this is a biopolitical reordering of the negative register of death transmuted into the positive register of life, especially for the United States homonormative subjects who, despite the egregious homophobic, racist, and misogynist behaviour of the United States military prison guards, benefit from the continued propagation of the United States as tolerant, accepting, even encouraging of sexual diversity. (Puar 2007, xxv)

Puar goes on to argue that the exercise of sovereign violence is historically and politically wedded to group and national identity formations, including the production of fictionalized enemies such as Muslim men as terrorists and national narratives such as U.S. exceptionalism. She also uses Mbembe's (2003) concept of *necropolitics*, by which she understands that anti-Muslim racism, operating on a level of biology and culture, is the governing rationality permitting imperial warfare. For Puar and Rai (2002) representations of Muslim men as “monster terrorists” have not only a discursive component but operate as identity classifications through which multiple forms of power such as sovereign and disciplinary power can be applied on the body (*ibid.*, 119).²⁵

Razack (2008), Philipose (2007) and Puar (2005) have analyzed the specific torture practices inflicted on Muslim men by U.S. soldiers in extraterritorial spaces such as the prisons

²⁵ For example, Puar's analysis of “terrorist assemblages” (2008) helps elucidate racist discourses that provide pervasive impetus for self-disciplinary mechanisms through which groups and individuals are incorporated into a racially repressive governing apparatus and imperial and colonial projects. She shows how “the transnational political agendas of U.S. imperialism” (53) are reproduced through discursive claims for gay men's inclusion into “Western” modern rights regimes, which construct Islam as “unyielding and less amenable to homosexuality than Christianity and Judaism” (Puar 2005, 13).

in Guantanamo Bay (Cuba), Bagram (Afghanistan), and Abu Ghraib (Iraq). In this set of literature torture practices are depicted as expressions of sovereign colonial power and the material enactment of previously established representations, their “raced-gendered grammars” (Philipose 1047–71), and the display of (non-)belonging (Puar 2005, 28). These authors consider torture as working to exalt white settler domination, through the systemic abandonment and exclusion of unwanted populations who do not embody the white settler subject of the imagined Canadian nation (Razack 2008, 59–62; Thobani 2007, 4–14).

For Puar (2005), the oppressive binary script of “Western” superiority and “Eastern” inferiority was inscribed on the bodies of detainees through torture practices demonstrating sovereign power and the monopoly over the use of violence (28). For Philipose (2007), these torture practices are racialized and heterosexualized expressions of a resurgent sovereign colonial power, similar to those of the lynching of black male bodies (1059). For Razack (2008), the torture at Abu Ghraib, as seen in widely published photographs, amounts to enactments of U.S. white settler domination and of ancillary systems of oppression, including white supremacy, patriarchy, and heterosexuality (61–63). Razack argues that the soldiers enacted colonial binary scripts of cultural inferiority and superiority, mirroring past imperial practices including transatlantic slavery, the experiences of Jews in Nazi camps (68).

Investigating Canadian Renditions to Torture

I situate my analysis within critical race feminist assertions that representations of Muslim men as Islamic fundamentalist terrorists and the application of torture are symbolic of forms imperialism and colonialism. These critical race feminist analyses have greatly contributed to forming an understanding of how representations of Muslim and Arab-looking men as Islamic

fundamentalist terrorists have contributed to legitimize the use of sovereign racialized state violence in the (re)production of colonial relations within “Western” liberal rule.

These analyses have helped to explain how the overarching racial structure in earlier forms of colonial violence have not changed in the post 9/11 context. What has changed, however, is the language used to legitimize and some of the practices that organize sovereign racialized violence. Jiwani (2006) points out that explicit racist articulations used as justifications for discrimination, exclusions, and violence are no longer permissible in Canada. Rather than relying only on direct forms of racism, indirect and obscured forms of racialization operate to legitimize colonial practices and organize colonial programs supposedly left behind. Within this context, I investigate how the sovereign racialized processes constituting renditions to torture were “effected by modern power” (Scott 1999, 23). I am interested in the modes of power that organized Canadian renditions to torture around liberal principles,²⁶ the “Western” nation-state system and its heirs: citizenship and nationalism. In particular, I examine in a Foucaultian sense the productive function of Canadian renditions to torture in their capacity to bring legitimacy for race-based policing, indefinite detentions, deportations (and torture) into being through particular national, group and individual identity formations. I analyze how representations of four Muslim men as Islamic fundamentalist terrorist were produced and verified; and how this verification process was organized by Canadian state officials around what Goldberg (1993, 6) points to as liberal modernity’s commitment to individual rights, the rule of law (rather than the rule of force such as torture), and in the Canadian context as idealized principles of multiculturalism, equality,

²⁶ Modernity, a period which began in the 16th century and came to be intertwined with the Enlightenment (in the 17th and 18th centuries), is marked by governmental shifts from feudalism, mercantilism, superstition, and religion to government through reason, capitalist industrialization, and secularism. Modernity is associated with liberal forms of state governance, such as the nation-state formation, from the 17th century onward (Goldberg 2002). I am particularly interested in what Goldberg points to as liberal modernity’s commitment to individual rights, to the rule of law (rather than the rule of force), and “to idealized principles of liberty, equality, and fraternity” (1993, 6).

and non-racism. I draw on Goldberg's insistence that in modern liberal nation-states the production of racial identities that operate with an insistence on "the moral irrelevance of race" is of great importance "to prompt and rationalize, enable and sustain" exclusions (ibid.). I use Foucault's concepts of knowledge/power and sovereignty-discipline-governmentality²⁷ to analyse Canadian state officials' conduct as forms of power that produced Elmaati, Almalki, Arar, and Nureddin as Islamic fundamentalist terrorists connected to al-Qaeda – first as representations and then through torture to coerce false confessions to legitimize and legalize race-based policing practices. I interweave post-colonial scholarship by Frantz Fanon (1963), Edward Said (1978), and David Scott (1999) with Michel Foucault's analysis of power to examine Canadian state officials' conduct and the accompanied explanatory discourses as a set of racialized and racializing practices that have produced sovereign racialized violence compatible with Canada's image as a multicultural, liberal democracy.

In this dissertation, I argue that Canadian renditions to torture, their justification, legalization, and organization—particularly the de-territorialization of detentions and torture—are symbolic of a form of 'modern imperialism' that de-centres *sovereign racialized state violence* from its geopolitical centre by distributing and incorporating nation-states, and individuals into the organization and administration of Canadian state-centred sovereign racialized violence. Here I use the concept of 'modern imperialism' to indicate that the practices and processes housed by Canadian renditions to torture are not new but are organized around modern liberal principles such as the rule of law, citizenship rights and Canada's national narrative of multiculturalism.

²⁷ In Chapter 1, I explain these concepts in detail.

Chapter Organization

In chapter 1, I outline a theoretical framework and method. Building on critical race feminist and post-colonial scholarship, as well as on Foucauldian concepts, this framework provides the tools for an analysis of *Arar Commission Report* (O'Connor 2006a) and *Iacobucci Inquiry Report* (Iacobucci 2008) that reveal some of the complex power relations through which Canadian renditions to torture were organized and represented: justified and explained.

Chapter 2 provides the post-9/11 U.S.-Canadian geopolitical background as well as the legal and financial macro-structural contexts within which two Canadian variations of the United States's program of extraordinary rendition — the security certificate process and Canadian renditions to torture — emerged. I specifically draw attention to the legal changes in the *Criminal Code* of Canada (1985, 2001), particularly in sections 83.01-83.3, that apply to both citizens and non-citizens, and sections 76–87 of the *Immigration and Refugee Protection Act* (or *IRPA*; 2001) applying to non-citizens such as refugees and landed immigrants. These legal changes provided the legal framework through which for example Muslim non-citizens Jaballah, Harkat, Almrei, Mahjoub, and Charkaoui without evidence could be produced as terrorists. This production consequently enabled the state to indefinitely detain and threaten deportation from Canada.

In chapter 3, I use the *Arar Commission Report* (O'Connor 2006a) and the *Iacobucci Inquiry Report* (Iacobucci 2008) to trace Canadian state officials' practices related to the four Muslim-Canadian citizens' renditions to torture and the sovereign racialized processes it houses: their labelling as terrorist suspects; their deportations and their detentions and torture in Syria and Egypt. In this chapter, I investigate Canadian state officials' conduct between 2001 and 2004 as racialized and racializing “technologies of government” (Rose and Miller 2010, 281),

symbolic of a modern imperial project that was organized around the men's citizenship rights in Canada and their dual citizenship with Syria and Egypt.

In chapter 4, I refer to the period after Arar's return to Canada, during which his detention and torture in Syria became the subject of a national scandal. After vigorous political lobbying and parliamentary debates (Abu-Laban and Nath 2007), a federal inquiry was launched in 2004. Arar, his family, and his legal team hoped that the inquiry would shed light on Canadian officials' involvement in his ordeal and on the systemic forms of anti-Muslim racism that guided state officials' conduct, while restoring Arar's respectability as a Canadian citizen (Arar 2005; Neve 2004; Canadian Council on American-Islamic Relations Canada and Canadian Arab Federation 2005). I critically investigate the discourses put forward by the Liberal-appointed Judge, Dennis O'Connor, which explained Canadian state officials' actions in the *Arar Commission Report of the Events Relating to Maher Arar: Analysis and Recommendations* (O'Connor 2006d) relating to the four processes of sovereign racialized state violence. I examine how modern imperialism operated on a discursive level through distinct discursive manoeuvres that codified anti-Muslim racism in explanations to the public and revived Canada's (inter)national respectability as a multicultural, liberal democracy.

In chapter 5, I investigate the discourses put forward in the *Iacobucci Inquiry Report* (2008), which seek to explain Canadian officials' conduct in relation to the detention and torture of Elmaati, Almalki, and Nureddin in Syria and Egypt. In addition to analyzing the explanatory discourses related to the four processes of sovereign racialized state violence, I examine the guiding principles of the inquiry process and the ways in which the discourses put forward by the Conservative government-appointed Judge Frank Iacobucci represented a political shift.

I conclude this study by highlighting the importance of renditions to torture in making colonial relations compatible with liberal rule. I stress the significance of the racialized policing practices that de-territorialize and disperse state-centred sovereign racialized state violence and the explanatory rationalities deployed in inquiry reports, as these create legitimacy, impunity and continuity for sovereign racialized state violence.

CHAPTER 1

CONCEPTUAL FRAMEWORK AND METHODS

In this chapter, I lay out the conceptual and methodological context for this dissertation. As I stated before, my analysis of the *Arar Commission Report* (O'Connor 2006a) and the *Iacobucci Report* (Iacobucci 2008), focuses on how the production of Muslim men as terrorists was organized and explained to the public. I draw out key concepts emerging within critical race feminist, post-structural, and post-colonial approaches that are important to my analysis. I emphasize the relevance of combining seemingly disparate theoretical perspectives of state power, and explain how a combination of these approaches inform my research. Further, in this chapter, I describe my methodological use of the *Arar Commission Report* (O'Connor 2006a) and the *Iacobucci Report* (Iacobucci 2008) as my primary data sources.

Conceptual Framework

As noted in the Introduction, I situate my research within critical race feminist literature. I am particularly inspired by critical race feminists Razack (2008) and Puar (2007) who have combined post-colonial approaches with Foucault's concept of biopolitics, to help to explain how the state, its bureaucracies, and practices including sovereign racialized state violence, come into being through diverse forms of power, processes and practices and discourses of legitimacy. I also use Foucault's concepts of power as compatible with structural approaches. His label as a post-structuralist has resulted in assumptions that his analyses of power are incompatible with structural approaches such as Marxist, feminist, and critical race theorists, who often place the state as the source of power, and state violence, state-centred structural oppression, at the centre of their analysis. Foucault's post-structural label is primarily based on his responses to Marxist

structuralism, economic determinism, and state theory. He rejects the notion of ideology in the Marxist sense: that is, capitalism as the economic superstructure determining all identity formations, all social relations, and the state as the ideological apparatus of the bourgeois class and centre of social control. Foucault (1978) does not deny class structures—or, as he calls it in his *History of Sexuality*, “bourgeois order” (12)—the fact of repression, nor the state as an authoritative regime that produces subjects. He investigates the state apparatus and structures as social constructions that are historically the effects of multifaceted power relations, which come into being through micro processes of power and discourses. Stoler (1995) points out that “the state is not written off as a locus of power”; rather, for Foucault, “state institutions foster and draw on new independent disciplines of knowledge and in turn harness these micro-fields of power as they permeate the body politic at large” (28). For Foucault, knowledge/power relations are inextricably linked to discourses that are exhalations of traditions, norms, and rules which influence how people think, live, act, speak, and bring (for example) the state as an institution, including its governmental transformations as well as governing technologies and its effects, into being.

I am inspired by Foucault’s notion that the state as an institution is socially produced and that knowledge/power relations producing subject formations play a crucial part in legitimizing forms of state governance, including racial repression. In order to analyze Foucault’s forms of power sovereignty-discipline-governmentality as a set of racialized and racializing practices intersecting with class, gender and heterosexuality, I use the critical race feminist concept of *intersectionality*, the post-colonial scholar’s broader framework of *racialization* and associated concepts such as Fanon’s *Manichean dualism* and *dehumanization*, Said’s concept of *Orientalism*, and Scott’s *colonial governmentality*.

Intersectionality

Intersectionality emerged as a research method in the context of 1980s critical race feminism. This approach allows analyses of how multiple inequalities and structures of oppression interact to structure women's lives in different ways (Crenshaw 1991). Crenshaw (1991) points out that intersectionality is not additive in its analysis; instead, she traces how "systems of race, gender and class domination converge" (1246). Critical race feminists have critiqued the way that identities are constructed in terms of "Western" universalisms, constructing women as a unified category, for example (ibid.; Mohanty 1988, 2004). Analyses that draw out the "multiple, fluid structures of domination that intersect to locate women differently at particular historical conjunctures" (Mohanty 2004, 55) enable understandings of the non-static, hierarchical realities of subordination, exclusion, and exploitation experienced by women.

I draw on critical race feminists and the concept of intersectionality to show how the representation of Muslim and Arab-looking men as Islamic fundamentalist terrorists constitutes a new form of Orientalism, and a practice of racialization that traverses religion, class, gender, and sexuality. Crucial to my project, I acknowledge the hierarchies of subordination among men—defined by their race, gender, nationality, ethnicity, religion, and class. Muslim men are at the centre of post-9/11 state violence. Therefore, it is important to bring into view the social construction of the racialized masculinity of the Muslim man as Islamic fundamentalist terrorist, in order to debunk representations of the "monster terrorist" based on religion, biology, individual and group pathologies, and psychological factors (Puar and Raj 2002, 123–4).

Since the 1970s, "research on men and masculinities has grown significantly," but the construction of racialized masculinities has remained in analytical shadows (Lee 2011, 32).

Nevertheless, as mentioned in the Introduction, a significant number of critical race feminist scholars have analyzed how Muslim men have been constructed since 9/11 as Islamic fundamentalist terrorists in movies, cartoons, and newspapers (Puar, 2005; Razack 2008). What has remained in the analytical shadows is how Muslim men have been produced as terrorist threats to Canada's national security on a material level. Of course, discursive reiterations of representations of Muslim men as Islamic fundamentalist terrorists, prone to violence, influence public perceptions, including the public's views about changes to laws. But the actual existence—the material production of Islamic fundamentalist terrorist groups—is crucial when seeking to gain political legitimacy for governing the state through race-based authoritarianism, exemplified through practices such as the intensification of racialized surveillance, indefinite detention, deportation and “the suspension of rights for those who are Muslim looking” (Razack 2008, 5).

I use the concept of intersectionality in order to examine how four Muslim-Canadian citizens—Ahmad Elmaati, Abdullah Almalki, Maher Arar, and Muayyed Nureddin—were created as Islamic fundamentalist threats, first through knowledge-producing practices in Canada and then through a verification/identity transformation process carried out in the torture chambers of Syria and Egypt. To illuminate the diverse forms of power operating in the transformation of these four, from men innocent of terrorism to Islamic fundamentalist terrorists, I draw on Foucault's concepts of power as power/knowledge, and sovereignty-discipline-governmentality.

Power/Knowledge and Sovereignty-Discipline-Governmentality

I am greatly influenced by Foucault's analyses of power, in particular, his genealogical work in *Discipline and Punish* (1977) and *History of Sexuality* (1978) in which he emphasizes

how the shift in governance from feudalism and authoritarianism to liberal democratic rule increased the importance of subject formations in the legitimization of governing. In these works, he traces the historical knowledge production of modern subjects such as the criminal and the sexual deviant as crucial for the ways in which these subject formations are treated, regulated and socially controlled. The connection between knowledge production and technologies governing is especially important, because it shows how socially constructed subject formations (so-called truth formations), such as Muslim men as terrorists, are historical social constructions grounded in power relations, and thus are the tools to legitimize (racially repressive) forms of state intervention.

I build on Foucault's analyses of the co-constitutive interaction between knowledge and power. This is a circular relationship, in which "power and knowledge directly imply one another. . . . There is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations" (Foucault 1977, 27). Knowledge about a subject is produced in ways that give rise to diverse forms of power, which then enable specific forms of state governance. For example, discourses are knowledge-producing, politically strategic techniques, through which meaning is attributed to conduct and subjects in ways that give rise to regulatory practices. In turn, these practices support the reproduction of governmental domination by including individuals and the population in general in the production of subject formations and giving consent to governmental technologies. Thus, in modern liberal societies, public consent, influenced by power/knowledge relations, allows (Canadian white settler) governmental domination to be (re)produced through democratic processes such as public consent and political consensus for racially repressive laws and policing practices.

I am inspired by how Foucault, depicting the shift from feudal and authoritarian to modern liberal societies, shows that sovereign power has not been completely replaced. Instead, it has been diversified through disciplinary technologies and governmentality; individuals and populations in general are drawn into practices of regulation. In particular, I draw upon his insights in his (1991) essay *Governmentality*, in which he argues that in modern liberal societies, diverse forms of power—sovereignty-discipline-governmentality—operate concurrently with the effect of reproducing relations of domination. In the following sections, I offer guiding conceptual contours to the idea of sovereign power, disciplinary, biopolitical and governmental power.

Sovereign Power

Foucault points out that in France, up to the French revolution in 1789, sovereign power operated via authoritarian figures, and as a juridical form through laws (Foucault 1977, 1978). Generally, sovereign power is exercised through violence that targets the human body. During the seventeenth and eighteenth centuries, sovereign power was organized around the public spectacle of executions, death, torture and the threat thereof, and the sovereign's right to decide over life and death (Foucault 1977, 4–16; Foucault 1978, 135). Starting during the eighteenth century in Europe, forms of resistance and revolution threatened the sovereign power of monarchical rule. Foucault focuses on the shifts that took place in the art of governing during the time when revolutions in France triggered structural changes in the political regime that limited sovereign modes of exercising power (Foucault, quoted in Gordon 1980, 39). In the eighteenth century, “the mythology of the sovereign was no longer possible”; the king, once the embodiment of sovereign power, “became a fantastic personage, at once archaic and monstrous” (ibid.). This shift in governance was a “moment in history where it became understood that it

was more efficient and profitable in terms of the economy of power to place people under surveillance than to subject them to some exemplary penalty” (38).

However, sovereign power was not completely replaced, but diversified and multiplied. Diverse forms of power emerged, which Foucault (1978) characterizes as *disciplinary power*—“the anatomic-politics of the human body” and the “biopolitics of the population” (Foucault 1978, 139). These two forms of power are “two poles around which the organization of power over life was deployed” (ibid.). Through disciplinary power, governmental domination was ensured not by warfare, marriage schemes, and/or inherited rights, but by a variety of disciplinary techniques—techniques that were employed in state institutions, such as prisons, and included all levels of society (89). Disciplinary techniques moved away from directly targeting the body; instead they targeted individuals’ will to act. Sovereign power was thus modified “to a capillary form of existence, the point where power reaches into the very grain of individuals, touches their bodies and interests itself in their actions and attitudes, their discourse, learning process and everyday lives” (Foucault, quoted in Gordon 1980, 39).

Furthermore, people’s existence and life itself became the target of governmental intervention; not only individuals but also populations in general were now integrated into the production of governmental domination (141). Post-revolution, the power to govern populations and territories became fragile; the power to govern the state apparatus, no longer inherited, was now “engendered by the masses” (Foucault, quoted in Gordon 1980, 13). Furthermore, “the eighteenth century invented, so to speak, a synaptic regime of power, a regime of its exercise within the social body, rather than above it” (39). The state came to be charged with the task of reproducing governmental domination, but without appearing repressive. It did this by involving the masses, who would give their consent to technologies of governance:

[The modern state apparatus] is engendered by the masses, . . . is under the control of the masses, . . . will carry on being controlled by them, and . . . in fact has a positive role to play, not in making decisions as between the masses and their enemies, but in guaranteeing education, the political training, the broadening of the political vision and experience of the masses. So is the job of this state apparatus here to determine sentences? Not at all, but to educate the masses and the will of the masses in such a way that it is the masses themselves who come to say, “In fact we cannot kill this man” or “In fact we must kill him.” (13)

Foucault focuses on different modes of power through which alignment is achieved between the wills of individuals, the masses, and ruling relations (Foucault 1991, 102–3). This is done through a variety of methods, including educating the masses to come to the same conclusions as the dominant group. The “apparatus of security,” which he understands as the population’s “acceptance and respect” for an art of governing the state, is achieved through three concurrently operating forms of power: sovereignty, discipline, and governmentality (Foucault 1991, 87–91). Thus, the modification of power (from sovereign to disciplinary and governmental power) does not eradicate but relocates the centralized power of the state to population. In fact, “the person of the king [. . .] [is] displaced within the system of political representations, rather than eliminated” (Foucault quoted in Gordon 1980, 39).

These insights are very important for my analysis trying to understand how sovereign racialized violence (considered illiberal practices such as racialized surveillance, criminalization without evidence, indefinite detentions and torture) targeting Muslim communities and Muslim men became the legalized mechanisms of Canadian state governance. Foucault’s assertion that in modernity sovereignty-discipline-governmentality operate concurrently to reproduce (white settler) domination is important to my analysis. I use governmentality to analyse how in the post 9/11 context the sovereign racialized power of the state was made intelligible to the public (population in general) as the common sense solution to the threat of Islamic fundamentalist terrorism. Particularly disciplinary power is an important concept to analyse how the production

of the four Muslim Canadian citizens as Islamic fundamentalist terrorists, as the crucial identity formation to gain legitimacy for race-based authoritarian governance, was organized through a variety of policing technologies.

Disciplinary Power

At the beginning of *Discipline and Punish*, Foucault (1977) depicts two different scenes of punishment: a prisoner's torture and public execution in 1757; and an 1838 scene in which young prisoners are governed by a timetable. Foucault selected these two scenes of punishment operating in France at different times to demonstrate a shift in governance from sovereign to disciplinary power. It took shape when forms of sovereign power—here, public torture and public execution—shifted to more rational or scientific forms of knowledge production in the approach to punishment—a timetable for prisoners.

For Foucault, knowledge production always involves historically and geopolitically determined discourses that attach specific meanings to the body: “the production of knowledge of the body, is the basis of producing power over the body” (Foucault quoted in Gordon 1980, 59); knowledge-power “constantly induces effects of power” (52). Scientific knowledge production became the major technique through which sovereign power—the right to rule—was legitimized. For example, the power to produce knowledge about *the criminal* expanded from discussions of heredity to include “an army of technicians” (Foucault 1977, 11). A variety of experts now produced “knowledge of the criminal, one estimation of him, what is known about the relations between him, his past, his crime, and what might be expected of him in the future” (18). Sovereign power was assigned to professionals and experts who defined, categorized, and labelled a subject's conduct as criminal, and determine the means by which that subject would be punished and managed. It was distributed to “wardens, doctors, chaplains, psychiatrists,

psychologists, educationalists” (11) who provided the logic for a variety of disciplinary technologies such as panoptic surveillance and meticulous routines. Sovereign power was now omnipresent in the figures of the wardens and other experts who defined the timetables, penalties, and treatment. Timetables, rules, and panoptic surveillance became major ways by which sovereign power was distributed and could be exercised without appearing repressive. An “internal economy of penalty” emerged; this economy would, according to previously established causal relationships, articulate diagnostic predictions and define penalties targeting the mind to ensure that representations of subjects would be normalized, internalized, and enacted (Foucault 1977, 18).

Here it becomes clear that identity formations are social constructions based on sovereign yet distributed knowledge productions and constitute important techniques to justify intervention strategies. In fact, Foucault points out that the production of a certain identity is symbolic of disciplinary mechanisms such as surveillance techniques that include the subject into the process of producing and reproducing governmental domination. For example, Foucault’s “panopticism” (195–228) highlights the presence of both sovereign power and (self-) disciplinary power in a system of permanent surveillance. Panoptic surveillance activates internal self-disciplinary mechanisms in the watched, so as to normalize and internalize dominant rules. A permanent yet unverifiable surveillance is a form of disciplinary power that operates from a distance and is set up to supervise and adjust behaviour, individual by individual, without coercion. The watched inscribes dominant power relations into themselves, and become caught up in their own subjection (203). Sovereign power becomes diversified and “representatives of power” (197) engage in branding practices defining “mad/sane, dangerous/harmless, normal/ abnormal” (199); they lay down rules on how to behave and have complete control over the schedule, in prisons or

in treatment. “The criminal” now was not killed, but instead was disciplined via a variety of “microphysics of power,” inducing the criminal to act upon him/herself and engage in conduct that would produce symmetry between his/her conduct and relations of domination (ibid.). Thus is “the penal system [able to] justify itself”; relations of ruling are reproduced through non-coercive and self-disciplinary means (17–19).

Foucault’s insights are very helpful in recognizing how sovereign power has not been completely replaced but instead has been encoded and distributed through knowledge/power relations and (self-) disciplinary mechanisms. Disciplinary technologies are political tactics that interact with the bodies and the wills of individuals in the production of subject formation. Thus, knowledge production about criminals provides legitimacy for governing technologies that create coherence between individuals’ conduct and relations of ruling:

The body is also directly involved in a political field; power relations have an immediate hold upon it, they invest it, mark it, train it, torture it, force it to carry out, to perform ceremonies and to emit signs. The political investment of the body is bound up, in accordance with complex reciprocal relations, with its economic use; it is largely as a force of production that the body is invested with relations of power and domination. (Foucault 1977, 25–26)

One example of how modern power operates through identity formations by targeting the body and the will of individuals is the modern prison. The modern prison reflects a shift in governance, whereby the target of power has become not only the individual’s body but also the individual’s will. In modern prisons, as well as in a range of institutions such as hospitals and schools, individual bodies and thoughts become the target of a disciplinary power that produces docile bodies and compliance without direct coercion (Foucault 1977, 136). In former times, prisons warehoused criminals until they were tortured to death; the modern prison, in contrast, is an institution which, like schools, barracks, and hospitals, operates as a political instrument

linked “to a project for the transformation of individuals” (Foucault, quoted in Gordon 1980, 39; Foucault 1977, 248).

Foucault (1980) uses the phrase “truth regimes” to describe the process through which identity formations are forged and “truth” (about, for example, the criminal) is established so as to more efficiently exercise control. Identity formations are no longer produced by sovereign power, because sovereign power has been transformed into disciplinary power, which operates through techniques that “no longer touch the body or at least [do so] as little as possible only to reach something other than the body itself” (Foucault 1977, 11). In modern societies, “if it is still necessary for the law to reach and manipulate the body of the convict, it will [do so] at a distance, in the proper way, according to strict rules, and with a much higher aim” (ibid.).

These insights are very important to understand how Canadian renditions to torture were organized to circumvent “strict rules” for example related to citizenship rights and to torture from a distance. I show how physical penalties such as torture, incarceration, and deportation are redirected from the Canadian state through a variety of disciplinary technologies that target the Muslim body and include the four men in their subordination. I analyse how death and physical pain inflicted on the body is no longer a goal of the penalty; rather, “the body now serves as an instrument or intermediary” through which “thoughts, will and inclinations” are targeted (16) for the purpose of gaining governmental legitimacy.

Foucault (1980) gives an example of how the production of “regime[s] of truth” (131) or “truth therapies” since the nineteenth century have operated as sites of social regulation that include “the criminal” or “the mad” in (self-) regulatory practices and the social and moral ordering of life (Foucault 1997, 148). Prior to the nineteenth century, “everybody was convinced of the incompatibility between madness and recognition of madness” until a French psychologist

named Leuret proposed a treatment plan for one of his patients: the confession (Foucault 1993, 148). The patient was forcefully showered, in a technique similar to what is known as waterboarding today, to “obtain a precise act: the explicit affirmation, ‘I am mad’” (ibid.). The man categorized as mad was forced to act upon himself, forced to confirm that he was indeed mad, thereby affirming dominant understandings of madness and, consequently, particular treatment mechanisms (Foucault 1997, 150–4).

In *The History of Sexuality*, Foucault (1978) shows how the confession would come to predominate in judicial and religious institutions as well. The confession (and its partner, penance) has operated in “Western” societies as Christian truth-producing rituals since the Middle Ages. Since the eighteenth century, the confession has spread throughout society and been used in legal, religious, and social spheres as a self-identification practice, one which seemingly reveals the essential truth of one’s self. For Foucault, confessions are (self-) disciplinary mechanisms, symbolic of dominant power relations and bourgeois morality (56). The confessor is disciplined to engage in self-identification discourses that align articulations of what “I am” with what and who dominant power relations have deemed unacceptable, immoral behaviour; thus, the confession is the outcome of moral repression and censorship. The confessor must acknowledge that his/her actions and thoughts are deviant, ill, or criminal.

Particularly interesting in the example of ‘the confession’ is Foucault’s focus on the interplay between the individual body and the soul or will in the application of disciplinary power to form identities in order to act upon them and produce domination (61). The virtue of power structures involved in confessions is distributed: while the individual is not directly exposed to sovereign power (except in cases of torture to confess), and the confessional

discourse does not come from above, the agency of domination does not reside in the one who speaks. The confessor is a subject of an “authority who requires the confession, prescribes and appreciates it and intervenes in order to judge, punish, forgive, console and reconcile” (61–62). Confessions and the identities that arise are produced through a multiplicity of power relations that are not without the presence of sovereign power. The discourses espoused operate as truth regimes and instigate a variety of governing technologies such as punishments and treatments. However, what is of crucial importance is not only identity formations as ‘truth’ regimes emerging from the interplay between sovereign and disciplinary power but the ways in which ‘the public’ (population in general) might or might not accept the proposed governing strategies. Foucault’s concept of biopolitics that is closely linked to governmentality provides an analytical platform to analyse rationalities that legitimize and justify certain forms and/or shifts governing the state.

Biopolitics

Biopolitics is a form of power that targets the population in general as a social and political body (ibid.). The concept marks a shift in governance—from governing individuals through sovereign power such as torture, death, and threats to life, to socially regulating population as a social body and life itself (Foucault 1978, 139–42). Foucault uses biopolitics to analyze a shift in governance whereby a “repressive power over death is subordinated to a power over life that deals with living beings rather than with legal subjects. Foucault distinguishes two basic forms of power over life: the disciplining of the individual body and the regulatory control of the population” (Lemke 2011, 36). Foucault (1978) uses the concept of biopolitics to explain how, in modern liberal societies, the right to rule has become the object of politics; through this right, individuals, populations, and life processes become targets of multiple forms of power.

Multiple techniques of power emerged in the eighteenth century which targeted the “population as an economic and political problem” (25). The population and life itself became the target of “analysis, stocktaking, classification and specification, of quantitative or causal studies” (24). Biopolitics also signifies the shift in governance from sovereign power to “the much more subtle and calculated attempts at regulation” (26), whereby knowledge production and diverse forms of regulation, rather than brute force, target populations as political bodies in order to produce and maintain governmental domination.

Governmentality

Foucault (1991) developed this form of power in his later work, to analyze how populations as political bodies are addressed through rationalities of governing. Governmentality is “the rationalization of governmental practice in the exercise of political sovereignty” through which disciplinary and sovereign power, as a specific “choice of methods” and “concrete practices,” is legitimized (Foucault 1979, 2–4). While disciplinary power emerges in Foucault’s work as a series of technologies that target individuals’ bodies and minds, in order to align individual conduct with dominant political goals, as in the confession, governmentality operates on the levels of self-reflection (the “conduct of conduct”), discourse, and rationality. It targets the thought processes of the masses. Foucault (1991) speaks about governmentality as a form of power that operates on a discursive level, providing political rationalities to populations in general. These rationalities constitute the logics that facilitate a specific form of governance governing for example the state apparatus.

Governmentality is a form of power concerned with knowledge production about “men in their relations with things” ranging from everyday habits, means of substance, and family customs to broad-scale crises such as epidemics (Foucault 1991, 92–93). It provides rationalities

to populations—“the public”—justifying specific programs and concrete technologies that influence, regulate, and manage people’s conduct in ways to affirm political sovereignty (89–90). Populations in general emerge as social bodies, the targets of regulation, and are folded into the apparatus of governance—rationalities, programs, and technologies. Aiming to establish governmental continuity in modern liberal societies, governmentality is a form of power that operates both as a discursive practice and interrelated justified governing techniques and programs. Discourse emerges as *raison d’état* that positions relations of ruling of and beyond the state apparatus in ways that can become acceptable to the public (91–93).

With the rise of liberalism and capitalism during the 19th and 20th century, the *raison d’état* came to involve the “governmentalization of the state” in relation to political and economic formations (Foucault 1991, 103). Political-economic formations are characterized by political rationalities such as early liberalism, Keynesian welfarism, and neo-liberalisms as forms of governing the state apparatus and beyond. Depending on each standpoint and principle, rationalities are put forward that, for example, critique too much or not enough state intervention, in private spheres or the market economy, and trigger programs and technologies of governance that target specific groups within the nation-state but also span across and beyond the nation-state’s populace.

A wide range of scholarship has emerged in response to Foucault’s notion of *governmentality*. Most contributions to the so called ‘governmentality literature’ treats “Western” liberalisms such as Keynesian welfarism and neo-liberalism as reflective discourses that provide rationalities of how to govern differently. For example, neo-liberalism is a set of discourses and practices that justify and implement welfare state restructuring and privatization, through shifts in policies and funding schemes that upsurge self-sustaining entrepreneurs as good

national citizens and welfare recipients as lazy and a drain on taxpayers. The governmentality literature

. . . makes a useful distinction between government and governance, and argues that while neo-liberalism may mean less government, it does not follow that there is less governance. While on one hand neo-liberalism problematizes the state and is concerned to specify its limits through the invocation of individual choice, on the other hand it involves forms of governance that encourage both institutions and individuals to conform to the norms of the market. (Larner 2000, 12)

Neo-liberalism can also mean redirect governance into different state institutions, such as from welfare institutions to criminal justice institutions whereby social problems are solved through criminalization and incarceration.

The governmentality-risk literature investigates the ways in which, for example, the concept of *risk* has been used and normalized as a political rationality to legitimize technologies of governing of and beyond the state in the contexts of Keynesian welfarism and neo-liberalisms; these might include risk-responses and the management of risk populations (Dean 1999, 4). Criminologists have begun to focus on how risk discourses are linked to neo-liberal governance and “governance through crime” (O’Malley 2009). The governmentality-risk literature is helpful for investigating how subject formations are entangled in the articulation of political rationalities, whereby risk is ascribed to bodies and groups, which then justifies the neo-liberal state rolling back funding for welfare and educational programs and rolling out funding for policing programs and the state police apparatus (Peck and Tickell, 2002).

Rose and Miller (2008) are interested in “the discursive character” of governmentality—that is, the specific forms of representation through which “the activity of government is articulated” and the “legitimacy of government” [30] is established. They also focus on the “technologies of government” (32): “If political rationalities render reality into the domain of thought, these ‘technologies of government’ seek to translate thought into the domain of reality”

(ibid.). They use the term *technologies* “to suggest a particular approach to the analysis of the activity of ruling, one which pays great attention to the actual mechanisms through which authorities of various sorts have sought to shape, normalize and instrumentalize the conduct, thought, decisions and aspirations of others in order to achieve the objectives they consider desirable” (ibid.) .

Rose and Miller (2008) also engage questions around identity formation. They ask what sort of techniques “have become capable of deployment” and how such techniques reshape the ways in which individuals understand and act upon themselves according to dominant principles. The production of certain identities makes human beings governable—not through the use of force, but “through indirect mechanisms of rule that are of such importance in liberal democratic societies: those that have enabled, or have sought to enable government at a distance” (33).

For the most part, I draw on Rose and Miller’s (2008) work to investigate not only the discursive character of subject formations but also the diverse forms power and techniques that have been deployed in the production of terrorist identities through which governmental technologies such as racialized policing, preemptive and indefinite detentions are justified. In Foucault, the ultimate expression of sovereignty lies within the power to kill or let live. In modern liberal societies and its associated nation-state system, the sovereign power to kill lies within the state’s rights to wage wars, define immigration, detain, and deport. These forms of sovereign power can be exercised under the conditions of legalization and legitimization—that is, justification and explanation. As reason is one of the most important elements of how sovereign power operates within modern liberal democratic societies such as Canada, I draw on Rose’s and Miller’s understanding of governmentality as a set of discourses that produce

governing technologies, which in turn produce subjects that legitimize previously considered illegitimate forms of governance.

The link between discourse and concrete practices and programs that produce subjects cannot be analyzed outside Canadian race politics. I draw on Foucault's few explicit works on race and racism that appear in *The History of Sexuality* (1978)²⁸ and especially in *Society Must Be Defended* (2003).²⁹ In the former, Foucault speaks to the historical development of different forms of racism caught up in shifts in power, and particularly the emergence of biopolitics indicating the shift in governance from sovereign to disciplinary power and governmentality. His works are helpful in explaining that a shift from sovereign to biopolitical power stands not only for a transformation in who defines who must live and who must die (Foucault 1978, 143), but also represents a shift in race politics (Lemke 2011, 40–44). Biopolitics marks the historical turning point at which nineteenth century racism underwent key historical-political changes.

In *Society Must Be Defended*, Foucault (2003) how the seventeenth century race was not defined by biological or genetic markers, but instead race was referred to as a people with the same language, habits, and religion. In the eighteenth century, the meaning of race changed into an anatomical category about bodies and skin colour. He traces biological racism to the

²⁸ Ann Laura Stoler (1995, 19–54) draws out Foucault's contributions to the study of racism in *The History of Sexuality*. She argues that Foucault's biopolitical historicity is weak when applied to the colonial context. However, she applies the link Foucault makes between sexuality and race in the production of bourgeois to Dutch colonial contexts. She examines some patterns of Foucault's disciplinary power and "technologies of security" as colonial variants that produced white bourgeois order. She shows how race and sexuality operated as organizing grammars and technologies of colonial rule in nonlinear ways. For example, she investigates the Dutch East India Company's management of sexual arrangements in the seventeenth century, such as the prohibition of interracial sexual activity and the immigration of so-called promiscuous Dutch women to the colonies in order to "cultivate white settler population on Java." She argues that "the management of nonconjugal sex was implicated in a discourse on 'the defence of society' much earlier than he suggests, not as a coherent and comprehensive regime of biopower, but with many of its incipient elements" (40).

²⁹ *Society Must Be Defended* is a collection of Foucault's lectures at the Collège de France between 1975 and 1976.

Enlightenment science preoccupation with the body. Sexuality and race increasingly became sites of knowledge production, surveillance, and intervention that targeted the general population in order to reproduce bourgeois order and white supremacy (Foucault 1978, 122–23). During the nineteenth century, questions of national governance occupied with heredity and “bourgeois hegemony” (125) were crystallized in eugenics and sterilization schemes. During this time, the scientific notion of degeneracy was inflected by race and sexuality.

For Foucault (1978), sexuality and race are social constructions that have emerged as the justifying and organizing principles of practices penetrating bourgeois order in the most intimate private domains of life. Discourses of race and sexuality became part of the political rationalities governing the state; they brought all spheres of life into the realm of governability (142–45). Through biopolitical changes, race and sexuality entered the field of politics (Foucault 2003, 256). Two race tropes—*they* and *us*—emerged through the nation-state system: the production of an internal and an external Other, whereby the state identified not only external enemies but also enemies within, based on race (ibid.). During the mid-nineteenth century, discourses of war became centred on biological terms of race. The twentieth century saw eugenics centred on race and sexuality such as in Nazism: the purification of the German race and the domination of white supremacy organized around blood purity and operated through the organized extermination of mad, homosexuals, and the Jewish race. Nazism in Germany operated as a form of state racism that was structured by sovereign power: violence and genocide, as well as disciplinary power—the production of docile bodies (65–86). The Holocaust was not an aberration of modernity but made its appearance alongside biopolitics through which the taking of life was legitimized through the protection of life (149–50).

Foucault's lectures on racism aid in comprehending the dynamic forms of racism and varied power relations implicated in the general production and reproduction of domination. For Foucault, racism is not fixed but is rather determined by historical and geopolitical contexts. Different forms of racism have historically operated to control, order, and secure the exploitation of populations. Racism in modern "Western" societies cannot be considered as an aberration; rather, it needs to be considered as a self-reflective practice intrinsic to the general production of the ability to govern—political sovereignty. This part of his work is helpful for coming to understand how explicit expressions of social Darwinism and biological racism have become unacceptable in the Canadian multicultural context. Racism has not disappeared, but has become reformulated; racism has undergone a "permanent purification . . . [to] become one of the basic dimensions of normalization" (Foucault 2003 quoted in Lemke 2011, 42). The effect of the ever-changing expressions and diverse forms of racism is not just repressive, but also productive. Foucault's work advances our understanding that reformulated racism is the outcome of a set of self-reflective practices operating as tools negotiating resistance against previous forms of racism, to achieve the broader goal of domination.

Foucault's ideas about how biopolitics has effected expressions of racism are helpful to explore how sovereign racialized state violence is reorganized and reformulated (through Canadian renditions to torture) to make state racism and sovereign state violence compatible with Canada's national narrative as a multicultural, liberal democracy. I investigate the diverse forms of power that reorganize and reformulate state racism as a set of practices and processes of racialization intersecting with class, gender, and sexuality. I draw on the concept of racialization that can be traced to Frantz Fanon's writings, and use insights from post-colonial

scholars such as Said (1978) and Scott (1999) who draw on Foucault's concepts such as knowledge/power and governmentality.

Racialization

Racialization indicates processes and practices through which different forms of racism are produced and reproduced (Murji and Solomos, 2005, 10). Racialization has been used by critical race scholars to analyze how racial structures come into being and "to examine the ways in which ideas about race are constructed, maintained, and used as a basis for exclusionary practices" (ibid.). While the concept of racialization focuses on signifying practices and processes, it also emphasizes the ideas upon which practices of racialization rest, produce identities, structure social relations, and have historically (re)produced colonial conditions. Murji and Solomos have traced the origins of the concept to Frantz Fanon's (1963) *The Wretched of the Earth*.

In *The Wretched of the Earth*, Fanon (1963) describes colonialism as a racializing process whereby "the ruling species is first and foremost the outsider from elsewhere, different from the indigenous population, 'the others'" (5). Colonialism is the creation of "the culturally inferior other." Fanon illustrates how colonial domination is established through epistemological and physical violence. The production of knowledge about the colonized legitimizes military violence such as the use of cannons and bayonets. The colonizer "fabricated and continues to fabricate the colonized subject" to justify violence, and the colonial projects from which "the colonizer" derives "his wealth" (2). Colonialism legitimizes the exploitation of resources and labour in the colonies, fuelling capitalist accumulation in Europe (in a Marxist sense) and a racially divided local economic infrastructure (5). Fanon particularly focuses on the racialized representations that produced physical and cultural differences as irreconcilable dichotomies

between the colonizer and the colonized, justifying the brute physical and psychological colonial violence that took root in the minds of the colonized Algerian in the anti-colonial nationalisms of 1960s.³⁰

Fanon (1963) emphasizes the production of discursive and material dichotomies between the colonizer and the colonized as they occurred in the dynamics of French colonialism in Algeria between the 1830s and 1950s. He names these dichotomies *Manichean dualism*. He describes racialized and racializing practices whereby polar opposite attributes—for example, good and evil, or civilized and uncivilized—are associated with skin colour and have justified colonial capitalist projects as civilizational missions. The colonizer produces knowledge about the colonized that “compartmentalize[s] the world” into “two different species” (5), and engages in discursive classification to divide humans by race. Based on skin colour and culture (5–6), the colonizer discursively and materially reduces the colonized “to the state of an animal”: “allusion is made to the slithery movements of the yellow race, the odors from the native quarters, to the hordes, the stink, the swarming, the seething and the gesticulations” (7). Cultural racism operates by portraying the colonized society “as a society without values. The ‘native’ is declared impervious to ethics, representing not only the absence of values but the negation of values. He is, dare we say it, the enemy of values. In other words absolute evil” (6). Manichean dualism legitimized the geographical compartmentalization of whites and blacks, whereby the colonized

³⁰ Fanon (1963) focuses on the anti-colonial movements in Algeria during the 1950s. He describes how the colonized élites were alienated from their fellow Algerians and looked at the peasants through the eyes of the colonizer—as culturally barbaric, inferior, and excluded (14–15; 22–23). Confined by a Manichean dualism, the colonized élites desired what the colonizer had: power and wealth. While they engaged in anti-colonial violence that aimed to remove the physical presence of the colonizer, the élites perpetuated colonial conditions. In Fanon’s work, anti-colonial violence must permanently transform colonial domination and the race logics that infiltrate every aspect of the lives of the colonized population, destroy cultural values and social-economic practices, and define the aspirations of the colonized élites. Fanon argues that anti-colonial violence must permanently destroy Manichean dualism; it must destroy colonial reminiscences and inscriptions of dehumanization in order to produce a new humanism.

had to live in dehumanized conditions and abject poverty, and experience political exclusion, economic exploitation, and cultural genocide.

In Fanon (1963), discursive and material practices and processes of racialization are intimately linked and define socio-economic class structures. White superiority is produced through colonial projects that create colonial conditions whereby the colonized are not only dehumanized on a discursive level, but also are forced to inhabit a hierarchical socio-economic space of economic exploitation and social segregation. Animal-like material conditions are created that affirm the colonizer's racialized hierarchical classification system, thus justifying ongoing colonialism. For colonialism to continue to thrive, it is not enough to produce racialized representations and create dehumanizing economic conditions of exploitation and segregation (149–50):

The colonist is not content with physically limiting the space of the colonized, i.e., with the help of his agents of law and order. . . . [Colonial violence also] aims at the destruction of the indigenous social fabric, and demolished unchecked the systems of reference of the country's economy, life styles and modes of dress. (5–6)

Colonial violence destroys cultural frames of self-reference by targeting the thoughts of the colonized. The colonization of thought takes shape as the colonized come to see themselves through the eyes of the colonizer, internalize racist articulations of biological and cultural inferiority, and reproduce colonial relations. (11)

Edward Said's (1978) *Orientalism* is animated by Foucault's discussion of the relationship between knowledge and power. For Said, Orientalism—the wide range of knowledge production about the Orient, as well as Muslim and Arab populations as culturally inferior—has justified “Western” European colonial expansion and exploitation, later legitimizing American imperialism (45–47). Orientalism is a form of race thinking, an ideological fantasy with no grounding in reality, and a set of discursive practices underlying historical shifts reproducing colonial domination. Said emphasizes the relationship between

Orientalism and colonialism. They are mutually constitutive—Orientalism reinforces colonialism, and colonialism reinforces Orientalism (39–40).

I draw on Said's assertion: "the Orient was created—or, as I call it 'Orientalized'" through projects whereby the Orient was "*made Oriental*" (5). I am interested in how, in the context of Canadian renditions to torture, the Orient has been "Orientalized" not only through writings and images that normalize notions of us-versus-them, but by connecting misrepresentations to reality (89). Orientalism is a "Western" system of knowledge production that is not grounded in reality but produces an "airy European fantasy," albeit one that is "tied to enabling socio-economic and political institutions, and its redoubtable durability" (6). Further, I use Said to show how Orientalism is a process of self-imagining as well as a process of otherization. Said argued that Orientalism operates across history as a set of representations of *self* as culturally superior and *other* as culturally inferior, producing narratives of *us* and *them*. Practices of other- and self-identification are practices to gain legitimacy for colonial and imperial projects, in the sense that "European culture gained strength and identity by setting itself off against the Orient" (3).

Since its genesis in the eighteenth century, Orientalism has operated as a set of discursive practices to justify "Western" European colonial expansion and exploitation, and later to legitimize American imperialism (Said 1978, 45–47). Throughout the nineteenth and twentieth centuries scholars, historians, imperial administrators, political theorists, travel writers, and others have normalized Orientalism as a "Western" way of thinking about "the Orient". Orientalism is not stagnant, but contains historically situated representations. It uses changing vocabularies to justify ever-shifting colonial and imperial projects (60–61; 78–80; 84). While Orientalism underlies historical and geopolitical changes and reflects particular configurations of

power, these shifting images and vocabularies house an “internal consistency of Orientalism and its ideas about the Orient” (5). Orientalism may underlie different uses of language, but it consistently portrays “the West” as culturally superior in contrast to “the East”; this produces the notion of a cultural divide between the two (40).

I mostly draw on David Scott’s (1999) concept of “colonial governmentality” (23–27) to examine the discursive and material encodings of racism and the reorganization of colonial and imperial projects enabling “Western” governments to present themselves as having transformed into non-racist, non-colonial liberal democracies (25). Scott draws on Foucault’s concepts of governmentality (1991) and power/knowledge (1980), and Said’s (1978) work on Orientalism to problematize the post-colonial condition. The modern state is not the same as the colonial state, but colonialism continues to operate in modern liberal societies. Nevertheless, the operation of colonialism in the modern state needs to be understood as more than simply a new episode in the history of colonialism. The modern state is marked by revolutionary power; and “premodern possibilities are no longer available as practical historical options” (Scott 1999, 23). Scott treats governmentality—in the sense of political rationalities—as one aspect through which colonial projects are justified by encoded forms of Orientalism. By using the concept of *colonial governmentality*, he brings into focus “the problem of the formation of historically heterogeneous rationalities through which the political sovereignties of colonial rule were constructed and operated” (25). Scott uses Said’s work to argue that, in political rationalities in modern states, the “distorted representations of the colonized” remain intact—but the use of language has changed. The colonial power of the modern state is encoded through political rationalities underpinned by this different use of language, and differently organized colonial

projects: these produce an interrupted yet unbroken link between the modern state and the colonial state (27–31).

Like Rose and Miller (2008) and Scott I am not only concerned about “the political rationalities of colonial power (ibid).” I am also interested in targets of colonial power such as Muslim Canadian men, its “field of operation” (policing and national security apparatus) and “the instrumentalities it deploys” through which colonial power is inserted into post-colonial societies, whereby modernity comes to be marked as “a turn in the career of colonial power” (Scott 1999, 26–27). For example, Scott shows how British colonialism in Sri Lanka operated throughout the nineteenth century through different applications of colonial rule (Scott 1995). Liberal principles such as the rule of law and political participation were linked with colonial rule. Liberal reforms induced a shift in colonial rule—from “mercantilism or sovereignty” to governmentality: “the reorganiz[ation of] the conduct or habits of subjects themselves”—which enabled colonial powers to “intervene on the level of society itself” (Scott 1995, 207). British colonial rule was re-coded in three domains—“government, the economic and the judiciary” (ibid., 208)—into which Sri Lankans were differently integrated. The crucial point Scott makes is that colonial power defined who could be considered a “legally defined subject,” that is, who “could exercise rights, however limited those might have been” (ibid., 208). Colonial power differentiated “the natives”; through this process, for example, Tamil political leadership came to an end. Colonial power was distributed, and “the native” was “conceived of as a productive agent” and was made “to work upon himself” under the panoptic gaze of the colonizer, to reproduce colonial relations without direct coercion (ibid., 213).

Scott’s (1995, 1999) usage of the concept of *colonial governmentality* informs my investigation of the racial underpinnings of the political rationalities that justify shifts if

governance, and influence how projects—such as the practice of renditions to torture—are organized through sovereign and disciplinary policing technologies, which then produce what can be described as modern coloniality. I use Fanon’s (1963) *Manichean dualism* and Said’s (1978) *Orientalism* as frames of reference in my examination of how direct and obscured forms of anti-Muslim racism underlie the political rationalities and policing technologies that make up the Canadian renditions program that produced Muslim Canadian citizens Elmaati, Almalki, Arar and Nureddin as Islamic fundamentalist terrorists and thereby produced legitimacy for racially repressive forms of state governance.

Similar to Scott (1995, 1999), I understand the production of colonial continuity not as a linear and seamless process but as a series of interconnected, ever-shifting practices that react and respond to contestations and political ruptures. In subsequent chapters, I examine how, and in what ways, Canadian renditions to torture are representative of how colonial continuity is produced in liberal modernity. This is accomplished through adjustments to a range of racialized discursive (governmental) and material (sovereign and disciplinary) practices, which are reformulations in the face of anti-racist and other political interventions—such as citizenship and universal human rights—against colonialism and racism. Following Scott, the political rationalities and practices that underpin Canadian renditions to torture, and the explanatory frameworks used to rationalize renditions to torture in the public inquiries discussed in the following chapters, reveal modern forms of state racism that I locate within the Canadian white settler context as a form of modern imperialism.

While modern imperial projects resemble older forms of colonial and imperial rule³¹ in their racial and economic capitalist macro structures, however, they cannot simply be equated

³¹ Ania Loomba points out that “colonialism and imperialism are often used interchangeably” (Loomba 1998, 1) as both concepts operate to expand European domination to “foreign” lands, and both share an overarching

with or generalized as equivalent to earlier forms of imperialism. Modern imperial projects differ in the ways they are legitimized and organized through Foucault's diverse forms of power, summarized as sovereignty-discipline-governmentality. They are discursive and concrete colonial practices, re-configured and re-coded to be acceptable in modern, liberal, democratic, political contexts. Flowing from "the West," modern imperialism operates through re-configured race-logics—such as those identified in Fanon's (1963) Manichean dualism and in Said's (1978) Orientalism—that legitimize, justify, and explain colonial projects and practices in ways that allow "Western" states such as Canada to be depicted as rights abiding and multicultural, non-racist liberal democracies that have parted with their colonial and imperial past.

The following sections provide the historical background required to conceptualize Canadian renditions to torture as a program that re-inscribes colonial relations while narrating the Canadian state as a multicultural, liberal democracy.

Canadian White Settler Colonialism and Multiculturalism

The process of producing colonial relations while narrating racial and colonial transformation is not new, but it is fundamental to the Canadian white settler state:

A white settler society is one established by Europeans on non-European soil. Its origins lie in the dispossession and near extermination of Indigenous populations by the conquering Europeans. As it evolves, a white settler society continues to be structured by a racial hierarchy. In the national mythologies of such societies, it is believed that white people came first and that it is they who principally developed the land; Aboriginal peoples are presumed to be mostly dead or assimilated. European settlers thus *become* the original inhabitants and the group most entitled to the fruits of citizenship. A quintessential feature of white settler mythologies is, therefore, the disavowal of

economic and racial structure. Both colonialism and imperialism comprise a wide variety of practices that include the exploitation of land, resources, and populations that also "meant the *unforming* or re-forming of communities that existed there already" (ibid., 2). However, colonialism and imperialism differ in their geopolitical and historical organization in that colonialism requires direct rule and imperialism does not (ibid., 7).

conquest, genocide, slavery, and the exploitation of labour of peoples of colour. (Razack 2002, 1–2)

Razack (2002) indicates that obscuring racialized state violence is fundamental to establishing and maintaining Canada as a white settler state. The (re)production of colonial relations alongside a narrative of racial and colonial transformation has operated as a form of governance since Canada was established as a politically self-governing, white settler nation-state. Stasiulis and Yuval-Davis (1995) consider Canada, Australia, and the United States to be white settler colonial societies: that is, “societies in which Europeans have settled, where their descendants have remained politically dominant over Indigenous peoples, and where a heterogeneous society has developed in class, ethnic and racial terms” (3).³²

Historically, in Canada, state-centred practices of racialization inflected by ideologies of gender, sexuality, and class have been obscured by national narratives (Bannerji 2000; Das Gupta 1999; Jiwani 2006; Mackey 2002; Mongia 2003; Razack 2004; Thobani 2007). Mongia traces Canada’s white settler nation-state building process, through which Canada became distinct from Britain and remains independent from the United States, to the end of the nineteenth century. She shows how white settler nation building at the beginning of the twentieth century depended on selective immigration and deportation practices. These were accompanied by Canadian narratives that began to invoke “the liberal imperative to disguise the racialized logic of migration regulations in an idiom that could be construed in non-racialized terms” (405). The continuous subordination of French settlers, the dispossession of Indigenous populations, and the exploitation of immigrants operate alongside the idea of Canada as a pluralist, gentle,

³² In contrast to other post-colonial societies that originated in the British Empire, such as India (Chatterjee 1993) and the Bahamas (Alexander 1997), where the colonizer left after local struggles for independence, white settler societies are marked by the permanency of white settlement and the continuous reproduction of white settler cultural, socio-economic, and political domination over Indigenous populations, as well as an influx of culturally and racially diverse immigrants.

and peaceful nation, based on two founding nations, that is markedly different from and superior to “other nations” (Mackey 2002, 13).

Critical race feminists such as Razack (2002, 2008), Thobani (2007), Mackey (2002), Bannerji (2000), and Das Gupta (1999) have critiqued the ways in which the Canadian state has been narrated as multicultural, notwithstanding the continued reproduction of colonial relations—the exploitation, oppression, and exclusion of racialized minorities in and from Canada. These scholars have critiqued state-centred multiculturalism as a form of Anglo-Protestant white settler nationalism, a national self-representation project that distorts and obscures the continuation of colonial relations both inside and outside Canada’s geopolitical boundaries (Bannerji 2000; Das Gupta 1999; Razack 2004). Bannerji (2000) and Mackey (2002) have pointed out that “multiculturalism from above” (Bannerji 2000, 6), or state-centred multiculturalism, developed throughout the 1970s and 1980s out of movements “that had developed on a global scale” to challenge state-centred race politics (Mackey 2002, 29). Multiculturalism was taken up by the federal government as a way to distinguish Canada from the United States in its integration policy,³³ and to negotiate domestic resistance to inequalities. As a national narrative, multiculturalism works to obscure state-centred racism. Official multiculturalism, with its politics of recognizing diversity and appeal to tolerance, can be seen as a form of nationalism that covers up white supremacist and capitalist policies and politics of exploitation and repression related to immigrant populations, and “sidelines the claims of Canada’s Aboriginal population” (Bannerji 2000, 6). Mackey (2002) contends that “liberal

³³ Throughout the 1970s and 1980s, multiculturalism was established as a fundamental characteristic of Canadian national identity vis-à-vis American melting-pot assimilation policies. Multiculturalism has been promoted as a cultural mosaic approach to integration, whereby ethnic, racial, and religious minorities can preserve and practice their cultural heritage; cultural difference is respected; and bilingualism is fostered. In the 1970s, state-sponsored programs were established promoting the multicultural heritage of communities and assisted new immigrants in promoting their integration, in the elimination of language barriers, for example.

values and the goals of inclusion and pluralism are an integral part of the project of building and maintaining dominant power, and reinforcing “Western” cultural hegemony” (163).

The state apparatus is not the sole producer of discourses and practices that generate colonial relations and an image of Canada as a multicultural, liberal democracy. However, critical race feminists have critiqued Canadian state bureaucracies for their central role in establishing and reproducing Anglo-Protestant white settler domination through national, group, and individual identity formations that are manifested and normalized through law (Bannerji 2000; Das Gupta 1999; Dua 1999; Lawrence 2003; Mackey 2002; Razack 2002, 2008; Thobani 2007). Thobani points out that the Canadian white settler state is founded on and continuously grounded in race-logics that produce subjectivities allowing for delineations of who belongs and who does not. She demonstrates that Canadian state-centred multicultural nationalism and citizenship are deeply enmeshed with historical politics of the gendered, racialized, and sexualized body. The racial politics of the white settler state are interwoven with gender, class, and sexuality to delineate the national subject and its “others”. The body, and above all the racialized body, is linked to the Canadian geopolitical territory as well as to its culture and politics (Thobani 2007, 3-4). The national character of Canada is equated with the figure of the ideal citizen, with implications for citizen-members who do not embody the ideal type. The white, Anglo-Protestant, middle-class man is the hegemonic citizen who is intrinsically understood to belong (4–5). He is the law-abiding citizen, the inherent bearer of rights. This long-established subject formation is reproduced today: this citizen continues to exist as the unmarked body who is free from racial profiling and other forms of race-based social control and regulation. In Canada’s national narrative, white settlers

. . . are presented (for the most part) as responsible citizens, compassionate, caring, and committed to the values of diversity and multiculturalism. Having overcome great

adversity in founding the nation, these subjects face numerous challenges from outsiders—“Indians,” immigrants, and refugees—who threaten their collective welfare and prosperity. (4)

Racially differentiated populations, otherized through biological and cultural markers, are considered not to belong to the Canadian white settler nation. They are controlled through immigration policies and are targeted by practices of policing, capitalist exploitation, exclusion, and oppression based on racialized otherization.

Representational practices of self and other are situated within the broader Canadian white settler context, which legitimizes state-centred racial violence alongside promoting Canada’s narrative as a multicultural, liberal democracy. Although liberalism portrays its use of law as an “objective, reasoned, and consistent system of rule far beyond the primitive use of brute force” (Thobani 2007, 35), law actually upholds colonial violence (ibid.): “in the colonial order, reason and violence [do] not exist in an oppositional relation, instead, they [a]re both complementary and coterminous” (ibid.). For example, past and present immigration laws have fostered racialized and gendered labour segmentation and exploitation according to the shifting demands of the capitalist labour market (Bannerji 2000). Immigrant communities have been regulated into segmented socio-economic, political, and geographic spaces along racial, ethnic, and national lines (Bannerji 2000, 1–13). Race and racisms operate through subject formations that justify and legalize a range of socio-economic regulatory and coercive state practices directed at the racialized other.

Colonization, Racialization, Criminalization and Deportation

Throughout Canada’s history, particular subjectivities have been assigned to racialized groups to justify state-centred sovereign racialized practices such as criminalization, incarceration, and deportation in order to maintain white settler domination. To establish Canada as a white settler nation, subject formations such as *Indian* have historically operated to confine

Indigenous populations on reserves, to deprive Indigenous populations of their cultures, and to deny Indigenous populations of their rights to land. By the mid-nineteenth century, Indigenous populations in Canada “came to be defined as obstacles to the development of capitalist industry and agriculture, and so their presence came to be increasingly defined as a problem by state authorities” (McCalla and Satzewich 2002, 25). Past and present ideologies of race, interconnected with gender, class, and sexuality, underlie representations of Indigenous populations and structure Indigenous peoples’ experiences of criminalization:

One of the ways in which colonialism is perpetuated is through racialized discourse. While past discourses cast Aboriginal people as “savage,” “inferior,” “childlike” (and therefore in need of a civilizing influence and the benevolent paternalism of the state), more contemporary discourses include the notions of the “welfare recipient,” the “drunken Indian,” and the “criminal Other” (and therefore in need of heightened surveillance and control). (Comack 2012, 79)

Historically, subject formations were used to justify and legalize the dispossession of Indigenous populations in Canada, and to deliver this specific group into carceral spaces such as prisons and/or reserves (Razack 2002, 1–19). Indigenous peoples experienced criminalization and imprisonment through laws and policing practices prohibiting cultural practices and preventing them from leaving reserves (Comack 2012, 69–78). Clearly, white settler colonialism has operated through the policing and criminalization of Indigenous and other racialized populations that have been legitimated through representational practices characterizing white settler non-normative conduct or/and populations as a threat (Comack 2012).

For Mirchandani and Chan (2002) as well as Jiwani (2002), to criminalize also means to racialize. Criminalization is a labelling process whereby particular conduct is labelled as crime and certain groups are defined as criminals. Racialization, intersecting with practices of gendering and classing, is a process that operates through the criminalization of conduct to implicitly target specific populations, thereby (re)producing racial hierarchies (Mirchandani and

Chan 2002, 12–13; Jiwani 2002, 67–73). “Those activities defined as ‘criminal’ are intricately tied to the material and symbolic relationship between power, social control and actions which resist control” (Mirchandani and Chan 2002, 14). The racialization and criminalization of specific populations can be considered forms of subordination and part of a broader strategy not necessarily of crime-prevention, but of repression and control of racialized others to maintain white settler economic, social, and political domination (ibid., 15).

The reproduction of white settler colonial domination has operated through the production of threats to national security, in order to control racialized minorities and political dissidents within Canada through criminalization and imprisonment, and to banish racialized minorities from Canada. Prominent examples include: the drug laws targeting Chinese immigrants in the early 1900s (Gordon 2006); the depiction of “Eastern” European immigrant workers as Bolshevik “alien scum” during a Winnipeg labour strike in 1919 and their subsequent arrest, internment, and deportation in the name of national security (Aiken 2001, 490); the depiction of “enemy aliens” of Japanese Canadians and their preventative internment during World War II (Aiken 2001; Oikawa 2002); and during the 1960s, the depiction of socialist political party members as communist threats and as a class of people that would engage in acts of violence so as to undermine Canada’s national security (Aiken 2001, 493).

Since the 1980s, young black Jamaican-Canadian and Somali-Canadian men have been depicted as risks and threats to national security and have been disproportionately criminalized and incarcerated (Comack 2006, 68; 2012; Gordon 2006). Through the criminalization of drug-related conduct, Jamaican-Canadian men have been labelled as criminals and/or dangers to public security, thereby justifying racialized policing, preventing immigration, and/or enabling their criminalization, imprisonment, and deportation from Canada (Barnes 2002, 192). Most

recently, immigration laws have been used as sites of criminalization, thereby enabling the removal of unwanted migrants from Canada (Chan 2006). Barnes notes that “in 1995, the *Immigration Act of Canada* was amended to include a danger to the public provision”; this provided the legal context through which Jamaican-Canadian men were targeted and could be arrested, detained, and deported without the right to appeal (Barnes 2002, 193–194). Within the broader context of organized crime, and specifically through the War on Drugs, young Jamaican-Canadian male permanent residents and, most recently, Somali-Canadian men have been criminalized, detained, and deported from Canada (Barnes 2002; Gordon 2006). The current trend to control and expel non-white populations through criminalization also needs to be understood in the context of 1980s neo-liberal state governance, whereby state spending is directed towards the policing, incarceration, and deportation of racialized, gendered, and classed groups (Murphy 2002).

In the post-9/11 context, the legacy of colonial governance, operating through criminalization, incarceration, and deportation, has found a new target: the risk of terrorism and terrorist-associated crimes are attached to the racialized and gendered bodies of Muslim men. Increasingly authoritarian policing practices such as preemptive criminalization, indefinite detention, and deportation have been legitimized and legalized through this depiction of Muslim men as terrorists.

In succeeding chapters, I investigate how, Muslim-Canadian citizens Ahmad Abou-Elmaati, Abdullah Almalki, Maher Arar, and Muayyed Nureddin, were produced as terrorists through the application of processes of sovereign racialized state violence that constitute Canadian renditions to torture. My examination of the *Arar Commission Report* (O’Connor 2006a) and the *Iacobucci Report* (Iacobucci 2008) involves an analysis of how “sovereign power

and the violence (or the threat thereof) that always mark[s] it” (Blom Hansen and Stepputat 2005, 3) was justified, organized through Canadian renditions to torture, and explained to the public.

Data Sources

To provide the historical and geopolitical background within which Canadian renditions emerged, I draw on media reports as well as selected speeches given by Jean Chrétien between September 12 and September 24, 2001 (Chrétien 2001a, 2001b, 2001c, 2001d, 2001e) and specific sections of laws from the *Immigration and Refugee Protection Act* (2001) and Canada’s *Criminal Code* (1985; 2001). I analyze political speeches as they express, in the clearest and most obvious form, the political rationalities that operated in the post-9/11 context, justifying changes in laws, the federal budget, and racialized policing practices targeting Muslim men and Muslim communities.

I focus on two federal government-ordered Commission of Inquiry reports as my primary sources: the *Arar Commission Report* (O’Connor 2006a), including the *Factual Background Volume 1* (O’Connor 2006b) and *Volume 2* (O’Connor 2006c); the related *Analysis and Recommendations* (O’Connor 2006d); and the *Iacobucci Inquiry Report* (Iacobucci 2008). While these two reports are highly censored documents, they are the only public documents that allow one to trace how sovereign racialized state violence, including torture, was organized by Canadian state officials, and to analyze how Canadian state officials’ conduct was explained to the public. I also draw on a variety of secondary sources such as the *Toope Report* (Toope 2005); semi-autobiographical books, such as *Dark Days* (Pither 2008a); and *Hope and Despair* (Mazigh 2008).

Volume 1 and Volume 2 of the *Arar Commission Report* focuses on the factual background related to Arar's detention in Syria, while the *Toope Report* is the only available text that documents Arar's experiences of torture. In July 2005, Judge Dennis O'Connor appointed Professor Stephen J. Toope, a scholar in human rights and international relations, as the fact-finder for the *Arar Commission*. His report assesses Maher Arar's credibility in relation to his statements that he was tortured in Syria. Toope also interviewed Ahmad Abou-Elmaati, Abdullah Almalki, and Muayyed Nureddin, and reviewed how their stories of torture corroborated. The *Toope Report*, released in October 2005, concludes that Arar, Elmaati, Almalki, and Nureddin had been tortured. In *Dark Days*, author Kerry Pither (2008a) primarily relies on the experiences of Ahmad Abou-Elmaati, Abdullah Almalki, and Muayyed Nureddin, as relayed to her in interviews for the purpose of this book. Pither, a human rights advocate, first became involved in Arar's case in 2003, to help him to prove his innocence and publicize his experiences of torture. Her book was written to bring to light Canadian officials' implication in all four men's experiences of detention and torture, which had been "cloaked in secrecy through claims of national security confidentiality" (xviii). In her autobiographical book *Hope and Despair* (2008), Maher Arar's wife Dr. Monia Mazigh describes the events around her husband's detention and torture from her perspective. It also details her social, economic, and political struggles to bring Arar back to Canada. The *Toope Report* and these two latter texts allow me to trace events that are obscured or were not part of the inquiry reports.

I also draw on transcripts of initial submissions by participants such as Elmaati, Almalki, Arar, and Nureddin, as well as submissions of stake holding parties granted intervenor status in the inquiries, including Amnesty International, the Canadian Council on American Islamic Relations, the Canadian Arab Federation, and other organizations. The initial submissions to the

inquiry are important texts as they provide insights into what the parties tried to achieve, in being part of the inquiries, and how their goals and requests were included and/or excluded in the final inquiry reports.

Commissions of Inquiry

Public inquiries in Canada are part of the British colonial system of governance. The monarch can assert his/her sovereign power to order investigations, known as Royal Commissions, into matters of public concern related to the misconduct of government departments (O'Connor 2007f). Inquiries continue to be regulated by the *Inquiries Act (An Act respecting Inquiries concerning Public Matters, 1868)*. The Act was first passed in Britain in 1846, implemented in 1868 in Canada, and most recently amended in 1934. It outlines the functioning of inquiries as distinct from judicial proceedings, criminal investigations, and legislative committees.

In modernity, the sovereign power of the monarch has been dispersed and transferred to the political parties governing the state. To launch a federal inquiry, it is first debated in parliament and then approved by the Governor General. The Minister of Public Safety and Emergency Preparedness holds the power to define the mandate of a Commission of Inquiry; to determine the terms of reference, to appoint commissioners, who have the power to grant participatory standing to victims and stakeholders; and to compel witnesses to appear, testify under oath, and produce specific documents. Witnesses have the right to legal representation. While some of these features are also part of judicial proceedings and criminal investigations, commissions are not legal determinations of criminal or civil responsibility. Public inquiries do not produce legal findings of guilt or liability, they do not rule on constitutional matters, and no person involved in the misconduct under investigation can be charged with a criminal offence as

a result of the inquiry. The intention of inquiries is to investigate misconduct and offer policy recommendations.

Inquiries may emerge out of the public's outrage over government officials' misconduct, political struggle, and contestation against, for example, state officials' racially discriminatory practices or use of excessive violence. They symbolize the government's acknowledgment of matters of public concern, and demonstrate a willingness to investigate government misconduct by calling these semi-independent investigations, which are open to the public and include core participants, witnesses, and public stakeholders. Retired or standing judges are often appointed as commissioners. Inquiries are believed to bring objective truth about government misconduct to light.

In Canada, public inquiries may be held at the federal, provincial, or territorial levels. They have become the usual extra-legal means through which to negotiate state officials' wrongdoing and state violence on a public level.³⁴ They are hailed as pedagogical tools for social accountability that can "restore confidence and fix institutions" (O'Connor 2007f, 2). In some legal scholarship, inquiries are affirmed as models for restorative justice, with socio-democratic objectives (Kalajdzic 2010, 161). With a mandate to uncover facts and review policies, the inquiry is idealized as an impartial investigation, providing transparency about government conduct and working towards concrete institutional changes through policy recommendations

³⁴ In the past two decades, the number of public inquiries into government misconduct has dramatically increased. Recent inquiries on a federal level include the *Iacobucci Inquiry* (2006–2008), the *Air India Inquiry* (2006–2008), the *Arar Inquiry* (2004–2006), the *Gomery Inquiry* (2004–2006), the *Romanov Commission* (2002–2004), the *Inquiry on the Blood System in Canada* (1995–1997), the *Inquiry of the Canadian Forces in Somalia* (1994–1997), and the *Royal Commission on Aboriginal Peoples* (1991–1996). Inquiries on the provincial level include, in Ontario: the *Cornwall Inquiry* (2005–2009), the *Inquiry into Pediatric Forensic Pathology in Ontario* (2005–2008), and the *Ipperwash Inquiry* (2004–2006); in Saskatchewan: the *Milgaard Inquiry* (2004–2008), and the *Inquiry into Neil Stonechild's Death* (2003–2004); in Newfoundland: the *Newfoundland and Labrador "Eastern" Health Inquiry* (2007–2009); in Manitoba: the *James Driskell Inquiry* (2006–2007); in British Columbia: the *Missing Women Commission of Inquiry* (2010–2012).

(O'Connor 2007f). By their investigative nature, inquiries include a restorative justice function, achieved through information gathering, public education, and policy development (Kalajdzic 2010, 185–86).

In contrast, Ashcroft (1990), Ashenden (2006), and Dodek (2009) point out that commissions of inquiry are not impartial, neutral, and objective fact-finding and policy review processes; instead they are governed by party politics and what Foucault has describes as governmental rationalities such as liberal welfarism and neo-liberalism. Ashcroft (1990) describes inquiries as “reckoning schemes of legitimization of the state” (1). For him, inquiries help to perpetuate dominant power relations and set up the state as an institutional domain of neutrality and self-reflection “dedicated to the advancement of the ‘common good’” (ibid., 7). Ashenden points out that inquiries are tools that reproduce state power by regrouping state practices, which have come under public scrutiny, into governmental rationalities such as “liberal welfare rationality” (Ashenden 2006, 68). Dodek (2009) critiques the participation of judges in commissions of inquiry with the mandate of fact finding and reviewing policies as the “judicialization of politics” (3). Similarly, to Dodek, I show how appointing judges as commissioners gives the impression of impartiality and independence from the political party politics of the state related to the inquiry process. Judges have been used to create an aura of political independence while enabling a political alignment between the legislative, executive, and juridical branches of government. In fact, the politically appointed judges who rule over the inquiry process and outcomes are extensions of political party politics. Further, I draw on critical race feminists such as Razack (2004) and Murdocca (2013) who situate Commissions of Inquiry in the Canadian white settler colonial context. In her analysis of the discourses in the inquiry report regarding the Somalia Affair, Razack (2004) argues that while the inquiry documented

acts of racial violence, racism as a form of violence disappeared from the report, which ultimately produced the national mythology of the Canadian state as non-colonial and non-racist. More recently, Murdocca (2013, 4) has defined the inquiry “as an institutional form of racial governance in liberal settler states” with the capacity to both recognize and reproduce colonial relations.

Before outlining the methodological details, the next section provides an overview over the organization of the Arar Commission of Inquiry and the Iacobucci Inquiry.

The Arar Commission of Inquiry (2004–2006)

Maher Arar and his wife, Monia Mazigh, along with a coalition of politicians, journalists, and non-governmental organizations (NGOs)³⁵ lobbied for a federal government inquiry into the detention, deportation, and torture of Arar, to clear his name of any affiliation to terrorism, and to restore his respectability as a Canadian citizen (Arar 2004). In 2003, public pressure mounted to launch a public inquiry.³⁶ Media outlets reported a possible government cover-up in relation to Canadian officials’ implication in Arar’s wrongful detainment in New York and his imprisonment and torture in Syria. Newspaper articles in the *Globe and Mail*, for example, demanded answers related to the “injustices” that happened to Arar “at the hands of the state, or states” and to know the details of “what happened and why” (Simpson 2003).

At first, Foreign Minister Bill Graham suggested that the case be referred to the RCMP Public Complaints Commission, “known to graveyard all serious inquiries”; however, “despite

³⁵ Politicians such as Alexa McDonough, Marlene Catterall, and Irwin Cotler, and non-governmental organizations including The Canadian Council on American-Islamic Relations, The Canadian Arab Federation, The Association for the Prevention of Torture, The World Organization Against Torture, and Amnesty International. The International Campaign against Torture also lobbied for a public inquiry.

³⁶ A research study is needed to detail the concrete practices by Arar and Mazigh and their allies that captured the media’s attention and brought this scandal to the forefront of public and political concern.

opposition from Prime Minister Jean Chrétien,” enough Liberal MPs demanded a public inquiry (ibid.). On February 5, 2004, the Arar Commission was established to investigate the actions of Canadian officials in relation to Arar’s detention in the United States and Syria and his torture in Syria, and to make policy recommendations in response to Canada’s involvement in Arar’s deportation to Syria and his subsequent torture in a Syrian prison. The Liberal government appointed the Honourable Dennis R. O’Connor, Associate Chief Justice of Ontario, as the Commissioner of the Inquiry. Judge O’Connor’s mandate was as follows:

- (a) To investigate and report on the actions of Canadian officials in relation to Maher Arar, including with regard to
 - (i) the detention of Mr. Arar in the United States;
 - (ii) the deportation of Mr. Arar to Syria via Jordan;
 - (iii) the imprisonment and treatment of Mr. Arar in Syria;
 - (iv) the return of Mr. Arar to Canada;
 - (v) and any other circumstance directly related to Mr. Arar that Justice O’Connor considers relevant to fulfilling his mandate.
- (b) To make any recommendations that he considers advisable on an independent, arm’s length review mechanism for the activities of the Royal Canadian Mounted Police with respect to national security based on
 - (i) an examination of models, both domestic and international, for that review mechanism, and
 - (ii) an assessment of how the review mechanism would interact with existing review mechanisms. (O’Connor 2006d, 280–281)

Judge O’Connor was given the sovereign power to decide who gets to participate. He created three separate categories of participant: (a) standing in a party; (b) standing as an intervenor; and (c) witness. Party standing was granted to those “who had a substantial and direct interest in all or part of the subject matter” (O’Connor 2006d, 285). Participants with party standing were granted the capacity to be involved, including permission to question witnesses and evidence. Judge O’Connor granted the Attorney General of Canada full standing, and granted limited standing to the Ontario Provincial Police (OPP) and the Ottawa Police Service

(OPS). He also named Arar as a participant in the factual inquiry process. However, Arar, still labelled as a terrorist suspect, could not attend the hearings for national security reasons. Thus, he was represented by Lorne Waldman and his legal team. Judge O'Connor excluded Elmaati, Almalki, and Nureddin from full participatory standing, explaining that full participatory status would violate national security confidentiality and would therefore exceed his mandate (O'Connor 2006d, 286; O'Connor 2006c, 772). However, he granted the men's legal teams limited standing, so they could attend the hearings and address evidence related to their clients' interests (O'Connor 2006d, 287). Judge O'Connor also raised concerns about a pattern related to Canadian state officials' conduct in the context of the four men's similar experiences of detention and torture in Syria (*ibid.*, 267–70).

Judge O'Connor granted intervenor standing to groups "who did not have a substantial and direct interest, but had demonstrated concern in the issues raised in the mandate" (O'Connor 2006d, 285). Sixteen NGOs were granted intervenor standing. All were public stakeholders dedicated to Arab and Muslim/Islamic relations, civil liberties, international human rights, and organizations in support of Canadian democracy. They included: the Canadian Council on American-Islamic Relations (CAIR), the Canadian Arab Federation (CAF), the Muslim-Canadian Congress (MCC), the Canadian Islamic Congress (CIC), the National Council on Canada-Arab Relations (NCCAR), the Muslim Community Council of Ottawa-Gatineau (MCCOG), the British Columbia Civil Liberties Association (BCCLA), the Canadian Labour Congress (CLC), the Law Union of Ontario (LUO), the International Civil Liberties Monitoring Group (ICLMG), the Council of Canadians, the Polaris Institute, the Redress Trust (REDRESS), the Association for the Prevention of Torture (APT), the World Organization Against Torture

(OMCT), and Amnesty International (AI) (*ibid.*, 286, 306). The role of intervenors was to assist O'Connor with their expertise to fulfill his mandate (*ibid.*, 289).

The relevant factual background for the inquiry was gathered through interviewing witnesses in hearings held public and in camera. Arar never testified at the inquiry. On October 27, 2005, Stephen Toope was commissioned, by Judge O'Connor, to interview Arar and the three other men to determine whether or not Arar had been tortured, and if the three other men's individual statements corroborated allegations of torture. The *Toope Report* (Toope 2005), published later that year, found that Arar and the others had indeed been tortured, and concluded that they had suffered from physical and psychological trauma caused by torture.

Over seventy government officials working for the RCMP, CSIS, and DFAIT were interviewed as witnesses. This process resulted in the production of 21,500 documents, of which 6,500 were entered as exhibits (O'Connor 2006b, 11–12). RCMP officers and DFAIT representatives were interviewed as witnesses, and were represented by legal counsel to safeguard their interests. Unfortunately, transcripts of witness statements are not available to the public, since most of the hearings were conducted in camera and a good deal of evidence therefore also heard in camera, on the grounds of national security confidentiality (O'Connor 2006d, 10–11). Judge O'Connor decided to prioritize national security over freedom of information and transparency. He named only a few individuals who appeared as witnesses, including:

- Jack Hooper, Deputy Director of CSIS;
- RCMP Commissioner, Gary Leoppky;
- Assistant Commissioner, Richard Proulx who allegedly ordered all restrictions on information-sharing policies between the RCMP and the FBI to be set aside;

- Superintendent Antoine Couture and Michel Cabana, leading RCMP officers who shared information about Arar with U.S. security officials;
- RCMP Sergeant Rick Flewelling, Corporal Randal Walsh, Randy Buffam, and Garry Clement;
- Ottawa police officers Patrick Callaghan and Kevin Corcoran, who were involved in the surveillance and information gathering of possible terrorist connects between Ahmed Khadr, Abdullah Almalki and Maher Arar and his family.
- DFAIT representatives were also called as witnesses, including Maureen Girvan, a Canadian consular service officer in New York who allegedly dismissed the possibility that Arar might be deported to Syria;
- Franco Pillarella, the Canadian Ambassador to Syria, who allegedly passed information acquired by SMI under torture to CSIS; and
- Canadian Consular Service officer in Syria, Leo Martel, who denied that Arar had experienced torture.

The Commissioner's report consists of three parts: *Report of the Events Relating to Maher Arar—Factual Background—Volume 1* (O'Connor 2006b) and *Volume 2* (O'Connor 2006c); *Report of the Events Relating to Maher Arar—Analysis and Recommendations* (O'Connor 2006d); and *A New Review Mechanism for the RCMP's National Security Activities* (O'Connor 2006e).³⁷ I focus on the *Report of the Events Relating to Maher Arar—Analysis and*

³⁷ The *New Review Mechanism for the RCMP's National Security Activities* (O'Connor 2006e) report was published at the same time as the *Arar Commission Report* (O'Connor 2006a). This more than 600-page document provides a "historical overview and evolution of Canada's national security activities"; it documents post-9/11 Canadian legislative changes, and outlines the policies related to the RCMP's national security mandate. The report compares "Canada's national security experience" with those of the United States, New Zealand, and "Western" Europe. Judge O'Connor concluded "that existing accountability and review mechanisms for the RCMP's national security activities are not adequate in large part because of the evolution and increased importance of that national security role" (2006, 18). He recommended "a new single review body for the RCMP's national security activities"

Recommendations; and the Report of the Events Relating to Maher Arar—Factual Background—Volume 1 and Volume 2 (O'Connor 2006b, 2006c, 2006d). Each of these sections consists of over 350 pages of documentation and analysis on how Canadian agencies, including CSIS and the RCMP, were involved in the detention, deportation, and torture of Arar. No information was acquired (or could be acquired) from the U.S. Federal Bureau of Investigation (FBI) or from Syrian Military Intelligence (SMI).

On September 18, 2006, Justice O'Connor issued the public report, after a confidential report was first issued to the Liberal government. On August 9, 2007, one year after the report was released, an addendum was published in which some portions of previously censored information could now be accessed. The addendum includes information about house searches and interviews with Arar in January 2002; knowledge-sharing incidents between the RCMP and CIA in October 2002 connected to Arar's removal to Syria; and the CSIS trip to Syria in November 2002.

The Iacobucci Inquiry (2006–2008)

From 2005 onward, Almalki, Elmaati, and Nureddin, their families, their individual lawyers, and NGOs such as Amnesty International Canada called for a public inquiry into Canadian officials' actions related to these men's experiences of detention and torture in Syria. While the families of Almalki, Elmaati, and Nureddin reached out to the public in a variety of ways, they did not achieve the same media publicity or public outrage as the Arar case. In fact,

(ibid., 17-18), as well as review mechanisms for other state departments involved in national security such as Canada Border Agency Services (CBSA), Citizenship and Immigration Canada (CIC), Transport Canada, the Department of Foreign Affairs and International Trade (DFAIT), and the Financial Transactions and Report Centre of Canada (FINTRAC). He pushed for an Independent Complaints and National Security Review Agency for the RCMP (ICRA), and suggested that the Security Intelligence Review Committee (SIRC) is best-suited to review the other agencies. He also recommended that the ICRA and SIRC form an Integrated National Security Review Coordinating Committee (INSRCC).

Justice Iacobucci pointed out that the inquiry into the experiences endured by these three men was recommended by Judge Dennis O'Connor (Iacobucci 2008, 44–45).

On December 11, 2006, the Iacobucci Inquiry was officially announced. Justice Frank Iacobucci was appointed by the Conservative government to lead the inquiry. His mandate was to determine:

1. whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether these actions were deficient in the circumstances;
2. whether there were deficiencies in the actions taken by Canadian officials to provide Consular Services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt; and
3. whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if whether those actions were deficient in the circumstances. (Iacobucci 2008, 29)

This inquiry process, like the Arar Inquiry, was located in unequal power relations. The federal Conservative government determined the mandate, and directed the Iacobucci Inquiry to be held internally—the public was to be excluded from the hearings. Justice Iacobucci granted core participant standing to Almalki, Elmaati, and Nureddin and their legal representatives.

Almalki was represented by Paul Copeland and Jasminka Kalajdzic; Elmaati by Barbara Jackman and Hadayt Nazami; and Nureddin by John Norris and Breeze Davis. Benamar Benatta, represented by Nicole Chrolavicius and David Baker, and Mohamed Omary, represented by Johanne Doyon, also alleged that they had been mistreated or tortured resulting from Canadian officials' actions, but were not granted participant status.

Justice Iacobucci granted intervenor status to eight NGOs to participate in the fact-finding process: Amnesty International Canada (AI); Human Rights Watch (HRW); the British

Columbia Civil Liberties Association (BCCLA); the Canadian Muslim Civil Liberties Association (CMCLA); the Canadian Council on American Islamic Relations (CAIR-CAN); the International Civil Liberties Monitoring Group (ICLMG); the Canadian Arab Federation (CAF); and the Canadian Coalition for Democracies (CCD). He also allowed two government intervenors, representatives of the Ontario Police Service (OPP) and the Ottawa Police Service (OPS). As in the Arar Commission, Iacobucci included the Canadian Coalition for Democracies on the intervenor list. However, he did not grant the Redress Trust, the Association for the Prevention of Torture, the World Organization Against Torture, the Council of Canadians, the Polaris Institute, or the Canadian Labour Congress intervenor status.

Several people and organizations withdrew from the inquiry. Arar withdrew his request to be granted standing in the Iacobucci Inquiry on March 21, 2007. Three lawyers withdrew because, throughout the inquiry, core participants' lawyers, non-governmental parties, the public, and the media were shut out of the process: Copeland withdrew as counsel for Almalki on June 4, 2008, and Norris withdrew as Nureddin's lawyer on June 9, 2008. The lawyer for the BCCLA, Paul Champ, withdrew from the process on October 3, 2007 and was replaced by Catherine Healy. The BCCLA withdrew completely from the Iacobucci Inquiry on December 11, 2007 (Iacobucci 2008, 47).

In the name of national security, interviews with the forty-four witnesses called by the inquiry were conducted in camera, and in secret locations. Justice Iacobucci mostly relied on 40,000 documents and diplomatic notes provided by the Attorney General and produced by three government institutions: the RCMP, CSIS, and DFAIT. He requested expert medical reports by psychologist Dr. Judith Pilowsky and psychiatrist Dr. Rosemary Meier, to validate Almalki's, Elmaati's, and Nureddin's claims of physical and psychological torture. These reports are not

available to the public. Justice Iacobucci pointed out that the governments of the United States, Syria, Egypt, and Malaysia did not respond to requests to take part in the inquiry (Iacobucci 2008, 41–49).

The public *Iacobucci Inquiry Report* consists of 455 pages, and is divided into three sections. The first section focuses on the factual narratives provided by the RCMP, CSIS, and DFAIT officials in the context of Elmaati's, Almalki's, and Nureddin's ordeals. Chapters are organized according to each man's experience, from the point of view of Canadian officials. The second section consists of the three men's individual accounts of what happened to them. The facts in this section focus on the men's detentions and experiences of torture in Syria and, in Elmaati's case, in Egypt. For the most part, their experiences in Canada are left out. The third part—the findings section—provides information on whether, in Justice Iacobucci's view, “the detention and mistreatment resulted, directly or indirectly, from the actions of Canadian officials” (Iacobucci 2008, 334).

Methods: Foucauldian Discourse Analysis and Stuart Hall's Politics of Representation

I treat the *Arar Commission Report* (2006) and *the Iacobucci Report* (2008), in a Foucaultian sense, as “discursive regimes” (Foucault 1980) – social products and outcomes of power/knowledge relations with the capacity to appear self-reflective and reproductive of colonial relations. The two inquiries emerged out of public outrage about what happened to the four men and requests to shed light on Canadian state officials' implication in the four men's experiences of torture in Syria and Egypt. As both inquiries were governed by fact-finding mandates, they can be considered a disciplinary mechanism directed at state officials and/or institutions. They are the only available documents that provide (partial and censored) public

knowledge about a program (renditions to torture) that was organized in secrecy. Consequently, the inquiries are the only public documents that allow me to (partially) trace how Canadian renditions were organized. However, as I will show through the ways in which the “facts” that triggered the men’s detention and torture in Syria and Egypt were explained to the public, the Commission of Inquires function as political tools to silence public outrage and discontent. In fact, the two *Reports* reproduce white settler domination through a variety techniques that allow the public/ me to trace sovereign racialized violence yet explain it as something other than state racism – something the public can accept.

I examine the discourses emerging in the two final *Reports* as the effects of knowledge/power relations – the interpretative power of the politically appointed Commissioner and the legal team. I examine how the sovereign political power of the state was distributed to judges who act as authoritative figures who can define who gets to participate, and what and how to speak about state officials’ misconduct. As will become evident, discursive regimes are not only repressive – they are productive in the sense that they include stake holding parties and participants and take up discourses of contestation in ways that engender governmental domination (ibid., 92-94). Commissions of Inquiry have the capacity to negotiate social and political conflict in ways that legitimize and reaffirm colonial relations of ruling by distributing the sovereign and political power of the state and by including ‘the colonized’, individuals and groups such as a variety of stake holding organizations into the inquiry process.

As I noted above, I use the *Arar Commission Report* (O’Connor 2006a), the *Toope Report* (Toope 2005) and the *Iacobucci Inquiry Report* (Iacobucci 2008) as resources to reveal partial and censored knowledge productions about government officials’ involvement in the four Canadian citizens’ unlawful detentions and experiences of torture in Syria and Egypt. Partial and

censored government information regarding Canadian officials' conduct is documented in hundreds of pages dispersed across the two inquiry *Reports* and in the *Toope Report*, as well as in books by Pither (2008a) and Mazigh (2008) that describe the men's experiences. I traced state officials' conduct across these texts and ordered state officials' conduct and events chronologically. I investigate the similarities and differences between the men, related to how Canadian renditions to torture were organized. I specifically look for patterns and links between Canadian state officials' actions and the men's experiences related to their labelling as terrorist suspects, their departure from Canada, and their detention and torture in Syria and Egypt.

My analysis is meant to address the following four research questions:

1. How did Elmaati, Almalki, Arar, and Nureddin become terrorist suspects?
2. Since the men resided in Canada, what were the circumstances that led to their departures from Canada?
3. Since they are Canadian citizens, what circumstances led to their detentions in Syria and Egypt?
4. What was the content and purpose of the torture they experienced?

I investigate the conduct by members of CSIS, RCMP, and DFAIT as sovereign-disciplinary racialized technologies, intersecting with ideologies of class, gender, that produced Elmaati, Almalki, Arar, and Nureddin as Islamic fundamentalist terrorists connected to al-Qaeda. I use the outcomes of these four questions as platforms to analyze the explanatory discourses presented in the *Arar Commission Report* (O'Connor 2006a) and the *Iacobucci Inquiry Report* (Iacobucci 2008). Given the political nature of the art of state governance in liberal democracies, I am also interested in how party politics influenced juridical appointments and effected inquiry processes and outcomes. I am particularly interested in what discourses presented in the initial

submissions to the inquiries by participants and stakeholders came to be taken up and included in the reports.

I choose, like many others working in the field of social science, to study the use of language, in a Foucauldian sense, as discourse (Foucault 1969, 23–79). For Foucault, discourse constitutes and is constituted by cultural cohesion; it emerges within and determines the limits of what can be said, and it reflects relations of domination (11). Discourses are knowledge-producing practices; they include “reflexive categories, principles of classification, normative rules, [and] institutionalized types” (25). Discourse always produces both discontinuity and continuity. Discourse includes hidden meanings, such as ideas that have become unpopular and morally unacceptable:

All manifest discourse is secretly based on an “already said”; and this “already said” is not merely a phrase that has already been spoken, or a text that has already been written, but is a “never-said,” an incorporeal discourse, a voice as silent as a breath, a writing that is merely the hollow of its own mark. It is supposed therefore that everything that is formulated in discourse was already articulated in that semi silence that precedes it, which continues to run obstinately beneath it, but which it covers and silences. (27–28)

Obviously, then, language cannot be taken at face value; it does not offer straightforward expressions of truth, but needs to be analyzed for its underlying meanings and content. It harbours historical and political continuity and discontinuity; it does not produce a break with the past, but rather encodes “pre-existing continuities” (Foucault 1969, 28). Discontinuities should not be studied in terms of linguistic analysis; rather, discontinuities should focus on content and “the unspoken element that [discourses] contain, the proliferation of thoughts, images or fantasies that inhabit them” (123, 155–56).

I do not conduct a discourse analysis in a traditional sense, that is, by analyzing linguistic patterns, but instead I follow Hall’s (1997) use of Foucault’s understanding of discourse, and analyze the underlying content and meanings attached to events and populations in the inquiry

reports. Discourse in Hall's sense is a system of representation that highlights unequal knowledge/power relations, that is structured by underlying ideologies, and that structures ways of thinking and acting. Hall uses discourse as a set of representations that govern "the way that a topic can be meaningfully talked about and reasoned about. It also influences how ideas are put into practice and used to regulate the conduct of others" in order to produce hegemonic power relations (Hall 1997, 72).³⁸ Hall, drawing on Foucault, uses discourse as a social practice producing knowledge that socially regulates ways of thinking about events and populations and indirectly influences people's actions. Hall is concerned about how deeply racialized, class-based power operates through media representations. He draws on the concept of *hegemony* (Gramsci 1971) to analyze how race and class domination is produced on a discursive level by targeting the minds of populations or the public through consensus building or media representations, not through coercion. A major component of his work aims to analyze the socio-economic, political, and cultural contexts within which discourses emerge that represent individuals, groups, and/or events. He investigates the race- and class-based ideological underpinnings—in short, the politics of representation that give meaning to events and thus perpetuate race- and class-based

³⁸ At first glance, combining Hall's use of Gramsci's (1971) concept of hegemony with Foucault's analytics of power seems incompatible, as these ideas stem from two diverging views of power. Gramsci positions the idea of hegemony within Marxist traditional understanding of power as a status or possession stemming from and held by the bourgeois ruling class. Gramsci (1971) advanced the Marxist idea of power as possession, viewing it as produced, achieved, and relational. The concept of *hegemony* emerged to show how power is produced and reproduced through the consent of populations, rather than through repression and violence. However, in hegemony, power still inhibits a hierarchical position and operates uni-directionally. Foucault rejected the notion of power as situated in a singular class or institution and as oppositional binaries of have and have not, or ruler and ruled. He proposes that power is omnipresent, multifaceted, and running through all of us. He investigates aspects of power such as sovereignty, discipline, and governmentality—their workings and manifestations. Both conceptualizations of power are useful in explaining patterns such as how white settler domination is established and maintained, through a variety of forms of power and complex processes of gaining legitimacy to govern. Both Foucault and Gramsci share the idea of power as relational and productive as opposed to repressive. Particularly, Foucault's *governmentality* is compatible with Gramsci's *hegemony*, in that both concepts can be related to discourses that provide—in a Foucauldian sense—rationalities operating towards the broader goal of producing the ability to govern (political sovereignty), and—in Gramsci's sense—production of consenting and participating subjects in the reproduction of white settler domination.

relations of domination. For example, in *Policing the Crisis: Mugging, the State and Law and Order*, Hall et al. (1978) show how, in England during the 1970s, media representations associated black male youth with mugging, thus creating “hate figures” that worked to create public consent for a neo-liberal “law and order agenda” (ibid., 339).

Furthermore, I draw on Teun van Dijk (1992) who, like Hall, uses language in a Foucauldian sense as discourse, and investigates the discursive strategies that legitimate and normalize racial social order. For van Dijk, “the crucial properties of contemporary racism is its denial” (87). He states that in most contemporary “Western” societies “general norms and values, if not the law, prohibit (blatant) forms of ethnic prejudice and discrimination, and many if not most white group members are both aware of such social constraints and, up to a point, even share and acknowledge them” (89). He investigates how in political discourses and media representations racism has discursively operated through encodings such as “positive self-representations” or disclaimers that deny racism (ibid.) and function to maintain white settler domination without appearing racist.

In terms of the Canadian multicultural context, I am interested in the underlying presence of anti-Muslim racism—its intersections with class, sexuality, and gender, and the ways in which it is encoded in the organization and explanation of Canadian renditions to torture. Investigating how Canadian state racism operates within a multicultural framework, I include an analysis of a range of historical, socio-economic, and political tactics through which racial meanings are attached to bodies and cultural practices in ways that justify and (re)produce white settler domination and other colonial realities. To understand racialization as a set of dynamic discursive and material practices and programs is to move away from understanding racism solely in terms of the biological positivism of nineteenth- and twentieth-century European colonialism and

imperialism. Euro-American nation-states, in the post-Holocaust and post-colonial context, represent liberal modernity as having broken from its colonial, imperial racist past; today, these nation-states prohibit explicit expressions of these earlier racisms. The concept of racialization enables analyses of racist ideologies that continue to be produced in these contexts, as well as the geopolitically and historically specific, ever-changing practices that operate on discursive and material levels in obvious, subtle, and obscured ways.

My analysis focuses on Scott's "colonial governmentality" to investigate how Said's (1978) *Orientalism* and Fanon's (1963) Manichean dualism are encoded differently yet continue to target the biological and cultural characteristics of Muslim male bodies. I believe that the study of racialization must always consider the signifying practices that target the corporeal form, producing subjects in specific geopolitical, socio-economic, and historical contexts, in interaction with other systems of oppression such as patriarchy, capitalism, and heteronormativity. I use intersectionality as a research method to study the ways in which "systems of race, gender and class domination converge" (Crenshaw 1991, 1246), to obscure sovereign racialized state violence and deny state racism through transnationally organized schemes such as renditions to torture and their accompanying explanatory discourses.

In the chapters that follow, I highlight political rationalities that legitimized racialized policing technologies. I show how racialized policing practices are local practices of colonialism that are affected by the men's Canadian citizenship rights, their dual citizenship with Syria and Egypt, as well as Canada's image as a multicultural liberal democracy and become a form of transnationally organized imperialism.

CHAPTER 2

CANADIAN BACKGROUND

Like many other “Western” countries (such as Germany, Sweden and Italy), Canada participated in the United States-led program of extraordinary rendition between 2001 and 2004. Canada was the only “Western” country to organize its own rendition program. The Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS), and Foreign Affairs and International Trade Canada (DFAIT) not only labelled Muslim men as terrorists and handed them over to the CIA, they also organized two variants of the extraordinary rendition program: the security certificate program and the rendition program. While both variants included the production of terrorist identities, the ways in which this production took place—for example, how and where detentions occurred—depended on the Muslim men’s Canadian citizenship status.

Under the 2001 Canadian *Immigration and Refugee Protection Act* (2001; hereafter *IRPA*), the security certificate process targeted five Muslim male refugee claimants residing in Canada: Mahmoud Jaballah, Mohamed Harkat, Hassan Almrei, Mohammad Mahjoub, and Adil Charkaoui (Aitken 2008).³⁹ The program organized the preemptive criminalization of these men, as well as their arbitrary detention in a facility specifically built (at a cost of Canadian \$3.2

³⁹ Benamar Benatta, an Algerian citizen and refugee claimant in Canada, had similar experiences. He entered Canada from the United States on September 5, 2001 and was detained upon his arrival in Canada in the Niagara Detention Centre. On September 12, 2001, he was interviewed by two Canadian immigration officials who determined, without explanation and without evidence, that he was a terrorist threat. He was immediately deported to the United States, where he was imprisoned for almost five years. He was physically abused in a New York detention centre (Baker and Chrolavicius 2007). Mohamed Omary, a Canadian and Moroccan dual citizen, claims that Canadian security officials passed false information to the Moroccan government, which resulted in his arrest and detention in Morocco between 2003 and 2005. He alleges that during his detention he was pressured, intimidated, and threatened “to reveal information about persons in Canada and to cooperate as a CSIS informer” (*Omary v. Canada [Attorney General]*, 2010).

million) for Islamic fundamentalist terrorist suspects within the Millhaven prison complex close to Kingston, Ontario (Aitken 2008)—the Kingston Immigration Holding Centre (KIHC). This facility came to be known as “Guantanamo Bay North.” With no evidence presented against them, the men were accused of being Islamic fundamentalist terrorists and indefinitely detained. They were threatened with deportation, thereby potentially facing the risk of torture in their countries of origin (Razack 2008, 25–58). The men’s legal status ideologically parallels that of the American “unlawful enemy combatants” held at Guantanamo Bay in Cuba (Larsen and Piché 2009, 203). Four Canadian citizens, Ahmad Abou-Elmaati, Abdullah Almalki, Maher Arar, and Muayyed Nureddin are the survivors of the Canadian renditions to torture project. Chapter three details how the labelling of Elmaati, Almalki, Arar, and Nureddin as terrorist suspects took shape in Canada and how their detention and torture was transferred to Syria and Egypt.

In this chapter, I provide post-9/11 geopolitical, fiscal, and legal contexts within which Muslim men have been produced as Islamic fundamentalist terrorists, although not precisely through their exclusion from “Western” laws and politics (Razack 2008). Rather, Muslim men and Muslim communities have become the subjects of Canadian political rationalities and the targets of fiscal shifts and changes in laws, as evident in changes to the *Criminal Code* of Canada, the 2001 federal budget, and policing practices amounting to versions of the United States’s extraordinary rendition program. I analyze rationalities put forward by then Prime Minister Jean Chrétien in public political speeches given between September 12 and September 25, 2001, in which he justified legal changes and shifts in federal budget spending and policing, from which changes to the security certificate program developed and within which Canadian renditions to torture emerged.

Popular culture outlets and media representations as well as parliamentary and non-government political debates amongst the public are deeply implicated in saturating the image of Muslim men as terrorists (Jiwani 2005; 2010; 2012; Razack 2008). Depictions of a Muslim terrorist monstrosity provide the logic for sovereign applications of power and practices on the individual Muslim man and on Muslim populations in general, in the name of national security (Puar and Rai 2002, 117). For purposes of this chapter, I examine select public speeches given by Chrétien in the direct aftermath of 9/11, justifying the legalization of the suspension of the rule of law and the financing of racialized policing practices, preemptive indefinite detentions, and deportations. I analyze these speeches as they express, in the clearest and most obvious form, the political rationalities that operated in the post-9/11 context to gain political legitimacy for changes in laws, the federal budget, and policing targeting Muslim men and Muslim communities.

In a Foucauldian sense, discourse is always political—but political speeches are particularly clear expressions of political party standpoints and the “governmentalization of the state” (Foucault 1991, 103). Political discourse addresses the population in general and the voting citizen in particular, as well as specific interest groups. The general goal of such speeches is the (re)production of governmental domination; in particular, they aim to produce political sovereignty over domains including budget spending, the economy, immigration, welfare, health care, and policing institutions. These speeches represent events, social problems, and groups according to overarching party politics; and in relation to political and economic forms of governance (such as liberal welfarism and neo-liberalism) and potential political membership. While political speeches occur in many locations including parliament, campaign tours, and political functions, the most important political speeches in relation to democratic and

representative government are public speeches, particularly those that are held at press conferences. Political speeches given in public spaces by professional politicians (in this case, particularly, the Prime Minister of Canada) who intend to gain legitimacy for a specific art of governing, target the population through widespread media distribution; such speeches are paradigmatic to the social, economic, and political contexts within which they emerge.

I analyze Chrétien's speeches in three different spatial-ideological contexts. I begin with three speeches delivered by Chrétien on September 11, 12, and 25 of 2001. These were given in front of Parliament Hill in Ottawa, and addressed the general Canadian public (via media outlets) on the topic of the 9/11 terrorist attacks. Next, I analyze two speeches addressing specific communities—namely Ontario business élites and Muslim and Arab communities—in which the Prime Minister spoke directly to particular concerns. Chrétien's speech delivered in a mosque in Ottawa on September 18, 2001 took place after members of Arab and Muslim communities complained to the government that they had been the targets of race-based hate crimes in the aftermath of 9/11. Lastly, I analyze a speech delivered by Chrétien on September 24, 2001 in Toronto, to a group of Ontario's business élites who had expressed concerns regarding U.S.-Canadian trade relations after the 9/11 border shut-down.

Similar to Puar (2007) and Razack (2008), I am inspired by Foucault's (2003) point that the modern state requires justifications for the killing (subordination) of one population in order to advance the survival (domination) of another. I have selected these speeches to show how the (re)production of governmental domination through discourse is, in a Foucauldian sense, a self-reflective practice of what can and cannot be said (Van Dijk 1997, 13). In fact, politicians professionally and consciously engage in discourses that are censored, that take into account "people as citizens, and voters, people as members of pressure and issue groups, demonstrators

and dissidents” (ibid.). Van Dijk identifies individuals, organizations, and groups who are actively involved in politics and social justice, as well as the general public, as “participants in the political process” (ibid.). The audience to whom the speech is delivered shapes the context and content of a political speech. Thus, the general public and specific groups are the target of power. The audience of a speech defines how, in Hall’s (1997) sense, events, social groups, and problems are represented—that is, framed, labelled and problematized—in that speech. The choice of language attaches particular meanings to events, problems, and groups, and influences the public’s perception, or the ways in which the public knows and thinks about the issues. Representations in political speeches attempt to make highly political changes appear as commonsensical (and often apolitical) solutions to the problem at hand. Political speeches are practices of representation that are underwritten by the racial, gendered, and sexual politics of the state, and are affected by claims of recognition and, in Canada, the politics surrounding multiculturalism.

In Canada, openly racist discourses are rendered taboo by Canada’s multicultural society and by multiculturalism as a state policy. However, racism has not disappeared from discourse nor from practice; rather, it is encoded and/or denied (Jiwani 2006). Given the general social norms and values of a multicultural society such as Canada, in which outright discrimination is prohibited, the Prime Minister of Canada, his political party, and his government must avoid being perceived as racist. Therefore, they must avoid direct articulations of racism. In what follows, I draw on Scott’s concept of *colonial governmentality* to examine how anti-Muslim racism operating through Manichean dualism (Fanon 1963) and Orientalism (Said 1978) is obscured and encoded in political rationalities that justify fiscal and legal changes and also shifts in policing through which programs such as Canadian renditions emerged.

This chapter is divided into four sections. The first section outlines the post-9/11 U.S. and Canadian geopolitical contexts within which Chrétien's speeches emerged. The second section provides an analysis of the politics of representation underwriting the speeches Chrétien gave to different audiences. The third section details some of the concrete legal shifts to the *Criminal Code* (1985; 2001) and the *IRPA* (2001) that specifically targeted Muslim communities and produced Muslim men as terrorists. I focus on the amendments to the *Criminal Code* and sections of the *IRPA* that extended police power to criminalize and incarcerate non-citizens without evidence of crimes having been committed. In the fourth section of this chapter, I draw on Aitken's (2008) and Razack's (2008) work who focus on the security certificate program. They demonstrate how, in the cases of male Muslim non-citizens (Jaballah, Harkat, Almrei, Mahjoub, and Charkaoui), liberal principles that ought to restrain sovereign power (for example through evidence-based policing, the principle of innocent until proven guilty, habeas corpus, and due process) were removed. Instead, the men's physical traits were combined with their various religious and political affiliations in a process that produced these men as terrorists, and allowed them to be indefinitely detained and threatened with deportation from Canada (Razack 2008, 50–57).

The Gentle Giant and the Giant Empire

In the immediate aftermath of the terrorist attacks on the World Trade Center and the Pentagon, U.S. President George W. Bush threatened to unilaterally punish those nation-states that harboured or aided terrorists. On November 21, 2001, he declared: "We fight the terrorists and we fight all of those who give them aid. America has a message for the nations of the world: If you harbour terrorists, you are terrorists. If you train or arm a terrorist, you are a terrorist. If

you feed a terrorist or fund a terrorist, you are a terrorist, and you will be held accountable by the United States and our friends” (Bush 2001).

These threats against the sovereignty of other nation-states became a problem for Canada, whose multicultural national identity was seen as being associated with a lax criminal and immigration laws. Canada therefore received criticism for having a porous border, and “too liberal immigration policies” (Aiken 2001, 9). While it quickly became public knowledge that some of the terrorist hijackers had travelled from Britain, and that others lived in Hamburg, Germany, U.S. media reports and some politicians linked the terrorist attacks to Canada. Immediately after the terrorist attacks, ABC newscasts speculated that the terrorists could have entered Maine via Québec en route to Boston (Laxer 2009, 1). *The Christian Science Monitor* stated: “Canadian and U.S. terrorism experts alike say the giant, gentle nation, known for its crimson-clad Mounties and great comedians, has also become an entry point and staging ground for Osama Bin Laden’s terrorist ‘sleeper-cells’” (quoted in Roach 2003, 5–6). *The Seattle Times* noted that “while thousands of U.S. soldiers are being shipped halfway across the globe to fight terrorism, little manpower has been focused on a problem much closer to home: Canada. Experts on both sides of the 4,000-mile border say the nation to the north is a haven for terrorists and that the United States-Canada line is little more barrier than ink on a map” (quoted in Laxer 2009, 2).

Some U.S. politicians and media perpetuated the idea that Canada was a “haven for terrorists” (Laxer 2009, 2). For instance, in a 2001 interview, Senator John McCain put forward the story that “some of the hijackers did come through Canada” (quoted in Laxer 2009). Janet Napolitano, former U.S. Homeland Security Secretary, also suggested that the terrorist hijackers entered the United States from Canada (1). Even the former First Lady, Hillary Clinton, stated in

2001 “we need to look to our friends in the north to crack down on some of these false documents and illegal getting in” (quoted in Laxer 2009, 2).

This false connection between the 9/11 attacks, Islamic fundamentalist terrorism, and Canada calls to mind what has come to be known as the “Ressam Incident.” Pither (2008a) and Roach (2003) show how Canada’s ostensibly lax border security and immigration legislation was tied to the risk of terrorist violence, when one incident that had occurred in December of 1999 was inflated in significance (Pither 2008a, 30–35; Roach 2003, 5–6). Ahmed Ressam, an Algerian refugee claimant to Canada, tried to smuggle explosives across the British Columbia–Washington border, allegedly to bomb the Los Angeles airport. He was caught by U.S. border control agents. He had previously entered Canada on a false passport in 1994 and claimed refugee status. After his refugee status was denied in 1995, he lived under the name of Benni Antoine Noris, and obtained a Canadian passport. While living in Montreal, Ressam allegedly belonged to an Algerian extremist group operating in Canada. While in custody in the United States, Ressam reported that two other men, Abdelmajid Dahoumane and Mokhtar Houari, both Algerian refugees, had together planned “the Millennium Plot.” In the aftermath of 9/11, these two men were constructed as belonging to a network of terrorists with connections to Osama Bin Laden and al-Qaeda (Pither 2008a, 30–32). In 1999, “the Ressam Effect” tightened the United States–Canada border.

After airplanes flew into the Pentagon and the two towers of the World Trade Center, Canadian government officials rushed to condemn the terrorist attacks and to express their solidarity with the United States government and the American people. The Canadian-U.S. relationship was defined as neighbourly, “a close friendship,” and was even described by Canadian politicians as a family-like relationship (Chrétien 2001a). The notion of “Western”

states share the same cultural values was perpetuated by Canadian politicians who promised to help protect the United States against a shared enemy: Islamic fundamentalist terrorism. In public speeches, Chrétien and other Canadian politicians promised increased and integrated border security, and extended domestic policing. Nevertheless, border crossings came to a virtual standstill after the 9/11 attacks. This shutdown produced a lineup over thirty miles long at the Detroit border, and was said to have brought Canada's economic export business to a halt (Carpentier 2007, 66–67; Lennox 2006, 1).

On September 13, 2001, in a speech on Parliament Hill, Chrétien guaranteed that Canada would “shoulder” the responsibility of fighting “evil.” He pledged “solidarity” with “our American friends,” “neighbours,” and “family,” offered “complete support in the days to come,” and promised “our full cooperation in bringing those who committed this awful crime to justice” (Chrétien 2001b). On September 14, 2001, while addressing the American Ambassador in Ottawa, he announced that “there will be no silence from Canada” and that “our friendship has no limit” (Chrétien 2001c).

On September 25, 2001, Chrétien made clear that his words were not empty promises: “we will change laws that have to be changed.” Chrétien proposed changes to Canadian domestic immigration law that mirrored political concerns, now in Canada as well as in the United States, about a porous Canadian border and lax immigration laws. He declared, a “new *Immigration and Refugee Protection Act* will strengthen our ability to keep Canadians safe from ‘undesirable’ individuals while ensuring that those who need Canada’s help are permitted to enter” (Chrétien 2001f). In the same speech, he proposed a new *Anti-Terrorism Act* (2001; hereafter, the *ATA*) as a bill that would amend a variety of Canadian laws, including the *Criminal Code* (1985), the *Canada Evidence Act* (1985), the *Charities Registration (Security Information) Act* (2001), and

the *Corrections and Conditional Release Act* (1992). Chrétien called this omnibus bill, which in its content mirrored the U.S.A. Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 2001), as “a promise towards greater cooperation between Canadian domestic policing agencies and their American counterparts.” He emphasized that “the RCMP will work in close cooperation with CSIS” and “is working with the American counterparts to provide whatever technical, logistical and other support is necessary to assist in their investigation” (Chrétien 2001f).

Chrétien promised that the changes to the *Criminal Code* (1985) would newly define terrorist-related activities as crime, name individual terrorists, and list terrorist organizations. On October 2, 2001, Foreign Affairs Minister John Manley listed several details of the anti-terrorism bill’s amendments to the *Criminal Code* specifically aimed at combating domestic terrorism. Manley stated that the bill would include “new listing provisions that establish a list of any persons and organizations that have committed, attempted to commit or participate in a terrorist act or facilitated the commission of a terrorist act” (Manley 2001).

Immediately following the proposed legal changes, a range of individuals, groups, politicians, scholars (such as professor and activist Sunera Thobani), immigration lawyers, and NGOs such as the Civil Liberties Union and the Muslim-Arab Congress (Roach 2003, 58) heavily critiqued the *ATA* (proposed as Bill C-36) and the *IRPA* (proposed as Bill C-11) for being anti-refugee and anti-Muslim, and for eroding civil liberties and the *Canadian Charter of Rights and Freedoms* (Roach 2003, 56–84).⁴⁰ Unions and Indigenous groups also spoke out

⁴⁰ Pratt (2005) emphasizes that several of the proposed changes to Canadian immigration law that mirrored aspects of the U.S. Patriot Act (2001) and the Bush Doctrine (2001) had previously been debated by the Canadian public and in the House of Commons. In fact, the proposed changes had been considered long before 9/11 (ibid., 3). For example, in April 2000 the Minister of Citizenship and Immigration, Elinor Caplan, tabled new immigration legislation (Bill C-31) that resembled many of the proposed changes to the *IRPA* (Bill C-11). In 2000, Bill C-31 had been vigorously debated in Parliament and no consensus had been reached. Bill C-31 was shaped by exclusionary

against Bill C-36, fearing that it would lead to strikes and protests being defined as terrorist conduct. Immigration lawyers and refugee communities worried that changes to the definition of terrorism would further restrict immigration and encourage deportations (58). To maintain Canada's reputation as a multicultural, liberal democracy, critiques that the proposed changes were illiberal, and authoritarian forced the government to make "powerful claims that the new law was not only necessary to prevent terrorism but that it complied with the *Charter* and advanced the cause of human rights" (57). In fact, "illiberal definitions of terrorism and strong police powers would now be defended in the name of human and equality rights" (ibid.).

Razack (2008) points out that "if the state [has been] able to preserve an appearance of tolerance at all it is only able to do so because the collective punishment of all Muslims is understood as reasonable, a necessary move to preserve "Western" civilization" (50). In the following section I explore how the content in Chrétien's public speeches contributed to compel "authoritarian consensus" (Hall et al. 1978, 339) despite public resistance. In analyzing Chrétien's political speeches, I am particularly interested in the ways in which anti-Muslim racism was codified in order to legitimize proposed changes as the common-sense way to preserve "democracy in the time of monsters" (Raj quoted in Razack 2008, 50). While Bush and Chretien proposed similar anti-terrorism legislation, there were differences in the ways in which anti-Muslim racism was expressed in some of their respective public speeches.

provisions, and allowed the detention and deportation of non-citizens based on links to "organized crime" (ibid., 3). The racialized, gendered, and classed notions of "organized crime" had already created a fear of drug-related crime; this fear was used to justify and legalize the race-based criminalization, federal incarceration, and deportation of young, noncitizen, Black men with Jamaican migrant backgrounds (Barnes 2009). Similar practices would now target Muslim and Arab-looking men. The events of 9/11 gave a boost to Bill C-31; its provisions remerged in the changes to *IRPA*, which also included new preemptive practices justified by new "risks." The *ATA* and the new *IRPA* enabled the criminalization of Muslim and Arab-looking men based on their religious affiliations, associations, and political dissent; these changes would lead to Muslim non-citizens being detained in and deported from Canada.

George W. Bush: The Spectre of Islamic Fundamentalist Terrorism

In George W. Bush's post-9/11 political speeches anti-Muslim racism was codified by depicting Muslim men as Islamic fundamentalist terrorists, the religion of Islam as culturally inferior and hateful towards "Western" values, and Islamic countries as violent, undemocratic, and barbaric nations. Muslim and Arab-looking men were made the bearers of a particular racialized and gendered subjectivity: *the terrorist*, a threat to national security. Under the leadership of an evangelical Christian and (neo-) conservative President,⁴¹ liberal ideals were juxtaposed with a form of Orientalism that delineated cultural boundaries between "us" and "them" (Nabers and Patman 2010, 67–72; Domke 2004, 3). Thus, the Orientalist composition of Bush's speeches that in Fanon's (1963) sense "divided the word into two species" (6–7) was inflected by evangelical Christian nationalism and body-focused anti-Muslim racism, in such binaristic conceptions as Christian "good" versus Islamic "evil" (Domke 2004, 24–25). Even though evangelical Christian world views politically disregard liberal ideals such as secularism, cultural pluralism, and women's equality on a domestic level,⁴² Bush used these ideals as tropes in his public speeches to bolster his anti-Muslim arguments. He helped construct universal hate figures—the Muslim man, Islam, and Islamic nation-states as the internal and external threats to

⁴¹ Domke (2004, 15) points out that George W. Bush surrounded himself with Christian conservative senior advisors such as Dick Cheney (Vice President), John Ashcroft (Attorney General), Donald Evans (Commerce Secretary), and Condoleezza Rice (National Security Advisor and later Secretary of State).

⁴² The George W. Bush era pursued domestic politics that implanted evangelical Christian religious doctrines into the fabric of America's diverse and multicultural society. From the beginning of his presidential term, Bush engaged in what Domke (2004, 6) has called "modern political fundamentalism" in which the (born-again) evangelical Christian belief system influenced changes in laws that socially controlled and compelled particular populations to act in accordance with evangelical Christian morals. For example, the Bush administration financed Christian faith-based programs and advocated a Christian faith-based schooling that denied evolutionary theory and man-made climate warming. The influence of evangelical Christian doctrines on politics and law disproportionately shaped the lives of gays and lesbians by prohibiting same-sex marriage, racialized Mexican immigrants through "illegal alien" immigration laws, and affected women's lives in relation to anti-abortion and anti-contraception legislations (Gerber Fried 2002; Silliman 2002; Smith 2002).

“Western” ideals and American national security, thereby justifying American imperialism and warfare (Puar 2007, 22–32; Grewal 2005, 202–208).

Jean Chrétien: The Biopolitics of “Racializing Crime and Criminalizing Race”

Chrétien moved away from Bush’s bluntly racist discourses that inscribed barbarism and cultural inferiority onto the Muslim male body. He mostly spoke to conduct. Chrétien considered the attacks on the World Trade Center and the Pentagon to be:

pre-meditated murder on a massive scale. With no justification or explanation. An attack not just on our closest friend and partner the United States. But against the values and way of life of all free and civilized people around the world. (Chrétien 2001g)

When speaking about the airplanes flying into the World Trade Center and the Pentagon, Chrétien marked this conduct as criminal behaviour. He describes the 9/11 attacks terms including “murder,” thereby giving these acts normalized and de-politicized criminal labels (Chrétien 2001g). What distinguishes terrorism from other crimes is the use of systematically organized violence with a political motive and purpose. But ascribing conventional crime labels to terrorist conduct is a form of essentialism that silences the political and imperial or colonial motives for acts of terrorism. The discursive tactic of defining acts of terrorism as criminal is a political tool, absorbing political and/or anti-colonial violence through a neo-liberal “governing through crime” and “law and order” agenda (Simon 2007). Chrétien’s speeches give the impression that the measures the state will take against future terrorist attacks will reside within the liberal legalities such as the rule of law.

He did not mention the physical traits of the Muslim body and cultural traits associated with Islam religion per se, yet the acts defined as culturally inferior and barbaric remain attached to the Muslim body and culture. Chrétien evoked the racialized, gendered Muslim body by relying on previously established Orientalist understandings of “the West” and “the East,” and

newer forms of post-9/11 Orientalism such as associating terrorism with the Muslim male body, which resonated with Bush's internationally broadcast speeches and media representations. He promoted racialized representations of Muslim men as terrorists by invoking previously established colonial images of Muslims as people who commit unspeakable violence against "Western" humanity in the name of Islam. For instance, he defined the suspected men who flew the airplanes into the World Trade Center as "cold-blooded killers who committed these atrocities" (Chrétien 2001d). The Muslim male body is indirectly framed as a religious agent whose violence knows no limits. By referring to "the terrorists" as "cold-blooded killers," Chrétien reproduced the suggestion that Muslim men are emotionless, violent savages (Fanon 1963, 4–6; 24). By describing the terrorists' acts as "atrocities" against "Western" values of freedom and democracy (among others), he assigned humanity to "Western" liberalism (and, indirectly, to "Western" white people) and inhumanity to "Eastern" brown people.

For example, Chrétien only indirectly associated "evil" with a group, religion, or individual:

it is impossible to comprehend the evil that would have conjured up such a cowardly and depraved assault upon thousands of innocent people. There can be no cause and grievance that could ever justify such unspeakable violence. Indeed such an attack is an assault not only on the targets but an offense against the freedom and rights of all civilized nations. (Chrétien 2001a)

Here discourses of *good versus evil*, of *victim* and *perpetrator*, mimic Fanon's (1963) Manichean dualism, and mirror Said's (1978) Orientalist images of a civilizational divide between "the West" as culturally superior *us* and "the East" as culturally inferior *them*, that have historically justified colonialism. The "West" is constructed as the innocent victim of the barbaric other capable of "unspeakable violence".

By attaching attributes of barbarism to specific actions or mindsets rather than to bodies, Chrétien created the illusion of non-racism. Implicating acts rather than bodies is a rhetorical move, through which conduct-focused anti-Muslim racism can be positioned within a multicultural framework as non-racist. Chrétien used a kind of Foucauldian biopolitics. Chrétien used a form of power that Foucault describes as governmentality (see chapter 1).

Governmentality operates on the level of discourse; as a self-reflective practice (Foucault 1979, quoted in Burchell 2008:1–4), it takes into account what can and what cannot be said in the pursuit of governmental domination. In Canada, since the *Canadian Charter of Rights and Freedoms* (1982) and the *Canadian Multiculturalism Act* (1985), openly expressed racisms have become politically, socially, and morally unacceptable. However, Jiwani and Richardson (2011, 241) point out that “racist talk and thought are most evident in the everyday conversations and texts that the dominant society produces about minority groups. Yet, in contemporary “Western” cultures, openly racist talk and similarly explicitly racist coded texts are taboo, often legally outlawed and socially censured” (Jiwani and Richardson 2011, 241). Within the multicultural context in which openly racist discourse leads to public discomfort and even public outrage, conduct-focused racism is a form of racism that the public can accept. For example, the criminalization of race has historically operated in Canada by discursively attaching certain crimes to particular racial groups (Jiwani 2002, 67).⁴³ Racist discourses that mark specific groups as criminals have shifted over time and now “tend to be more subtle” (76). Operating on

⁴³ As a white settler state, Canada has long engaged in the social control of non-white populations through criminalization. Immigrants such as Chinese labourers have been targeted (Strange and Loo 1991), as well as Aboriginal people (McCalla and Satzewich 2002; Monture-Angus 2000; Sangster 2002). In the late nineteenth and early twentieth centuries, biological race politics were less unpopular than they are in Canadian public discourse today. Conduct-based discourses, however, targeted the racialized body in the past, as they do in contemporary North America. For example, since the 1970s and 1980s, the so-called War on Drugs has targeted African-American women and men, as well as Latinos, through conduct-based racism, reproducing white settler dominance in the United States and in Canada (Barnes 2002, 2009; Gordon 2006; Steiner 2001).

the level of knowledge production, unpopular biological race politics are circumvented, while the social control of Muslim populations through proposed sovereign racialized practices such as preemptive criminalization, detention, and deportation is legitimized. Conduct-focused racism allows the Canadian state to appear non-racist and non-colonial, and to be defined as culturally and politically superior to the United States. While the United States (and, by extension, Canada, as part of the “Western” family of so-called civilized nation-states) is depicted as the innocent victim of the “atrocities” committed by “the evil other,” Canada is depicted as a more humane, liberal, and democratic state.

However, distorted forms of racism produce the same colonial, political, economic, and social effects as more direct and open forms of racism (Jiwani 2002; Jiwani and Richardson 2011, 241; Mongia 2003, 405; Razack 2004, 116–152). By appearing non-racist, the Canadian state can claim to have broken from its colonial and authoritarian past, and can seem culturally superior to its contemporary white settler counterpart—the United States. In the next section, I show how Chrétien engaged in discourses that produced two risk figures—Islamic fundamentalism and American imperialism—that threatened Canada’s multicultural nationalism and economic security.

Canadian Risk Figures: Islamic Fundamentalism and American Imperialism

Chrétien represented Canada’s multicultural population and the state policy of multiculturalism as under threat, from both Islamic fundamentalist terrorism and American imperialism. He frequently produced the Canadian state as a distinctly non-racist, geopolitical space that had come under threat internally through the presence of Islamic fundamentalism in Canada and externally through American imperialism operating through threats to halt economic trade relations.

For example, at the Central Mosque in Ottawa on September 21, 2001, Chrétien promoted the notion that the Canadian state was a multicultural—that is, non-racist—state. He made this speech after members of Muslim communities in Canada and the United States had been the targets of racially motivated violence (Muneer 2002), seeking to distance his government from the physical violence that had been inflicted on members of Muslim communities:

I have come here as your Prime Minister, to bring the message of reassurance and tolerance. I want to stand by your side today. And to affirm with you that Islam has nothing to do with the mass murder that was planned and carried out by the terrorists and their masters. . . . As I have said, this is a struggle against terrorism, not against any faith or community. And Canada will not use the justification of national security to abandon our cherished values of freedom and tolerance. We will not fall into the trap of exclusion as we have in the past. As a sign of the importance our government attaches to this issue, we have amended the *Criminal Code* to provide for tougher sentences for those who are convicted of hate crimes. (Chrétien 2001d)

In this speech, Chrétien represented Canada as a non-racist, pluralist state; a state that is different (he implied) from the United States. He created this representation by engaging in discourses of empathy and racial protectionism. He demonstrated compassion for the realities faced by Muslim communities, and recognized the racially motivated violence that had been inflicted on individuals from Muslim and Arab communities. Chrétien then engaged in protectionist discourses by offering a neo-liberal solution—criminalization—to address a systemic and structural problem—racism. In doing so, he depicted the Canadian state as a protector against racism, working to save the Muslim community from hate crimes. Chrétien implied that the Canadian state embraced racial and cultural diversity and also protected this diversity through law. In particular, the promise to criminalize race-based violence against Muslim communities and individuals suggested that the Canadian state no longer engaged in racialized violence, discrimination, and exclusions, but had emerged as a non-racist agent, protecting Canada's culturally diverse populations.

Protecting diversity in this context created an aura of political correctness, which served to obscure such ideological underpinnings of state governance as racism and capitalism; disguised state-centred, non-white labelling practices; and created racial hierarchies (Bannerji 2000, 35). For Bannerji (2000), state-centred multiculturalism is a governing device and its accompanying concepts of diversity and tolerance are conceptual tools used to manage racial and cultural diversity with the broader goal of reproducing colonial relations of ruling and maintaining hierarchies of belonging, in the context of the capitalist, racialized, gendered, and classed labour market segmentation (ibid., 37–38).

Chrétien engaged the concept of *tolerance* to differentiate the religion of Islam from Islamic fundamental terrorism; in doing so, he appeared to engage a form of liberal modernity that, according to Goldberg (1993), does not reject otherness, but includes the other in the white settler nation-state (7). In fact, Chrétien's message of tolerance constituted a form of otherization and inferiorization, implying that while Muslims are allowed into the white settler Canadian nation, they remain the others of Canadian society. As McClure (1990) has pointed out, the concept of tolerance is soaked in political meanings delineating particular power relations (362). In Chrétien's speeches, the concept of tolerance designates the dominance of Anglo-Protestant settlers; the presence of Muslims in Canada is due to the kindness of these true (i.e., white settler) Canadians (Mackey 2002, 18–19). Since “to tolerate” means to “allow; permission granted by authority; a license to actions, practices, or conscience” (McClure 1990, 362), Chrétien's use of tolerance asserts white settler domination—in particular, the sovereign power of white settlers to define who is tolerable and who is not. Specifically, through his racial differentiation of “the good *and* the bad aliens” (Engle 2004), Chrétien signals that less radical and more secular Muslims are welcome in Canada's multicultural society, but that the

accommodation of religious difference also has its limits. Differentiating between secular and religious fundamentalist Muslims worked in this case to delineate who was to be tolerated in Canada and who was not.

Chrétien's invocation of the concept of tolerance—at a mosque, so soon after 9/11—was more than just a simple restatement of Canada's commitment to the accommodation of cultural and religious diversity. His declaration of solidarity with apolitical, secular, "good" members of the Muslim community, in contrast to the "bad" Islamic religious fundamentalists, functioned as a dividing and alienating tool that perpetuated divisions within Muslim communities. The political rhetoric, with its implicit references to "good" and "bad" Muslims, has the potential to fracture Muslim communities, with the intention (in Hall's sense) of garnering support and solidarity of the "good" Muslims for the proposed amendments to the *Criminal Code* (1985), which would potentially curtail the freedoms of all Muslims. The division between "good" and "bad" Muslims also operated as a disciplinary tool to elicit a show of "good" Muslim citizenship through actions that politically supported the proposed measures against Islamic fundamentalist terrorism. This division between "good" and "bad" Muslims have a social regulatory function that may set self-disciplinary mechanisms in motion, which adjust behaviours amongst Muslim populations—in relation to religious worship and political engagements—who do not wish to appear as Islamic fundamentalist terrorists.

In a different speech, the notion of "bad" (fundamentalist) Muslims as threats to Canadian liberal values such as multiculturalism was used to justify the implementation of legal reforms through which Muslim religious affiliation. In fact, multiculturalism under threat by Islamic fundamentalist terrorism became the legitimizing feature that would render some Muslim men living in Canada into disposable subjects, without the rights of due process, or the ability to

remain in Canada (Razack 2008). These infringements of rights became justified as anti-terrorism measures and were legitimized in the name of defending distinct Canadian values, such as state-centred multiculturalism, against the threat of Islamic fundamentalism.

Chrétien emphasized, over and over, that state-centred multiculturalism was under threat not only from Islamic fundamentalist terrorism but also from American imperialism. He engaged in a form of Canadian nationalism (Mackey 2002, 107–114) that produced multiculturalism and liberal welfarism as distinctive Canadian values—specifically, values that were both in need of protection from Islamic fundamentalism and American imperialism. For example, at the Confederation Dinner that took place on September 24, 2001, at a hotel in downtown Toronto, Chrétien stated:

Ladies and gentlemen, and my friends: I want to tell you another thing that is very important. Canada is a nation of immigrants. People from all nationalities, all colours and religions. This is what we are. And let there be no doubt: we will not allow terrorists to force us to sacrifice our values and traditions. We will continue to welcome people from the whole world and offer refuge to the persecuted. Last Friday I visited a mosque. And I sensed the sadness of the Muslims at the fact that Islam has been tarnished by this mass murder. I turn my back on those who, in response to the attacks, have committed acts of hate against the Muslim-Canadians or other minority groups in Canada. This is completely unacceptable. The terrorists win when they export their hatred. They stand not for any community or religion. They stand for evil. For evil and nothing else. It is a struggle against terrorism, not against any one community or religion. They stand for evil and nothing else. It is a struggle against terrorism, not against any one community or faith. Because, ladies and gentlemen, we are all Canadians. (Chrétien 2001e)

In this speech, Chrétien reinforced the understanding of Canada as a distinct geopolitical space, with a permanent and stable identity marked by cultural pluralism and diversity. He repeatedly created the impression of non-racism by making a distinction between Islamic fundamentalist terrorism and Muslim communities. In U.S. media representations, multiculturalism has been folded into anti-Muslim racist discourses to create the notion that liberal values are threatened by Islamic fundamentalism (Grewal 2005; Puar 2008, 2005). Similarly, Chrétien suggested that Islamic fundamentalism had become a threat to Canadian

values such as multiculturalism, notions of racial and gender equality, liberal democratic principles, and economic security. In fact, he used liberal values such as multiculturalism and welfarism to justify supposedly illiberal and unpopular changes in laws and budget spending.

Chrétien even suggested that Canada's economic security could only be maintained by aligning Canadian anti-terror policies with those of the United States. He stated that, in a meeting with Bush, both leaders had agreed to take shared measures "against the menace of terrorism" whereby the flow of trade and Canadian economic sustainability was ensured:

[Bush and I] . . . also talked about the importance of making sure that our economies continue to work well. In particular, we agreed that the movement of goods across our border should be normalized as quickly as possible. This is very, very important. Twenty-five percent of their exports come to Canada and 87 percent of our exports go there. So the free flow of goods has to be restored very quickly, and we agreed to do just to do that. (Chrétien 2001e)

In this speech Chrétien promoted the idea that Canada's economic security would be at risk if Canada did not engage in U.S.-led, anti-Muslim racism codified as anti-terrorist measures. He justified the racial repression of one group for the purpose of the (neo-) liberal survival of the broader Canadian population. He represented the proposed legal changes as a necessary Canadian alignments with U.S. Homeland Security Measures, justifying this so-called alignment as a defence against the risk of losing the economic security that depends on Canada's trade relations with the United States. He indirectly hinted at a form of American imperialism, as evidenced by U.S. threats to halt previously established free trade agreements. Finally, he promoted the notion that neo-liberal, free market economic security hinged on the Canadian state's commitment to a racialized and repressive law-and-order agenda flowing from the United States.

Chrétien promoted the notion that a broader management of populations through entrepreneurialism, as well as through targeting Muslim communities by an expanded police

apparatus with extended police powers, flowed from the United States. Harmonizing immigration and anti-terror legislation with coordinated national security policing practices that targeted Muslim communities was constructed as particularly crucial in order to maintain Canada's economic security. Chrétien claimed that most businesses and consumer products produced in Canada catered to what he called American consumer culture, and argued that, consequently, all Canadians would benefit economically from harmonizing anti-terror laws. He said that building a coordinated United States–Canada policing apparatus would enable the open border and free trade with the United States to be continued, thus sustaining the domestic Canadian economic order, and enabling the continued accumulation of wealth by Canadian business élites. These measures would also benefit all Canadian workers, and would secure Canada's commitment to remaining a distinct, multicultural, welfare state.

Chrétien used ongoing economic neo-liberalization practices, previously manifested in free trade agreements (from the 1980s onwards), to justify the legalization of anti-Muslim racism because, he suggested, Canada's liberal welfare state would also be threatened if the Canadian government failed to implement anti-terror legislation:

Canada will not divert from its overall agenda. Of course, we will adjust to changing circumstances. Of course, we will do what is required to meet our immediate security needs. But just as the long-term security of business depends on investing for the future, so does the long-term security of a country like Canada depend on its investment for the future. Our government will continue our long-term agenda to build a stronger economy and society. We will focus our investments on targeted priority areas. We will continue to invest in skills and learning, in research and post-secondary education. We will continue encouraging excellence and ensuring all children a good start in life. We will continue to invest in health care. We will better target our current spending on improving the lives of Aboriginal Canadians. Clean air and water are no less a priority because of the terrorist attacks in New York and Washington. . . . Ladies and gentlemen, there is one thing that is sure: we will not be defeated by terrorism. We will not go into hiding. We will fight them. We have values in Canada we are proud of. (Chrétien 2001e)

For Chrétien, “immediate security needs” needed to be met in order to ensure the continuation of trade relations with the United States; this would, in turn, enable the Canadian

state to continue investing in education, health care, and welfare. Chrétien portrayed these programs as Canadian benevolent, non-colonial protectionist measures that were vulnerable to American imperial threats. In this speech, he assured the public that the proposed investments in an expanded policing apparatus would not affect liberal welfare politics. However, he suggested that the maintenance of liberal welfarism in Canada depended on economic trade with the United States, which in turn required the United States–Canadian harmonization of anti-terror measures in areas such as transnational border security, information sharing, and the coordination of national policing.

In Chrétien's speeches, the interlinking between politics, law and economics becomes apparent. By calling up internal and external threats to the Canadian nation, he provided the logics to implement changes in laws that legalized conditions similar to "homo sacer" (Agamben 1995) as "states of exception" in a time of crisis (Agamben 2005, 1). Chrétien's interlinking of (neo-) liberal values such as multiculturalism, welfarism, and entrepreneurial capitalism with the racialized criminalization of Muslim communities, and in particular of Muslim men, promoted a form of race-based authoritarianism that relied on obscured forms of anti-Muslim racism. In fact, the discursive strategies emerging from Chrétien's speeches constitute the biopolitics of race; they supply rationalities for legitimizing and legalizing the suspension of rights and the institutionalization of race-based policing practices targeting not only Aboriginal, Somalian and Jamaican communities but also the Muslim communities in Canada. Through obscured forms of racism depicting Muslim men as terrorists, the exercise of sovereign racialized state violence (such as preventative arrests, and indefinite detentions that violate liberal principles such as habeas corpus and the rule of law) is made intelligible. Multiculturalism and economic security are used as tools to justify a form of neo-liberalism that promoted the de-regulation of market

economies, the privatization of education and health care; and that re-directed state funding towards the police and security apparatus.⁴⁴ Far from stripping away the social regulatory and social control capacities of the state, this form of neo-liberalism promotes an extended police and security apparatus whereby the subjectivity of Muslim man as terrorist is used as a legitimizing tool, and has become the target of police state intervention.

In the following sections, I outline how terrorist policing and its underlying race logic became the governing ideology of (RCMP and CSIS) policing activities that was legalized through the post 9/11 changes to the *Criminal Code of Canada* (1985, 2001), sections of the *Immigration and Refugee Protection Act* (2001), and manifested through the 2001 federal budget. Rather than providing an exhaustive account of all the fiscal and legal shifts that took place during this period, these sections focus on key aspects of the legal and financial changes within which Canadian variations of the American extraordinary rendition program emerged.

The Legalization and Financing of the “Criminalization of Race”

Despite broad resistance, the *ATA* passed as Bill C-36 in the House of Commons in October 2001 and received royal assent on December 18, 2001. Under the notion that “acts of terrorism constitute a substantial threat to both domestic and international peace and security” and that terrorists “threaten Canada’s political institutions, the stability of the economy and the general welfare of the nation” (*ATA*, 2001), the *ATA* (2001) has implemented a new immigration law (*Immigration Refugee Protection Act*, *IRPA*, 2001), and has amended (amongst other laws

⁴⁴ In the United States, the relationship between racism and neo-liberalism has been the concern of anti-racist activists since 1980s. In particular, Angela Davis (2003) and more recently Michelle Alexander (2012) address how neo-liberal governance of the state that privileges deregulation and privatization has increased funding for the police/military apparatus targeting of the black population through drug policies. The War on Drugs in the United States became the tool to subordinate and exploit black populations through practices of criminalization and incarceration that are symbolic of slavery and Jim Crow laws.

such as the *Official Secrets Act*, the *Canada Evidence Act*, the *Proceeds of Crime Act* and the *Income Tax Act*) the *Criminal Code of Canada*. Particularly, the amendments outlined in the *IRPA* and the *Criminal Code* have extended the powers of the state to preemptive criminalize, detain and deport. Aiken (2001) points out that the preemptive criminalization, indefinite detentions and deportation of populations had been lingering prior to the *Anti-Terrorism Act* (2001).⁴⁵ The 9/11 terrorist attacks on the World Trade Center and the Pentagon and the depiction of Muslim men as terrorists have provided the political contexts to implement legal reforms that (at first temporarily but now permanently⁴⁶) manifest suspensions of the rule of law and habeas corpus within Canada's criminal justice system. The post 9/11 shifts in federal budget spending, in particular some of the amendments to *the Criminal Code* and to Canada's immigration legislation, can be considered tools to control Muslim presence in Canada through practices of gendered race-based criminalization (Jiwani 2002, 67-76; Razack, 2008, 50; Thobani 2007, 33–60).

⁴⁵ The suspension of civil liberties and the rule of law do not occur only in times of crisis. In fact, the preemptive criminalization, indefinite detention, and deportation of populations had been lingering prior to the *Anti-terrorism Act* (2001). However, historically, the *War Measures Act* (1914) was the only omnibus legislation that legalized the temporary suspension of the rule of law, arrests on suspicion rather than evidence, preventative detentions, and deportations. In the name of national security, protective measures included censorship of publications; appropriation, control, forfeiture, and disposition of private property; and arrest, detention, exclusion, deportation, and the halt of immigration of "enemy aliens" such as Ukrainians and Germans during WWI (1914–1918). During World War II (1939–1945), Japanese and German Canadians were detained in internment camps. During the October Crisis (1970), the political separatist organization Front de Libération du Québec (FLQ) became regarded as a terrorist organization and the *War Measures Act* was activated to arrest and detain members and suspected members of the FLQ without charging them (Aiken 2001).

⁴⁶ Here the permanency of the "states of exception" (Agamben, 1995) becomes clear. The *Anti-terrorism Act* (2001) includes a sunset provision, stipulating that anti-terrorism laws shall expire after five years. However, in 2007 and in 2012 anti-terrorism laws, particularly sections of the *Criminal Code* that outline preventative arrests and investigative hearings, were extended. In fact, in 2012, through Bill S-7, new definitions of terrorist crimes were added, including leaving Canada to join and train with a terrorist group.

The “Security Budget” and Racialized Policing

In December 2001, the Liberal Government of Canada released a budget that was approved by all political parties. It clearly showed that the government’s new spending priorities focussed on the policing of Muslim communities (Iacobucci 2008, 65; O’Connor 2006a, 76). The so-called “security budget” (Roach 2003, 10) devoted \$7.7 billion over five years to security and enforcement initiatives: \$1 billion for immigration screening and enforcement, \$1.6 billion for the equipping and deployment of more intelligence-gathering personnel, \$1.6 billion for emergency preparedness and military deployment, \$2.2 billion for aviation safety, and \$1.2 billion for border security measures (Carpentier 2007, 13; Whitaker 2003, 47). On October 12, 2001, \$59 million was given to the RCMP and \$10 million was given to CSIS. Of the \$59 million, \$37 million was received by the RCMP’s “Communications Security Establishment, the organization tasked with spying on phone and electronic communications” (Pither 2008, 3).

This “security budget” (Roach 2003) promoted a form of neo-liberalization that gave state racism an authoritarian spin. Since the 1980s, neo-liberalization had taken shape through the deregulation of trade relations, the increased privatization of social services, and the expansion of the public and private police apparatuses. After 9/11, the primacy of state policing was re-established because of the supposed threat of Islamic fundamentalism and the police apparatus focussed on the surveillance of Muslim men suspected of terrorism. The police and the national security apparatus were allocated state financial resources and given a specific mandate to target Muslim men and Muslim communities (Iacobucci 2008, 65; O’Connor 2006a, 76).

Prior to the terrorist attacks, the neo-liberalization of the state saw not only a privatization of and decreased funding for health care and education, but also the transfer of the monopoly of policing from the state to communities and the private sector (Bayley and Shearing 2001;

Murphy 2007). Ericson and Haggerty (1997) point out that throughout the 1980s private and state police agents had been on the rise and had become part of a society-wide risk management trend, no matter if risk refers to natural disaster, technological and societal problems, or threatening behaviour (Ericson and Haggerty 1997, 3). Throughout the 1980s and 1990s, risk-based community policing (of, for example, Aboriginal communities, poor immigrant, Somali and Jamaican communities) shifted from being tasked with deterring crime and reactive, evidence-based crime-solving practices to information gathering policing using surveillance and data collection technologies (ibid., 5). The work of police officers has shifted more and more from reactive, crime-solving law enforcement to knowledge producing and information accumulation through racialized surveillance targeting of specific communities in the name of risk management. Police officers also operate as information brokers collaborating with and transmitting knowledge to other institutions such as insurance companies and welfare and health care providers.

According to Murphy (2007), multilateral policing⁴⁷ was retained after the terrorist attacks, but the state was reinstated as the primary policing apparatus (450). The preventative policing of risk populations such as the poor and young Black males, which had already taken shape throughout the 1980s and 1990s through risk assessments and probability calculations of criminal behaviour (Ericson and Haggerty 1997), were now re-centred as state initiatives. They were now extended to target Muslim communities and Muslim men. In the name of disrupting

⁴⁷ Multilateral policing prior to 9/11 meant that policing was de-centred from the state through the involvement of private companies and the promotion of individual and community self-surveillance practices. However, multilateral policing after 9/11 has meant that while community and corporate involvement has been retained, increased numbers of national, provincial, municipal, and border control personnel; and the expansion of policing power as part of an internationally coordinated effort to fight Muslim fundamentalist terrorism have strengthened state policing.

and preventing Islamic fundamentalist terrorism, the power of the police and national security apparatus was expanded.

The security budget increased police manpower across all local units. Police power, which had previously been restricted, was also increased, to allow preemptive interceptions of individuals with possible associations to al-Qaeda (Murphy 2007, 461). Evidence-based policing shifted to knowledge-producing policing (i.e., terrorist-producing policing), with a specific focus on Islamic fundamentalist terrorist threats. Notions of “us versus them” and “the enemy within” governed national and local policing. Two communities emerged: the broader national Canadian community—figured to be *at risk*—and the Canadian Muslim community—the *Risk* (Murphy 2007, 461). Risk-policing was juxtaposed with anti-Muslim racism that suspended liberal principles such as innocent until proven guilty and habeas corpus. In fact, the amendments to the *Criminal Code* “made it easier for public police to get search warrants, detain without charge, compel testimony, expand the scope of legal surveillance, [and] establish reasonable suspicion” (Murphy 2007, 455). The following sections outline particular aspects of *Criminal Code* and *IRPA* that legalized these policing practices by which Muslim citizens and non-citizens can be defined as terrorists through the criminalization of intent and conduct related to religious affiliation and political association.

The *Criminal Code*

The *ATA* amendments to the *Criminal Code* legalized a particular practice of racialized criminalization whereby “suspicion and illegality” could be inscribed “onto the bodies of those who ‘look’ like ‘Muslims’” (Thobani 2007, 240). For example, the new terrorism laws outlined in sections 83.01-83.3 the *Criminal Code* (1985; 2001), for the first time, define terrorism and terrorist-related offences as crimes, and identify terrorists as belonging to specific political and

religious groups, and individuals were listed as terrorists (Roach 2003, 21–29). In particular, the sections in paragraph 83.01 (1)b define terrorists and terrorist activities in ways that allow for the attachment of the risk of terrorism to specific, individual (Muslim male) bodies, based on religious affiliation and political conduct. For example, under section 83.01(1)b, a terrorist act is defined as an “act or omission, in or outside Canada that is committed in whole or in part for a political, religious or ideological purpose, objective or cause.” Roach (2003) argues that the criminalization of “political or religious motives” critically infringes on the constitutional rights that protect democratic principles inherent in equality rights, the right to protest and strike, and the freedom of religious expression and political opinion (25–26). In a democratic society, these activities should not be defined as crimes—they should be exempted from criminalization and punishment.

Of particular concern is the way in which newly defined terrorist offences under the notion of prevention and preemption do not require evidence of terrorist activity, or a direct link to a terrorist group (Roach 2003, 39). In fact, in section 83.01(1)b of the *Criminal Code*, allows for the labelling and criminalization of individuals and groups as terrorists without a crime having been committed, based simply on supposed motive and intent. Motive includes “in whole or in part . . . a political, religious or ideological purpose, objective or cause” (*Criminal Code* 1985, s. 83.01(1)b). Intent includes participating in or associating with a terrorist group, attempting a terrorist offence, counselling others to commit terrorism, or being involved in a conspiracy to commit terrorism.

In practice, the criminalization of motive and intent functions as a racialized and authoritarian mechanism through which Muslim men can be construed as terrorists or terrorist suspects based on their religious affiliation or their association with religious and political

groups. Through the notion, that Muslim men constitute a terrorist risk, they can be criminalized based on the possibility or assumption that they might commit a crime related to terrorism, or based on an assumed association with an “identified” or “affiliated” Islamic fundamentalist terrorist group or individual (ibid.).⁴⁸

Section 83.28 of the *Criminal Code*, which governs “investigative hearings,” and section 83.3 of the *Criminal Code*, which governs the “preventative detentions” of citizens, also operate on the notion of preemption and race-logics. A peace officer’s suspicion of a motive and intent to commit terrorist acts (perhaps associated with Muslim men and religious and political conduct) is enough to compel a person to attend an investigative hearing in front of a judge. The suspect has the right to counsel but must answer questions about “any thing in their possession or control, and produce it to the presiding judge” (*Criminal Code* 1985, sub-s. 5c), even though such objects might be self-incriminating. While the information cannot be used against the suspect in subsequent proceedings, they can be used for further evidence-gathering investigations such as applications for electronic surveillance and communication interceptions (ibid., sub-ss. 10a, 10b).

⁴⁸ Smolash (2009) pointed to two groups of Muslim men who were criminalized and detained through these changes to the *Criminal Code*. In 2003, the RCMP, in collaboration with Citizen and Immigration Canada (CIC), at gunpoint, pulled twenty-four South Asian men out of their beds (745). These non-citizens were labelled Islamic fundamentalist terrorists. Without charges being laid or evidence presented against them, they were detained and deported from Canada. “Within weeks, the government and police recanted fully and admitted they had made a mistake, but most of the men were deported and the government never apologized” (ibid.). Similarly, in 2006, eighteen male Muslim and Arab Canadian citizens and permanent residents, described in sensational terms as “the Toronto 18,” were arrested and detained. These men were accused of having plotted a terrorist attack in downtown Toronto at a scale similar to 9/11. A *Toronto Star* staff reporter stated that “it was to be ‘the battle of Toronto,’ a three-day bombing assault aimed at shutting the downtown core, crippling the economy and killing civilians” (Teotonio 2008). Another *Toronto Star* headline alleged that an RCMP mole had entrapped these men (Walkom 2008). In 2006, fourteen terrorist suspects were charged with terrorist-related crimes. Since then, charges against seven men have been dropped; the others pleaded guilty to aiding a terrorist plot, and received sentences ranging from two to twelve years.

Preventative arrests can take place when a peace officer believes or suspects that a terrorist activity has been committed, a person has knowledge about a terrorist activity, or that a terrorist activity will be carried out. The arrest can be carried out without a warrant but with the prior consent from the Attorney General. The terrorist suspect can be held for twenty-four hours and “as soon as possible” thereafter must appear in front of a provincial judge. This hearing determines, based on information provided by the peace officer, whether the suspect’s continued detention is warranted. The peace officer has to show cause why the detention of the person in custody is justified on one or both of the following grounds: (a) to ensure the person’s appearance before a provincial court judge; and (b) to ensure the protection of the public. If there is not enough show of cause, the hearing can be adjourned for forty-eight hours, but after that the suspect has to be released. If the judge is satisfied “by the evidence adduced that the peace officer has reasonable grounds for the suspicion” (*ibid.*, sub-s. 8a), then the judge may commit the person to prison—without charge or trial—for a term not exceeding twelve months, or impose terms and conditions upon release for up to twelve months.

These anti-terrorism laws were implemented to remove restrictions imposed by liberal principles such as habeas corpus to legalize previously unacceptable (illiberal and undemocratic) forms of criminalization and detention. However, Canadian citizens can not be indefinitely detained nor deported from Canada. Under the notion of national security, sections 33 and 77-87 of the new *Immigration and Refugee Protection Act*, referred as the security-certificate process, can without evidence criminalize, detain and expel non-citizens constructed as terrorists from Canada.

The *Immigration and Refugee Protection Act* and Security Certificates

The *Immigration and Refugee Protection Act (IRPA)*, which passed as Bill C-11 in the House of Commons on November 1, 2001, targets non-citizens: these are permanent residents, refugees, and foreign nationals. Section 33 of the *IRPA* restrict populations from entering Canada, and enable the deportation of permanent residents or refugees who are deemed inadmissible based on suspected membership to an organized crime or terrorist organization. These measures constitute an extension of the shifts in immigration law that Pratt (2005) has called “immigration penalty” (1). Canadian immigration law has undergone a shift from regulating who is and is not admissible to Canada through the point system, to the present criminalization and law enforcement legislation through which non-citizens can be arbitrarily criminalized, detained, and removed from Canada.

The changes put forward in the *IRPA* in sections 75–87 expand the state’s capacity to produce terrorists. Similarly to the *Criminal Code*, *IRPA*’s sections 76–87 refer to the security certificate process, which extends police power to interpret Muslim men’s conduct as suspicious and potentially linked to terrorist groups such as al-Qaeda. Security-certificates are not a new phenomenon. The security-certificate process has existed for over twenty years. According to the Ministry of Public Safety and Emergency Preparedness, it was first introduced into immigration legislation in 1976, and amended in 1991 and in the post 9/11 context. Section 77 (1) outlines that The Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration hold the power to issue certificates on grounds of national security. Through the notion of *potential terrorist risk*, police officers’ and border agents’ simple belief that a non-citizen of a suspect population is a member of an organization that has engaged in or might engage in a terrorist activity is enough for a non-citizen trying to enter or reside in Canada to

become inadmissible to Canada. Consequently, the individual may be detained and possibly deported from Canada (*IRPA* 2001, s. 81).

Under section 78, during the hearing process evidence is not disclosed to the detainee. While evidence has to be provided in cases of *citizen terrorist suspects*, in cases of *noncitizen terrorist suspects* evidence is not disclosed to the detainee nor to the lawyer representing the detainee. This so-called “secret evidence” is based on intelligence that has been gathered by CSIS, which relies on knowledge shared by foreign agencies, and the police. In these hearings, constitutional disclosure rules such as the right to cross-examination, the right to see/hear evidence, the right to question how evidence has been collected, and “restrictions on the use of opinion and bad character information” are suspended (Roach 2012).

These juridical hearings are also called “secret trials”. Under section 78, for example, the accused has the right to counsel; however, the accused and their counsel can be excluded from juridical hearings. Furthermore, the hearings are always held in camera—thereby excluding the public. During these hearings, security and police agencies are not required to present any evidence. This process creates conditions whereby the accused cannot defend him/herself against nondisclosed evidence, and crucial information regarding the innocence of the accused can be suppressed. The use of secret intelligence as evidence to impose indefinite detentions and deportations is highly prejudicial and repressive, and also houses the capacity to produce terrorists based on hearsay or on an officer’s belief or suspicion.

This security certificate procedure produces a hierarchy amongst subordinated populations; it is a dual system for citizens and noncitizen terrorist suspects, including landed immigrants living in Canada, new immigrants, and refugees (Macklin 2007). The inadmissibility process dissolves legal principles such as the rule of law, habeas corpus, the presumption of

innocence, the right to a fair and public trial, and universal equality rights for non-citizens against whom security certificates have been issued. In addition, the threat of deportation violates a key feature in refugee law, the principle of *non-refoulement*, which protects refugees from the risk of persecution and torture if repatriated (United Nations 1984).

The security certificate process is not merely a form of stereotyping and discrimination; it is also a form of de-humanization, whereby Muslim noncitizens through terrorist labelling are entered into the security certificate process whereby their exclusion from the right to have rights is legalized. Importantly, this process is not only repressive and exclusionary but also a productive process, whereby secret evidence (that is, no evidence and/or the suppression of evidence showing that the accused is not a terrorist) amounts to the production of terrorists.

The security budget and the amendments to the *Criminal Code* and the *IRPA* had far-reaching material consequences for noncitizen Muslim men in Canada. Aitken (2008) and Razack (2008) have documented how, through the security certificate process, non-citizens Jaballah, Harkat, Almrei, Mahjoub, and Charkaoui experienced race-based legal disqualifications from the rule of law (Aitken 2008, 381–396; Razack 2008, 25–58), effectively producing these men as terrorists. Razack explains that a specific form of race thinking governs the security certificate process: sleeper-cell logic. Sleeper-cell logic operates on the belief that

Bin Laden’s network employs the tactic of sleeper-cells, where ‘operatives are often established in foreign countries for extended periods of time, up to several years, prior to a given operation being executed. Preceding the activation of the operation, they may live as regular citizens, leading respectable lives, avoiding official attention’. (Razack 2008, 37)

She points out that based on sleeper-cell logic the men’s life histories, in conjunction with their Arab origins and Muslim faith, were taken as evidence marking “them as individuals likely to commit terrorist acts” (Razack 2008, 28). She argues that “the profile must do most of the work to convince us that the men are a profound and self-evident threat” (Razack 2008, 50).

Through the security certificate process (ss. 76–87 of the *IRPA*) the five men were indefinitely detained in Canada without being given access to the evidence or charges against them (Aitken 2008, 382). Security certificates were issued against Jaballah in 1999 and again in 2001, and against Mahjoub in June 2000 (and then upheld in 2001). Almrei was detained in 2001, Harkat in December 2002, and Charkaoui in May 2003. These men, considered violent terrorists, were separated from other members of the male prison population, and were put into newly built isolation units within the maximum security prison at the Millhaven Penitentiary, close to Kingston, Ontario. These high security isolation units came to be referred to as Guantanamo North (Aitken 2008, 381–385). During their years of incarceration, these men experienced torture in the form of indefinite confinement without having committed a crime, isolation, humiliation, and religious desecration.

The 2001 amendments to the security certificate process facilitated not only the arbitrary and indefinite detention of Muslim non-citizen men, but also authorized hearings that amounted to secret trials. The idea that national security required complete confidentiality was used to justify security certificate hearings that were held without the presence of the detainees or their counsel. For example, judges can “hear all or part of the information or evidence in absence of the permanent resident or the foreign national named in the security certificate and their counsel if, in the opinion of the judge, its disclosure would be injurious to national security” (*IRPA* 2001, s. 78). The notion of *confidential evidence* established a racialized, authoritarian, legal context in which five Muslim male detainees were assumed to be guilty of terrorism, without being given the opportunity to access, let alone challenge the evidence against them. This facilitated not only their arbitrary and indefinite detention in Canada, but also the lingering threat that they would be deported from Canada.

The security certificate program provided the legal structure through which the men were produced as Islamic fundamentalist terrorists. The *IRPA* contains a separate section that specifically targets refugees and landed immigrants, enabling the Canadian state to define Muslim men as terrorists without providing evidence that a crime has been committed, and to indefinitely detain and deport non-citizens.⁴⁹

For Razack, the idea of citizenship rights and citizenship status is deeply implicated in the men's experiences of racialized criminalization, indefinite detention, and deportability. For

⁴⁹ With the help of civil and human rights lawyers and the relentless efforts of the men's individual lawyers, the security certificate process was legally challenged. In February 2007, in the landmark *Charkaoui* case, the court found that the denial of Charkaoui's right to view evidence was a violation of sections 7, 9, and 10 of the *Canadian Charter of Rights and Freedoms* (1982; *Charkaoui v. Canada [Citizenship and Immigration]*, 2007). While this ruling can be considered a success in reasserting some *Charter* rights, it also allowed the Canadian state to reassert itself as a self-reflective and law-abiding nation-state while constant suspicion and surveillance continued to define the men's daily lives. For example, Harkat, who spent almost four years in detention, was released in June 2006 into twenty-four-hour surveillance through an electronic monitoring device. His security certificate was struck down by the Supreme Court in February 2007; however, another security certificate was placed on him in February 2008. This security certificate was under review of the second Supreme Court challenge. In May 2014 the Supreme Court of Canada upheld the security certificate and Harkat now faced deportation to a country where may face torture. Charkaoui was detained from 2003 until February 2005 without charges. His carcerality continued as he was placed on strict house arrest for over four years. His security certificate was revoked in September 2009. In 2013, federal prosecutors accused Charkaoui again of plotting a terrorist attack in the Montreal Métro in 2002. Jaballah endured three security certificates in 1999, 2000, and 2001, and spent over six years in prison without charges. Since 2007 he has been living under strict house arrest. As of 2013, many restrictions have been lifted but he is still not allowed to use the Internet and other electronic devices. He must wear a tracking anklet and visitors to his home must first be cleared by CSIS. Almrei spent seven years in prison without charge and was released and placed under house arrest on January 2, 2009. His security certificate was quashed in December 2009. However, terrorist suspicion against him has not disappeared. Since then he has had problems getting a loan to buy property and apply for permanent residence status. Mahjoub spent seven years in prison without charges, was released, and has been placed under house arrest since 2007. While in January 2013, the Federal Court of Canada has lifted some of the harshest house arrest conditions, he is waiting for a court decision to dismiss the case against him. The *Charkaoui* ruling had a bearing on where the men were detained, but not on their overall experiences of carcerality, nor on the lingering threat of deportation and possible torture. Furthermore, the judge's ruling in *Charkaoui* did not end the racialized authoritarian practices of the *IRPA*. In fact, the court rejected Charkaoui's lawyer's argument that his client had experienced differential treatment on grounds of identity, and that his detention violated equality rights (*Canadian Charter of Rights and Freedoms* 1982, s. 15). The court ruled that the secret evidence would be reviewed by an appointed security-cleared advocate, appointed by the federal Minister of Justice. In February 2008, parliament passed the provision that evidence must be presented to the judge, and "the judge shall determine whether a certificate is reasonable" (*IRPA* 2008, s. 78, c. 3, s. 4). While the accused was entitled to a review process, the evidence did not have to be shared with the accused (*IRPA* 2008, ss. 82.1-5, c. 3, s. 4). In the version of the *IRPA*, amended on August 15, 2012, s. 83(g) grants the permanent resident or foreign national "an opportunity to be heard," but s. 83(c-e) confirms that the judge can "hear information or other evidence in the absence of the public and the permanent resident or foreign national and their counsel, if in the judge's opinion, its disclosure could be injurious to national security or endanger the safety of any person" (*IRPA* 2012, s. 83, c.19, s. 706).

example, “Hassan Almrei’s situation arises out of a section of the *Immigration Act* that authorizes security certificates, and thus the state of exception into which he is plunged as part of the legal structure in which non-citizens have fewer rights than do citizens” (Razack 2008, 26).

In the next chapter I will follow Razack’s instruction to “pay attention to how empire is embodied” (Razack 2008, 19) through four Muslim-Canadian *citizens*. I will illustrate how Canadian citizens Ahmad Abou-Elmaati, Abdullah Almalki, Maher Arar, and Muayyed Nureddin also experienced racialized labelling, surveillance, and violations of privacy and civil rights similar to the experiences of the Muslim non-citizens. Since no evidence, motive, or intent was found that could connect these men to a terrorist movement, and since no crimes had been committed, as citizens they could not be legally detained in or deported from Canada. For these men, Canadian citizenship became a liability to be deported, detained, and tortured in Syria and Egypt.

Conclusion

Chrétien’s public speeches given in the immediate aftermath of the 9/11 events reveal obscured forms of anti-Muslim racism that justified contested legal and budget shifts to the public. By encoding body-focused racism as conduct-focused racism, he portrayed the Canadian state as non-racist and multicultural, and therefore distinct from the United States. Chrétien evoked two risks to national security—American imperialism and Islamic fundamentalist terrorism—in reproducing the broader Canadian multicultural narrative, while phasing in racially repressive laws that targeted Muslim men and their communities. The legislative and budget changes provided the legal and financial framework for preemptive criminalization, indefinite detention, and deportation as necessary to maintain Canada as a distinctly multicultural, welfarist and economically sustainable nation-state. Post-9/11 legal and fiscal shifts enabled the

reproduction of internal colonial relations in Canada, through neo-liberal imperatives that legalized the racial subordination and political repression of Muslim men, Muslim communities and in particular Muslim non-citizens, via a state-centred police apparatus.

The changes to Canadian immigration legislation and the *Criminal Code* are not merely violations of or exclusions from constitutional rights “on grounds of identity” (Dench 2001, 36). In fact, the *Criminal Code* promoted terrorist-producing activities by legalizing racialized practices of criminalization in the absence of evidence that a crime had been committed and based on religious markers. In addition, the *IRPA*’s security certificate program created colonial realities such as arbitrary and indefinite detention in Canada, and the possibility of deportation from Canada for non-citizens Jaballah, Harkat, Almrei, Mahjoub, and Charkaoui.

This terrorist-producing process constitutes a form of political violence that is grounded in the ‘colonial governmentality’ that provided the legitimacy and legality for this form of racially repressive state governance. In the context of white settler domination and Canada’s national narrative of state-centred multiculturalism, the processes of legitimacy and legality created both external and internal boundaries: the Canadian state reproduced domestic white settler domination through racialized and gendered repressive mechanisms, while maintaining Canada’s national and international reputation as a distinctly law-abiding liberal democracy.

In the following chapter, I illustrate how the production of four Muslim-Canadian citizens — Elmaati, Almalki, Arar, and Nureddin — as terrorists took a transnational turn and operated by means of torture that was carried out in the geopolitical contexts of Syria and Egypt.

CHAPTER 3

CANADIAN RENDITIONS TO TORTURE

The 2001 amendments to the *Criminal Code* (1985) and the *Immigration and Refugee Protection Act* (2001) provided the Canadian state with the ability to produce Muslim *non-citizens*—Mahmoud Jaballah, Mohamed Harkat, Hassan Almrei, Mohammad Mahjoub, and Adil Charkaoui—as terrorists. Legal provisions that eliminated the need for evidence and allowed for preemptive criminalization and secret trials enabled the construction of these men as terrorists, and consequently their detentions in and threats of deportations from Canada. This chapter focusses on Muslim-Canadian *citizens* Ahmad Abou-Elmaati, Abdullah Almalki, Maher Arar, and Muayyed Nureddin who also experienced racialized policing. However, since no evidence was found connecting these men to terrorist activities, the Canadian Security Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP) could not pursue their allegations without violating the men’s citizenship rights. At this point, the production of these Muslim-Canadian citizens as Islamic fundamentalist terrorists was transferred into the torture chambers of Syria and Egypt.

In this chapter, I trace the racialized (policing) practices administered by members of the RCMP, CSIS, and DFAIT between 2001 and 2004, and explore how sovereign and disciplinary power was administered to de-centre sovereign racialized state violence from the Canadian state. I focus on two public government documents: the *Arar Commission Report* (O’Connor 2006a), including its *Factual Background Volume 1* (O’Connor 2006b), *Factual Background Volume 2* (2006c), and *Analysis and Recommendations* (O’Connor 2006d); and the *Iacobucci Inquiry Report* (Iacobucci 2008). On occasion, I draw on the *Toope Report* (2005) and Kerry Pither’s book, *Dark Days* (2008). While the two government reports emerged from criticism of Canadian

state officials' implication in the men's detention and torture, the reports released to the public⁵⁰ amount to ideologically governed discourses resulting from multiple layers of censorship (see chapters 4 and 5). Nonetheless, these two reports provide the most comprehensive public account of Canadian state officials' implication in the four men's detention and torture in Syria and, in Elmaati's case, in Egypt. I also use the *Toope Report*, since it is the only document that provides information about Arar's torture. As such, the report reveals possible similarities between the torture experienced by Arar and that experienced by Elmaati, Almalki, and Nureddin. As Canadian officials' involvement in the men's renditions to torture have been cloaked in censorship and "secrecy through claims of national security confidentiality" (Pither 2008, xviii), I draw on Pither (2008) in which Elmaati, Almalki, and Nureddin give their personal accounts of what happened to them. I examine the so-called facts provided to the public in relation to four questions:

1. How did Elmaati, Almalki, Arar, and Nureddin become terrorist suspects?
2. What were the circumstances during their residency in Canada that led to their departures from Canada?
3. As they are Canadian citizens, what circumstances triggered their detentions in Syria (and Egypt)?
4. What was the content and purpose of the torture they endured?

I treat state officials' conduct as racialized "technologies of government" (Rose and Miller 2010, 281), through which racialized representations —providing political rationalities to justify colonial projects—enter the domain of "truth." These are the political strategies that

⁵⁰ The facts established by the legal teams of Judge O'Connor (2006a) and Justice Iacobucci (2008) were gathered through a series of interviews with state officials; the legal teams also reviewed documents that were made available by the Attorney General of Canada.

shaped the four men's identity transformation, from people innocent of terrorism to terrorists, as a modern imperial project through which the white settler colonial state could be represented as a modern state.

Of the four men, the majority of national and international public outrage focused on Arar. Media representations created a spectacle around the idea that Arar was the victim of the United States–led extraordinary rendition. Scholars focusing on how Canadian policing institutions were implicated in Arar's ordeal generally argue that Canadian state officials were drawn into the U.S. program of extraordinary rendition, and indeed the broader U.S. imperial anti-terror warfare apparatus (Carpentier 2007; Lennox 2006; Murphy 2007; Webb 2007). For example, Webb critiques the U.S. government's assertion of transnational dominance over sovereign nation-states, arguing that the United States forces other nations to adopt American-style security measures. After 9/11, "the police, security intelligence, and military operations of many nations are becoming increasingly integrated with U.S. operations. National governments are giving up sovereignty and throwing aside national checks and balances in favour of integrated security spaces that are largely being designed and controlled by the United States" (Webb 2007, 185).

Murphy (2007) refers to Canadian changes in policing practices as "Americanized policing," triggered by American "pressure to adopt more aggressive domestic security policies" (Murphy 2007, 468.) Other scholars also explain the expansion of the Canadian policing apparatus as dependent on American imperialism, including the extension of police power to criminalize and detain, and the erosion of civil liberties promoted by the security budget, the 2001 *Anti-terrorism Act*, and the 2001 *Immigration and Refugee Protection Act* (Carpentier 2007; Lennox 2006). According to these scholars, Canadian legal shifts similar to the Bush

Doctrine (2001) and the *Patriot Act* (2001) resulted from American imperialism in the form of threats to freeze economic exchange with Canada, if the Canadian state would not harmonize Canadian laws and policing practices with respect to immigration, transnational border control, and local policing (Lennox 2006, 9).

Both Lennox (2006) and Carpentier (2007) mimic Chrétien's discourses suggesting that post-9/11 Canadian legal changes are the result of Canada's economic dependence on the United States. They refer to Canadian government documents estimating that, at the time of the attacks, 80 percent of Canadian exports went to the United States, and \$1.9 billion in trade crossed the Canada–United States's border daily. The loss of revenue caused by border delays was estimated to be in the \$4 billion range (Carpentier 2007, 67); as well, numerous jobs were at risk in multinational stores (such as the many Home Depot locations across the country) and in factories such as Ford and General Motors located in Windsor, Ontario (Lennox 2006, 1). Lennox argues that U.S. promises to help Canada police Muslim fundamentalist terrorist threats amounted to an erosion of the Canadian state's sovereign right to police, detain, and deport:

No longer could Canada view its domestic policy as outside the scope of American security interests, and no longer could Canada be sure unilateral action to change such policies would not be taken if Washington decided it necessary. To defend itself against such “help,” Canada would have to establish its own doctrine of pre-emption against domination, by actively anticipating or following the American will in terms of changes and innovation to its internal security and immigration policy, its governing structure, its budget allocations, and its border, port and airport security policies. (Lennox 2006, 9–10)

Lennox argues that although Canadian legal changes put forward in the *ATA* were initiated by Canada, they were made under duress, to combat American domination (14). He also declares that the changes to Canadian laws and the \$7.7 billion investment in anti-terrorism policing made by the federal government in its December 2001 budget were “in large part for show” (13–14).

The argument that Canada was forced to develop a budget and laws that promoted the preemptive racialized criminalization of Muslim men have perpetuated the notion that Canada

legalized racialized policing practices that disproportionately affected Muslim populations under threat from American imperialism.

The representation of Canada as a victim of U.S. imperialism serves to obscure Canada's white settler colonial relations. Practices of gendered and racialized labelling, indefinite detention without the need for evidence, deportation, and torture cannot simply be projected onto American imperial ambitions. While the United States has reinforced its global imperial sovereignty through threats of military invasion, economic sanctions, and financial incentives, the Canadian state cannot be considered a merely benevolent, multicultural, liberal democracy falling victim to an imperial agenda on the part of the United States. Instead, Canada needs to be understood in its historical context as a white settler state and as a colonizing bureaucracy. As I have pointed out earlier, the sovereign racialized state practices such as criminalization (Razack 2004, 128); confinement in prisons (Hannah-Moffat and Shaw 2000), detention centres (Aiken 2001; Pratt 2005), and on reserves (Razack 2004, 133–6); and deportation (Barnes 2002, 2009) and torture⁵¹ (Strange 2001, 2006) constitute routine practices through which white settler domination is maintained.

⁵¹ In 1987, Canada ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that prohibits torture for the purpose of a confession (United Nations 1984, Article 1); obliges Canada to take effective measures to prevent torture (Article 2); and prohibits Canada from returning, extraditing, or refouling any person to a state “where there are substantial grounds for believing that he would be in danger of being subjected to torture” (Article 3). Furthermore, section 12 of the Canadian *Charter of Rights and Freedoms* (1982) protects individuals from “cruel and unusual punishments” in Canada. The *Criminal Code* (1985) of Canada, section 269.1 (1), outlines torture as an offence: “every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.” While torture and corporal punishment have been outlawed and are considered unacceptable and barbaric in Canada, variations of the official definition of torture are practised in Canadian prisons, albeit hidden from public view. Carolyn Strange (2001) has pointed out that punishment directed at the body in Canada has been politically controversial since the 1930s (347–55). For example, whipping was abolished in 1972, and the death penalty was not abolished until 1976 (*ibid.*). The Canadian nation-state represented itself throughout the 1990s as particularly concerned for the welfare of its prisoners; for example, psychological treatment programs were made available to federally incarcerated female prisoners. These programs have been critiqued for absorbing marginalized populations into the state's penal culture of control (Kendall 2000; Pollack 2000). Garland (1990) has argued that “modern penalty” has seen a decline in physical punishment exemplified through the electric chair and the guillotine; however, corporeal violence has not

Lennox and other scholars who frame Arar's experiences as the result of American imperialism implicitly portray the Canadian state as the feminized, innocent victim of hyper-masculine, aggressive America. These explanations perpetuate the production of the Canadian state as a benevolent, multicultural, liberal democracy on the heels of legalizing and implementing race-based authoritarian policing practices. Mackey (2002) points out:

The construction of Canada as a gendered body victimized by external and more powerful others, creates a fiction of a homogenous and unified body, an image that elides the way the Canadian nation can victimize internal "others" on the basis of race, culture, gender, or class. It appropriates the identity of marginalization and victimization to create national innocence, locating the oppressor safely outside the body politic of the nation: a more compelling and less politically complicated image than that of the nation as a differentiating and non-unified body laden with internal oppressors and victims. (Mackey 2002, 12)

Other academic literature conceptualizes Arar's experiences as an infringement of his citizenship rights; his "dual citizenship" contributed to his ordeal, in the sense that he occupied a political space in which his Canadian citizenship rights could be violated (Forcese 2006; Nyers 2006). His Syrian citizenship is depicted as a problem, and the cause of his deportation by the American government to Syria. In contrast, some scholars argue that Arar's experiences are characteristic of a racially defined differentiation of citizenship through which the Canadian state reasserts white settler domination (Abu-Laban 2004; Macklin 2007; Stasiulis and Ross 2006). For these scholars, in the post-9/11 context the application of Canadian citizenship rights has become increasingly precarious and hierarchized according to factors such as race, place of birth, ethnicity, and religion. These indicators of otherness produce a segmentation of Canadian

ceased. It has been reorganized to appear modern and humane. Although "modern penalty" denies physical violence, incarceration is a form of state-organized corporeal violence targeting marginalized populations. Inside prisons, physical violence is administered in ways that constitute acts of torture: degradation, humiliation, isolation, and solitary confinement—prisoners are strapped to their beds, exposed to overcrowding as well as the administration of pharmaceutical drugs, strip searches, and the use of dogs in drug searches. As prisons are disproportionately filled with Aboriginal, Black, immigrant, poor, and mentally ill men and women (Balfour and Comack 2006), these populations are proportionately over-exposed to torture.

citizenship; Arar's ordeal was the result of this segmentation (Abu-Laban 2004, 17). The construction of Muslim citizens as other produces conditions such as rightlessness, similar to "contemporary refugee jurisprudence" (Macklin 2007, 333). Macklin invokes Arendt's concept of *statelessness* as a reference point, and identifies Arar's detention in Syria as the result of the negation of his citizenship rights.

While these approaches show how citizenship rights are segmented along the lines of race, class, gender, and national background, they cannot fully explain the experiences of Elmaati, Almalki, Arar, and Nureddin. In order to capture the complex ways in which citizenship and nationalism are entangled with torture, I argue that nationalism and citizenship comprise a set of transnationally organized practices around which terrorist identities were produced (Grewal 2005; Malkki 1994; Thobani 2007) and through which white settler domination in Canada could be reproduced.

I draw on Foucault (1977, 26; 1978, 63) who challenges the idea that power is wielded by people or groups via sovereign acts of domination, and his analyses lead away from investigating power as concentrated (to the state or an institution) and as an instrument of coercion. I use his argument that power is dispersed and is embedded in knowledge production to show how in the post 9/11 context of national security policing, the power to produce terrorist identities has been concentrated to policing institutions such as CSIS and the RCMP yet has been distributed. Particularly, Foucault's *The Politics of Truth* (1997), in which he argues that the production of identities as essential ontological "truths" is key to how governmental domination and specific (punitive) techniques of governing are legitimized in modern societies (Foucault 1980, 131-132; Foucault 1997, 147-166), inspire me. I show that the elaborate transnational organization to inflict torture on the four men's bodies was not to "deny [their] voice, agency and autonomy"

(Scott 1999, 24–25), to exterminate and kill the colonized, or to destroy their culture (Fanon 1963). The purpose, rather, was to produce a Canadian Islamic fundamentalist terrorist sleeper-cell, the existence of which would advance the legitimacy of preemptive criminalization, indefinite detention, and deportation.

I have divided this chapter into four sections, corresponding to what I identify as four processes of sovereign racialized state (i.e., colonial) violence producing the four Canadian citizens as Muslim fundamentalist terrorists connected to the al-Qaeda movement and “Eastern” countries such as Syria and Egypt. In the first section, I examine the knowledge-producing policing practices that classified Elmaati, Almalki, Arar, and Nureddin as terrorists. In the second, I focus on how the RCMP negotiated terrorist production goals when no evidence was found that these men were engaged in terrorist activities and thus, because they are Canadian citizens, could not be officially detained in Canada; and deported them from Canada. In particular, I examine RCMP officers’ use of panoptic policing tactics that codified sovereign racialized state policing as self-disciplinary activities, prompting Elmaati’s and Almalki’s self-deportations, and preventing Arar and Nureddin from returning to Canada.

In the third, I analyze the ways in which Canadian state officials organized what can best be described as “torture from a distance,” eliciting false confessions from the men, namely, that they were Islamic fundamentalist terrorists connected to al-Qaeda. I show how cultural barbarism was inscribed into different geopolitical contexts, when the RCMP and CSIS elicited help from Syrian and Egyptian intelligence agencies in detaining and interrogating Canadian terrorist suspects. I examine the content and purpose of the torture experienced by the men and trace the links between CSIS officials’ visits with SMI officials and the RCMP’s questions that were sent to the SMI to be used during the torturous interrogations.

In the fourth, I examine DFAIT (Consular Services) officials' and RCMP officials' treatment of false confessions as voluntarily made statements. I argue that denying that torture had occurred was a political, tactical move to both maintain an expanded and increasingly race-based authoritarian police apparatus and widen the social control and cultural subordination of Muslim communities.

The Production and Distribution of Racial T/lies

In the post 9/11 context, national security and risk-policing targeted Muslim communities in Canada. Existing racialized policing practices shifted from evidence based policing not only to the production of knowledge about Islamic fundamentalist terrorists, terrorist networks, and future terrorist events but also to the production of Islamic fundamentalist terrorists.

Canadian state officials had produced racialized representations of Muslim men as Islamic fundamentalist terrorists before the 2001 terrorist attacks on the World Trade Center and the Pentagon took place. CSIS had assigned Islamic fundamentalist terrorist identities to three Canadian residents: Ahmed Khadr, Mahmoud Jaballah, and Ahmed Ressam. Ahmed Ressam is the only one of these individuals against whom actual evidence of terrorist activity has been found. Specifically, Ressam is believed to have been involved in an attempted bomb plot in the United States. Ahmed Khadr, an Egyptian Canadian citizen, was under CSIS investigation for allegedly channelling money to the al-Qaeda network via his charity work. Khadr was the director of the Canadian-based aid organization *Human Concern International* (HCI) in Pakistan during the mid-1990s. In 1995, he was accused by the Egyptian government of funding a terrorist attack on the Egyptian Embassy in Islamabad, an attack in which he was severely wounded. He was detained in Egypt but found not guilty. Khadr returned to Canada, where the label of terrorist continued to be applied to him (Cinema Politica 2010).

Since 1993, CSIS had tried to establish a link between Jaballah—an Egyptian-born refugee claimant in Canada—and al-Qaeda. He was first placed in detention through the security certificate program in 1999, and then again in 2001. In the 1999 security certificate, CSIS conflated all political movements in Egypt, labelling them as one terrorist organization. CSIS alleged that Jaballah was an active member of al-Jihad, an Egyptian Islamic group defined by the United States as an Islamic fundamentalist terrorist group connected to al-Qaeda. As no evidence was found, the security certificate could not be upheld. The 2001 security certificate did not provide new evidence, but the information of the 1999 security certificate was interpreted through what Razack has described as sleeper-cell logic, whereby his past affiliation with a particular political movement and his present religious affiliation was used to construct him as a terrorist suspect.

In fact, after 9/11, the national security mandate of CSIS was governed by sleeper-cell logic. Allegations were made that Islamic fundamentalist terrorists lived undercover as good (i.e., secular) and assimilated Muslims in “Western” nation-states, but secretly belonged to a terrorist network to plot more anti-Western terrorist attacks. From this point of view, Canadian officials acted within a politically mandated and legalized anti-Muslim racist framework “to track down individuals involved in the 9/11 conspiracy” (O’Connor 2006d, 66). Muslim communities (and particularly Muslim men), considered to inherently carry Islamic extremist ideologies prone to violence, became the target of racial profiling and racialized surveillance practices. For example, CSIS began to investigate Khadr’s and Jaballah’s social networks and examine members of their religious communities. In particular, the Sunni community with which Khadr was affiliated became the target of racialized and gendered surveillance and knowledge-gathering activities.

These sovereign racialized surveillance were distributed across all policing levels and knowledge-producing activities transferred from CSIS to the RCMP in late September 2001. An RCMP project named A-O Canada was formed, to prevent and intercept possible Islamic fundamentalist terrorist attacks. Project A-O Canada was a direct result of the immediate financial investment in the increased policing of Muslim communities and specific individual Muslim men living in Canada. Judge O'Connor (2006d) stated that "the project's investigation was focused entirely on members of the Muslim community" (76). In fact, two-thirds of the RCMP's financial and manpower resources "were directed towards counterterrorism investigations" that focused on Sunni Islamic communities in Canada (Iacobucci 2008, 65). The project consisted of 15 divisions: A through N in Ottawa, Montreal, and Vancouver; and O in Toronto. RCMP officers who became members of the Project A-O Canada investigation units, such as the Integrated National Security Enforcement Teams (INSETs) and the National Security Investigation Sections (NSISs), were drawn from a variety of police units from Ontario and Québec. The project was tasked with identifying terrorist suspects, gathering information about possible terrorist threats, and assessing and analyzing the activities of specific targets as possible terrorist conduct. Members of A-O Canada collected "information about individuals who had connections to Arab or Muslim organizations, had attended training camps in Afghanistan at different periods of time, or had associated or communicated with others whose actions had raised suspicions" (O'Connor 2006d, 72–73).

In the post-9/11 period, terrorist allegations made by CSIS against Khadr and Jaballah became the central sites through which terrorist connections to other Muslim men were made. Khadr and Jaballah were portrayed as if they indeed were Islamic fundamentalist terrorists, imminent terrorist threats, who had connections to Osama Bin Laden. Information about "the

imminent threat” of possible terrorist attacks was passed from CSIS to the RCMP (O’Connor 2006b, 12–13, 35–36), and triggered the investigations into the lives of Muslim-Canadian citizens Elmaati, Almalki, Arar, and Nureddin in relation to the al-Qaeda movement.

Justice O’Connor states: “beginning with the CSIS advisory letters shortly after 9/11, Project A-O Canada was provided with information linking targeted individuals to what was described as an imminent threat to the security of Canada” (O’Connor 2006b, 35). The investigation of “several Toronto-based individuals” (Elmaati and Nureddin) supposedly posing “an imminent threat to the public safety and security of Canada” was transferred from CSIS to the RCMP on September 24, 2001 (Iacobucci 2008, 96). Project A-O Canada was asked to assist with the investigation into Almalki’s activities. The investigation of Almalki—an Ottawa resident (with possible ties to Khadr)—was transferred from CSIS to the RCMP in September 2001 (*ibid.*, 97, 109–111). As CSIS had not found any evidence of terrorist conduct, the goal of A-O Canada was to produce knowledge about a connection between Elmaati and Almalki and Khadr, Jaballah, or Ressam and other possible terrorist links in order to prevent “a second wave of terrorist attacks” (*ibid.*). The project started with terrorist knowledge-producing activities revolving around Ressam’s, Khadr’s, and Jaballah’s religious associations with the Sunni community in Toronto and Ottawa, as well as their broader economic activities and social connections to Elmaati, Almalki, Arar, and Nureddin.

Ahmad Abou-Elmaati

Prior to 9/11, CSIS had investigated Ahmad Abou-Elmaati as an individual who “might have some knowledge of the threat to Canada and Canadian interests abroad” (Iacobucci 2008, 109). However, the Ressam incident triggered Elmaati’s construction as a terrorist suspect. While Elmaati was never directly or indirectly associated with Ressam, the fact that he worked

as a U.S.–Canada cross-border truck driver made him a terrorist suspect. Iacobucci recalls that on August 16, 2001 Elmaati was stopped at the Canada–U.S. border crossing at the Queenston–Lewiston bridge. His truck and belongings were searched. U.S. border officers found in his personal belongings a boarding pass from a flight to Syria, where he had visited his future wife. In the glove compartment, they found a map of a government building in Ottawa, labelled Atomic Energy of Canada, and maps of virus- and disease-control laboratories. He was immediately fingerprinted and photographed. After eight hours of interrogation he was released. He repeatedly stated that the map was not his property, but had been left behind by another driver. In the aftermath of September 11, 2001, this incident would haunt him. Two CSIS agents found him at his mother’s house in Scarborough, and interrogated him about the map in the truck. In October 2001, RCMP investigations confirmed that the map was an old delivery map, that these buildings had been torn down, and that the government institutions in question had long since moved from the locations indicated on the map (Iacobucci 2008, 110).

The map was not the only piece of so-called evidence that, according to the RCMP, suggested that Elmaati was a terrorist; three previous experiences were also key. Elmaati became a terrorist suspect, and was linked to Jaballah, because both had participated in the American-sponsored anti-Soviet Mujahideen uprising against the democratically elected government of the Democratic Republic of Afghanistan in the 1980s. The RCMP looked into possible connections between Elmaati’s political affiliations in Afghanistan and “jihad-related activities” (Iacobucci 2008, 111). Elmaati was also suspected of terrorist conduct because of his brother’s (Amr Abou-Elmaati’s) supposed ties to Khadr. Amr Abou-Elmaati was depicted as a terrorist in part because he was working in Afghanistan with a Canadian-based aid agency called the Health and Education Project that had been set up with the help of Khadr. Iacobucci states: “on November 8,

2001, the RCMP received information that a foreign agency believed that Mr. Elmaati's brother, Amr Elmaati, had recently entered Canada for the purpose of boarding a flight in Canada and diverting it to a target in the United States" (ibid., 117).

Abdullah Almalki

CSIS considered members of the Sunni community, particularly Ahmed Khadr, to be Islamic fundamentalist extremists with terrorist ties (Iacobucci 2008, 193–94). Abdullah Almalki, an electrical engineer living in Ottawa with his wife and four children, was affiliated with the Sunni community in Ottawa. He was labelled an imminent threat and became a terrorist suspect partly because until 1995 he had worked for the same organization, Human Concern International, which Khadr had worked for. On September 24, 2001, Project O Canada began focusing to investigate him. On October 1, 2001, he became the primary target of surveillance practices that aimed to produce knowledge connecting him to al-Qaeda (195).

Almalki was also constructed as a terrorist because of his business relationships (Pither 2008, 45). On October 5, 2001, the RCMP was instructed "to uncover Mr. Almalki's business relationships around the world with a view to collecting evidence that might support a charge of facilitating terrorist activity" (ibid.). In the post-9/11 context, his degree in electrical engineering and his business relationship with a Pakistani supplier of electronics to the Pakistani military were enough to indicate to the RCMP that he had direct ties to terrorist activity. Almalki was placed under surveillance by three RCMP teams beginning immediately after 9/11 (Pither 2008, 47–53).

Ironically, Almalki was constructed as a terrorist connected to al-Qaeda based on his entrepreneurialism and his thriving business relationship with a Pakistani company that can be traced to U.S. financing of the Pakistani military post-9/11. The United States had given \$73

million to Pakistani military initiatives, aiming to secure the Pakistan-Afghan border. The money was allocated to helicopters, vehicles, fuel, night vision goggles, communication equipment, training, and new telecommunication devices (Pither 2008, 47-53). Almalki's microelectronics company, Dawn Services, was very successful. It had been constantly expanding since the late 1990s, and since 9/11 had been doing particularly well. The company became a major supplier for Microelectronics, a company in Pakistan providing the military with two-way radios (ibid.). Almalki's engagement in the global free market—namely his participation in the transnational military complex as an entrepreneur—was interpreted as terrorist conduct.

Maher Arar and Monia Mazigh

Through the surveillance of Almalki, Maher Arar and Monia Mazigh became “persons of interest”: “Project A-O Canada described Mr. Arar and his wife as Islamic extremists suspected of being linked to the al-Qaeda movement” (O'Connor 2006d, 24). Arar and Almalki knew each other through a family connection dating back to 1987–1988. When Arar moved from Montreal to Ottawa, Almalki signed Arar's rental lease as a surety. In the following years, they met occasionally for coffee. By October 12, 2001, when they met in Mango's Café in Ottawa, Arar had become a terrorist suspect (O'Connor 2006b, 53–58). This meeting, followed by a twenty-minute conversation held during a walk in the rain, was enough for Arar to be labelled a person of interest with a significant connection to Almalki, who had been directly linked to bin Laden's associates (ibid.). In an RCMP document that included a diagram entitled “Bin Laden's Associates: Al Qaeda Organization in Ottawa,” Arar was described as “a business associate or a close associate of Mr. Almalki” (O'Connor 2006d, 25). This document was shared with American agencies.

Mazigh also became a terrorist suspect—based on her marriage to Arar. Mazigh was constructed as an Islamic fundamentalist terrorist suspect simply based on her marriage to a Muslim man. RCMP officers constructed Mazigh as terrorist suspect because they assumed that she was privy to her husband’s terrorist activities (O’Connor 2006b, 59).

Muayyed Nureddin

Mahmoud Jaballah belonged to the Sunni community in Toronto and Ahmed Khadr belonged to the Sunni community in Ottawa; consequently, both places of Sunni worship were profiled, and individual Muslim men belonging to these communities were considered possible terrorist suspects. Muayyed Nureddin, an Iraqi-born geologist, was one of these (O’Connor 2006b, 72–73). He became a target of Toronto-based terrorist investigations, based on the assumption that Muslim places of worship and community interaction were likely to produce or harbour terrorists. He was associated with the Sunni community and he sent remittances to family members in Iraq. Both these activities led to his construction as a terrorist suspect, and he was placed under surveillance: “based on its Sunni Islamic extremism investigations, the RCMP suspected that Mr. Nureddin was acting as a financial courier for individuals believed to be supporters of Islamic extremism” (Iacobucci 2008, 254).

The *Arar Commission Report* (O’Connor 2006a) and the *Iacobucci Report* (Iacobucci 2008) further revealed that despite the fact, that the RCMP’s intelligence gathering practices did not produce concerted evidence that these men are terrorists, the four men were labelled as terrorists and placed on international watch lists. For example, Elmaati was placed on international watch lists as a person who engaged in activities “in support of politically motivated violence, and posed an imminent threat to public safety and the security of Canada” (Iacobucci 2008, 113). On September 29, 2001, the “RCMP office in Rome sent an urgent

request for assistance to law enforcement agencies in several countries including Syria and Egypt” (ibid., 113). On September 23, 2001, the RCMP received a note from CSIS stating that Almalki, based on his business relationships, was the “Ottawa-based procurement officer for Osama Bin Laden” and “an important member of al Qaeda” (ibid., 194). On October 2, 2001, the RCMP passed on this lie to their liaison offices in Islamabad, Rome, Paris, Washington, London, and Berlin, and, on October 4, to law enforcement agencies in Syria and Egypt. On October 31, 2001, Almalki and his family were defined as “Islamic Extremist individuals suspected of being linked to the al-Qaeda terrorist movement,” and they were placed on international watch lists and border lookouts (ibid., 196–97).

Around the same time, in late October 2001, the RCMP had no information about Arar other than the fact that he had shared coffee with Almalki, and that Mazigh was his wife. Nonetheless, the RCMP defined both these men as “Islamic Extremist individuals suspected of being linked to the al-Qaeda movement” (O’Connor 2006d, 13), and sent a request to the United States asking that the men be listed on their border lookouts (ibid., 13–19; O’Connor 2006b, 59). Similarly, Nureddin was labelled and placed on international watch lists as a “financial courier for people believed to be supporters of Islamic extremism” (Iacobucci 2008, 254).

The production of the four Muslim-Canadian citizens as terrorist suspects was grounded not in reality but in, to borrow a phrase from Said (1978), “a structure of lies or of myths which, were the truth about them to be told, would simply blow away” (6). In fact, the identification of Jaballah, Khadr, and Ressam as terrorists was used to build a web of racial t/ies, through which Elmaati, Almalki, Arar, and Nureddin were produced as members of a Canadian Islamic fundamentalist terrorist sleeper-cell connected to Osama bin Laden and the al-Qaeda movement. CSIS and RCMP investigations tried to establish terrorist ties between Khadr and Almalki,

Khadr and Nureddin, Jaballah and Elmaati, Ressam and Elmaati, Almalki and Arar. Without evidence of a terrorist connection, Elmaati, Almalki, Arar and Nureddin became guilty (not based on what they have done but) by association with an Islamic community and/or their remote and manufactured connections with Khadr, Jaballah and Ressam who supposedly possess extremist ideologies and are prone to terrorist violence. This construction emerged through sovereign racialized state policing practices that had the aim of producing terrorists living and operating in Canada.

Terrorist suspects were produced not through evidence-based criminal investigations, but rather through sovereign processes of knowledge production governed by anti-Muslim racism and, in particular, sleeper-cell logic (Razack 2008, 28). As was the case for the five Muslim non-citizens, the four men's Arab origins and political and life histories were used "to mark them as individuals likely to commit terrorist acts, people [with a] propensity for violence" (Razack 2008, 28). In a biopolitical sense, the four men's lives became the targets of sovereign racialized knowledge production, whereby income-generating activities, family life, friendships, business relations, and religious affiliations were construed as terrorist activities.

The normative citizen of a white settler nation—the hegemonic citizen subject—is a white, European, bourgeois, heterosexual, able-bodied male. This citizen is the referential subject for processes of otherization (Thobani 2007, 3–4). The four Muslim-Canadian citizens *enacted* dominant white, patriarchal, hetero-normative, middle class Canadian values, yet they did not *embody* the white settler Anglo-Protestant Canadian. Their physical traits and religious affiliations became the reference points through which their work and private, everyday banal conduct was marked as Islamic fundamentalist terrorist conduct.

For example, Almalki's and Arar's gendered enactments of citizenship that provided for their families in Canada such as Almalki's entrepreneurial activities of producing and sending microelectronics to Pakistan or Arar's frequent travels to the U.S. became the reference points to produce them as terrorist suspects. In the cases of Almalki and Arar upward class mobility, entrepreneurialism and in conjuncture with Islam religion emerged as the focus of terrorist suspicion. Furthermore, Elmaati's work as a cross-border truck driver and Nureddin's activities in providing for family members in Iraq were interpreted as terrorist related conduct. In Elmaati's case even ordinary everyday activities such as keeping an old map of a Canadian government building in the glove compartment of his truck, and in Almalki's case volunteering, drinking coffee and walking in the rain with Arar – were interpreted as terrorist conduct.

In Arar's and Mazigh's case heterosexuality as well as their nuclear family life became the reference point to label Mazigh as a terrorist suspect. Heterosexual reproductive relations within which men and women perform their gendered roles are the quintessential efficacies for the biological and cultural reproduction of the white settler nation (Yuval-Davis 1997, 20–25). However, the heterosexual marriage of a Muslim man (Arar) and a Muslim woman (Mazigh) was depicted as a threat to the white settler nation, because such a marriage was read as indicative of possible terrorist connections. In fact, a racialized gender dichotomy between male and female was perpetuated, by depicting Arar as the carrier of terrorist knowledge and agent of terrorist activity, and depicting Mazigh as a non-active, subordinate woman who—through her association to her husband—was privy to terrorist knowledge.

Historically, in Canada, laws, policing practices, criminalization, detentions, and deportations have been important tools for regulating, socially controlling, and punishing the

other for deviating from the hegemonic citizen subject and committing transgressions against⁵² “its values, ethics and civilizational mores” (Thobani 2007, 3). In the post-9/11 world, when Muslim citizens espoused bourgeois, entrepreneurial, heterosexual, able-bodied masculinity, the activities of the men (and one woman) who did not embody the ideal white settler Canadian citizen, these activities were marked as terrorist conduct, and the citizens were labelled as Islamic fundamentalist terrorist threats to the nation. In this context, Islam religion became the markers of racialization and criminalization.

The broader racialized representation of Muslim men as Islamic fundamentalist terrorists and the concrete projection of racial t/ies on Muslim men constitutes a boundary-making practice, internal to the white settler state, through which white settler domination is reproduced by delineating who does and does not belong in Canada (Razack 2008, 50), and who is and is not a Canadian-Canadian citizen (Mackey 2002, 142). The labelling of Muslims as terrorists is a form of cultural otherization that, in this context, operated through sites of privilege, such as middle class educational and economic attainments. Canadian political, economic, and social values such as entrepreneurialism, heterosexuality, and middle class financial success served as negative referents for otherizing particular citizens. In this context, the attainment of a middle class status did not serve to overcome or compensate for racial subordination but became the sites of racialization and otherization. This otherization served to reassert white settler cultural dominance, which was believed to have come under threat through the presence of Muslims as potential terrorists in Canada. These practices of otherization are also practices of racial

⁵² Critical criminologists have pointed out how deviations from the “master citizen subject”—particularly by members of Indigenous populations, Black (male youths), poor women, and members of the LGTB community—have been criminalized in Canada (Dickson-Gilmore 2011, 75–88; Faulkner 2011, 230–76; Wortley and Owusu-Bempah 2011, 125–48).

subordination. They are underpinned by a broader classed, heterosexual, gendered, and racist structure that posits Muslim inferiority and white Anglo-Protestant superiority. What is more, they promote the notion that Muslim populations are not really Canadian, even when they enact Canadian values. Further, knowledge production that defines social contacts, religious affiliations, and income-producing and life-sustaining activities as terrorist conduct also delineates how Muslims should participate in Canadian political, social, and economic life.⁵³

As the RCMP had no concrete evidence that these men were terrorists, as citizens they could not be detained in Canada nor deported from Canada.⁵⁴ In place of a formal criminal prosecution, Canadian state officials used indirect forms of sovereign power to deport and detain. Assigning concrete positions within Islamic fundamentalist terrorist groups to Elmaati, Almalki, Arar, and Nureddin, and placing these men on terrorist watch lists, had the effect of triggering their detentions in the United States and Syria. In fact, the reproduction of white settler cultural

⁵³ Further research needs to be conducted that analyses how sovereign racialized knowledge productions that define social contacts, religious affiliations, and income producing and life sustaining activities as terrorist conduct, also delineate how Muslims should participate in Canadian political social and economic life and induce self-disciplinary mechanisms. By criminalizing conduct only when it is enacted by the “other”, the Canadian state signals how the gendered and racialized “other” should behave in Canada: “they” should be politically submissive and docile in the face of authoritarian mechanisms, “they” should engage in *working* class activities, and “they” should be isolated and alienated from their friends of similar religious background and religious communities.

⁵⁴ For example, the *Charter* (1982) guarantees Canadian citizens freedom of conscience, thought, belief, speech, association, and peaceful assembly. Further relevant rights outlined in the *Charter* include mobility rights, as per section 6(1): every citizen of Canada has the right to enter, remain in, and leave Canada; and section 9, which outlines that “everyone has the right not to be arbitrarily detained or imprisoned.” Canadian citizens also have legal rights, as per section 8, which states that “everyone has the right to be secure against unreasonable search or seizure.” Section 10 delineates citizens’ rights on arrest or detention. They are the rights (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful (*ibid.*). Section 11, “Criminal and Penal Matters,” states that any person charged with an offence has the right to be informed without unreasonable delay of the specific offence; (a) to be tried within a reasonable time; (b) not to be compelled to be a witness in proceedings against that person in respect of the offence; (c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; and (c) not to be denied reasonable bail without just cause. Lastly, section 12 of the *Charter* states that “everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”

domination took a transnational—and imperial—turn, when RCMP officers and CSIS agents assigned to each man a function within the al-Qaeda network and placed the men on international terrorist watch lists.

In the next section, I show how Canadian citizenship became a liability for these men to be deported by other means, and detained in countries known for the use of torture.

Canadian Citizenship Rights as a Liability

In contrast to the American renditions to torture program, in the Canadian context Muslim men were not kidnapped, but were instead included in the rendition process. As the RCMP could not find evidence of a Canadian terrorist connection that would enable the detention of the men in Canada, officers engaged in policing tactics that circumvented Elmaati's, Almalki's, Arar's, and Nureddin's *Charter* rights to stay in the country as per their Canadian citizenship. The following section analyzes the sovereign and disciplinary racialized policing techniques that were applied to extrapolate specific behaviour from Elmaati and Almalki such as self-deportation and prevented Arar and Nureddin from returning to Canada by triggering the U.S. and Syria to detain these men.

Ahmad Abou-Elmaati

The Iacobucci inquiry found that Project A-O Canada's investigative units had exhausted all "domestic leads" (Iacobucci 2008, 138) related to allegations that Elmaati was a terrorist. In fact, the RCMP had found evidence that he was *not* a terrorist (Iacobucci 2008, 110): an RCMP investigation in mid-October revealed that the map that had been used to label him as a terrorist was in fact ten years old, and the building it showed had been torn down (Iacobucci 2008, 11). However, these facts did not deter the RCMP from considering the map to be the blueprint for an

Islamic terrorist attack on governmental buildings in Ottawa. Thus, the RCMP and CSIS did not dislodge the identity of *terrorist* from Elmaati; instead, and unbeknownst to Elmaati, they defined him as a possible member of the al-Qaeda movement, and passed this false information on to the FBI. The RCMP also asked the Canadian international liaison office in Rome to instruct several law enforcement agencies in Europe, Syria, and Egypt, to look out for Elmaati as a possible terrorist (Iacobucci 2008, 116). At the same time, the RCMP engaged in sovereign and disciplinary techniques that continued to portray him as a terrorist.

Elmaati was first interviewed by CSIS agents on September 11, 2001 (Iacobucci 2008, 110). During this initial visit, he was questioned about his national background. He had been born in Kuwait, but, in addition to his Canadian citizenship, he was also considered a Syrian and an Egyptian citizen because his parents had been born in those countries. In multiple interviews, CSIS agents asked him questions about his connections to Egypt and Syria and the map (ibid., 110–112). He was asked to cooperate “voluntarily” in identifying terrorists, but in the interviews, he was threatened and intimidated, in an application of sovereign power. For instance, CSIS agents threatened him with severe consequences for him and his family; they indicated that his future wife’s immigration to Canada could be stalled or even halted if he did not answer their questions (ibid., 111–12). CSIS agents also uttered threats by invoking the Mukhabarat (an Arabic term referring to intelligence services known for their torture practices) if he would not cooperate with the CSIS investigations (ibid.).

Following the initial CSIS interrogation, the RCMP took over the surveillance of Elmaati and his family in October 2001. The RCMP continued with repeated interviews and house searches. RCMP officers engaged in a mix of panoptic surveillance and community policing, including the public in police harassment techniques that finally induced Elmaati’s departure

from Canada. In Elmaati's case, RCMP officers engaged in a mix between panoptic surveillance and community policing. In Bentham's sense, panoptic surveillance operates by giving the impression of permanent, unverifiable, observation from a distance, used for the purpose of behaviour adjustment. Community policing relies heavily on the visibility of police officers to prevent crime. The RCMP officers made sure that their 24-hour surveillance of Elmaati was visible and verifiable to Elmaati and his family. For example, they were visibly followed to work, to restaurants, and while shopping (Pither 2008, 15–17). In addition, an unmarked police car trailed them at all times, giving the impression of omnipresent surveillance.

Furthermore, the RCMP engaged in a form of governance at a distance by including the public in broader mechanisms of surveillance: newspaper and television reports based on false information. For example, on October 13, 2001, the made-up evidence construing Elmaati as a terrorist was leaked to the media. One CTV Newsnet message read: "A thirty-six-year-old Kuwaiti man had been stopped at the United States border with a map detailing nuclear facilities and virus control labs in Ottawa" (quoted in Pither 2008, 17). *The Globe and Mail* printed a front-page story about Elmaati entitled "Kuwaiti found with papers on sensitive Ottawa sites" (ibid.). The *National Post* headline read: "Terrorists eye nuclear plants, expert says: 'Ample evidence': Kuwaiti man had sensitive documents on N-plant, virus lab" (ibid., 18).

These kinds of policing and surveillance practices, forms of sovereign and disciplinary power, are directed at the individual body; yet they are distributed in such a way that the wider populace is included in state practices of stigmatization, accusation, condemnation, and surveillance to promote self-disciplinary mechanisms. In this case, visible surveillance and public denunciation worked to prompt Elmaati's self-deportation.

The concept of *self-deportation* first came to my attention in the United States post-9/11 context as an approach through which the Republican Party tried to deal with Mexican ‘illegal aliens’. Instead of engaging in law enforcement efforts to locate and deport illegal aliens, the government created incentives for migrant workers to self-deport. The Republican Party under the Bush administration called for increased border security through building a wall and increasing border controls along the Mexico-United States border to reduce the influx of illegal aliens, and creating an amnesty in legal proceedings for migrant workers’ illegal activities in the United States if they self-deported. Similar to the Elmaati case, the key point of self-deportation is that the state seemingly reduces aggressive and oppressive sovereign forms of state power by promoting and creating political and economic structures and a social environment so that unwanted populations leave voluntarily.

Self-deportation is a concept closely linked to Foucault’s (1977) *panopticism*, in which sovereign and disciplinary power operate concurrently to induce a desired behaviour (195–228). While appearing voluntary, this behaviour does not arise through choice and free will but through the omnipresence of a sovereign power that operates through a variety of disciplinary techniques. In Elmaati’s case, as the state could not exercise sovereign power directly on his body, and deport him, they engaged in practices that influenced his will and made his departure from Canada appear voluntary. However, a coherent, historical timeline of the events reveals that Elmaati decided to leave Canada, accompanied by his mother, after the racial t/lies were leaked to the press, one month earlier than he had originally planned (Pither 2008, 117). The plan was to go to Syria to help him plan his wedding, and his mother was to visit friends in Egypt before joining him in Syria (ibid.).

Elmaati's departure did not free him from the RCMP's continued surveillance, which in fact suggest that the goal all along may have been to deport Elmaati to Syria. On November 11, 2001, when Elmaati and his mother arrived at Pearson airport in Toronto, border security agents interviewed him about his travel plans, asked how much money he was carrying, and questioned him about the map. Despite the fact that Elmaati was considered a terrorist in Canada, he was not detained in Canada, he was allowed to continue on his trip. Project A-O Canada's Division O "made a decision to have Mr. Elmaati monitored on his journey and therefore took steps to ensure that Mr. Elmaati would be allowed to board the aircraft" (Iacobucci 2008, 117). In fact, two undercover RCMP officers accompanied Elmaati and his mother on their flights to Frankfurt and Vienna, and tracked Elmaati through European customs until he boarded his flight to Syria. Customs agents at the German and Austrian airports asked Elmaati the same questions that the RCMP had asked him in Toronto, and let him continue his journey (Pither 2008, 22). Accompanying him through Austrian and German customs, the two RCMP agents ensured his departure from Canada, and guaranteed his uninterrupted travel. In Vienna, they made sure that he boarded his flight to Syria. Upon his arrival in Syria, on November 12, 2001, he was taken into custody and detained at Far' Falastin prison (Iacobucci 2008, 121). He was held there until January 25, 2002, and from January 25, 2002 to March 29, 2004 in various prisons in Egypt (Iacobucci 2008, 269).

Abdullah Almalki

Almalki, a Syrian-born Canadian citizen, and his family also experienced constant open surveillance, multiple search warrants, and wire-tapping. They were placed under continuous pressure to give so-called voluntary police interviews. In these interviews Almalki was asked questions always geared towards establishing a terrorist connection to Ahmed Khadr, through his

humanitarian work in Afghanistan, his business relationships in Pakistan, and his connections to Sunni community members in Canada (Pither 2008, 63–64). The RCMP labelled Almalki as a terrorist suspect and placed him on an international terrorist watch list, including countries such as Syria, as wanted for questioning (Iacobucci 2008, 195–96). As with Elmaati, the RCMP engaged constant police harassment, visible surveillance, multiple house searches, public shaming, and discreditation through interviews with business partners, friends, and family, all of which produced a public perception of Almalki as a terrorist, and resulted in the self-deportation of Almalki and his family from Canada.

In an interview with Pither (2008), Almalki stated: “We were squeezed out of Canada. It is as if you have a cat and you keep annoying the cat until it jumps out the door and leaves the house” (64). On November 27, 2001, Almalki left Canada for Malaysia, where his mother-in-law lived. His wife and children followed him the next day. They had decided to travel separately, in case Almalki was harassed at the airport (63–64). The events that led to his detention in Syria are obscured in the *Iacobucci Inquiry Report* (Iacobucci 2008); however, from the details provided by Almalki in Pither’s book, it becomes clear that Almalki was not simply “squeezed out of Canada.”

Almalki’s departure from Canada did not stop the RCMP’s continued harassment, but instead seemed to trigger it from a distance. For example, while in Malaysia, the RCMP interfered with Almalki’s travel agenda, business relationships, and his family ties in Syria, to facilitate his detention in Syria. Through a collaborative effort between American, Canadian, and Syrian policing agencies, attempts were made to extradite him from Malaysia to Syria. In December 2001, the RCMP was informed by the Syrian police that a Syrian warrant against Almalki for failing to complete his military service could be used as a tool to enable his

extradition from Malaysia to Syria (Iacobucci 2008, 199). RCMP officers interviewed during the Iacobucci Inquiry testified that they shared information with Malaysian and U.S. officials “that contained business information and information relating to the threat from Islamic terrorism” (ibid.).

The RCMP attempted to starve Almalki out of Malaysia by interfering with his business relations and consequently capping his income. By mid-April 2002, his business relations with the Pakistani microelectronics company that supplied the Pakistani military came to a halt. As Almalki explained (Pither 2008, 4–9), one major business shipment went missing; he recounted his suspicion that the FBI seized one of his electronics shipments after it left the manufacturer in Texas, bound for Microelectronics in Pakistan. The United States government’s seizure of his property was only made possible through knowledge that the RCMP had gained from one of their searches of Almalki’s house and business (Pither 2008, 111–12). In the end, Almalki flew to Syria on his own initiative, to visit his dying grandmother, after family members told him that it was safe to do so. On May 3, 2002, he was arrested at the Damascus airport and brought to Far’ Falastin prison (Iacobucci 2008, 203). Almalki was incarcerated from April 22, 2002 to February 29, 2004.

Elmaati’s and Almalki’s experiences of police harassment indicate that sovereign and disciplinary policing tactics were used to squeeze the men out of Canada (Pither 2008, 1–15; 47–99). While both men may be seen to have left Canada voluntarily, I understand the men’s departures as self-deportation: sovereign racialized practices of the Canadian state, codified as self-disciplinary mechanisms, had triggered the men’s decisions to leave. The sovereign power of the police apparatus made the men’s everyday lives unbearable and triggered their departure from Canada. The state’s sovereign power to deport, newly codified as self-disciplinary power,

was transferred to the men themselves, and their detentions were de-territorialized from Canada into the geopolitical realms of Syria.

While Arar, his wife Mazigh, and Nureddin were also exposed to covert surveillance practices and questioning, they were not harassed to the same extent as Elmaati and Almalki. Arar, Mazigh, and Nureddin were also secretly labelled as terrorists and placed on international terrorist watch lists, but only Arar and Nureddin were prevented from returning to Canada (Pither 2008, 95–96); Mazigh was not.⁵⁵

Maher Arar

In early October 2001, when he was questioned by RCMP officers, Arar had no idea that he was part of an RCMP investigation related to a Canadian Islamic fundamentalist terrorist cell with a connection to al-Qaeda (Pither 2008, 95–96). He was not aware that, since his meeting with Almalki in the Mango Café in Ottawa on October 12, 2001, he had been labelled a “person of interest” in a terrorist investigation. In fact, he and his wife had been defined by the RCMP as “Islamic Extremist individuals suspected of being linked to the al-Qaeda terrorist movement” and placed on border lookouts and the FBI terrorist watch list (O’Connor 2006d, 13, 19). Arar and his family left Canada in early July 2002 to visit Mazigh’s family in Tunisia. In Ottawa, Arar worked as a wireless technology consultant. Needing to attend to his business, Arar decided to return to Canada earlier than his wife. On September 26, 2002, while travelling from Tunisia to

⁵⁵ As I note above, the labelling processes that constructed Mazigh as a terrorist suspect were governed by gendered and heterosexist anti-Muslim racism; however, I could not find any evidence in the reports as to why Mazigh was not prevented from returning to Canada. It might be that gendered anti-Muslim racial logics constructed her as an “imperiled woman” (Razack 2008). These variations of anti-Muslim racism have not prevented the CIA from kidnapping, detaining, and interrogating other Muslim women. Unfortunately, these incidents have not been questioned, analyzed, or publicly condemned to the same extent as the renditions of Muslim men.

Canada via Zurich and the United States, Arar was detained by American immigration officials at the John F. Kennedy Airport in New York.

Arar's detention in the United States was based on information provided by Canadian officials to the FBI and on his presence on international terrorist watch lists. Here the sovereign racialized power to detain was distributed to the United States; but this sovereign racialized power over Arar's fate did not leave the grip of the Canadian state. The RCMP sent questions to be asked of Arar by the FBI without a lawyer present (O'Connor, 2006b, 153–61). Despite the fact that the RCMP and consular service knew of his detention in the United States, they did not interfere in his deportation to Syria. Here, non-interference operated as a technique to induce Arar's deportation to Syria with no direct involvement but with indirect manipulation by the RCMP. For example, an FBI agent contacted RCMP Officer Flewelling and told him that Arar had requested to be transferred to Canada. The FBI agent said that "the United States did not have enough information to charge Mr. Arar and was looking to remove him" and that "Washington wanted to know whether the RCMP could charge him or refuse him entry to Canada" (O'Connor 2006d, 29). In this conversation, RCMP Officer Flewelling subtly gave the impression that the RCMP did not want Arar to be returned to Canada, stating that Arar could not be detained in Canada (*ibid.*). Here, the United States Immigration and Naturalization Service (INS) clearly acknowledged Arar's Canadian citizenship status and looked at the RCMP as an authoritative power to make a decision about where to deport Arar.

On October 7, 2002, the Director of the United States Immigration and Naturalization Service (INS) issued "an order finding Mr. Arar to be a member of al-Qaeda and directing his removal from the United States" to Syria (O'Connor 2006d, 27). On October 8, 2002, Arar was

first flown to Jordan and then driven to Syria. He was detained in Far' Falastin from October 9, 2001 until October 5, 2003 (ibid.).

Muayyed Nureddin

Similar to Arar, Muayyed Nureddin was detained in Syria as a result of being secretly placed on international terrorist watch lists. Based on RCMP "Sunni Islamic extremism investigations" (Iacobucci 2008, 254), Nureddin had been labelled as a "financial courier for people believed to be supporters of Islamic extremism" (ibid.). Unaware that he had been labelled as a terrorist and placed on international watch lists, he traveled from Canada to Iraq via Turkey, and was to travel back to Canada via Syria. On December 11, 2003, while on stopover in Syria, Nureddin was captured by Syrian Military Intelligence Services (SMI) officials and detained in Far' Falastin prison until January 14, 2004 (ibid.).

Although RCMP policing practices were customized to the individual life circumstances of each of these four men, a pattern emerged: Canadian sovereign racialized state-centred practices of deportation and detention were de-centred from the Canadian state. Canadian sovereign racialized state power to deport and detain was distributed, involving the men in their own departures from Canada; other states, such as the United States and Syria, became involved in men's deportation and detention. On the surface, it appears that Elmaati and Almalki left Canada voluntarily, that the United States deported Arar to Syria, and that Nureddin could not return to Canada because he was detained by the SMI. However, the men's deportations and detentions were promoted by Canadian state bureaucracy policing techniques that created structural conditions which, soaked in anti-Muslim racism, triggered the men's self-deportations and prevented their return to Canada. In particular, the classification of the men as terrorists connected to al-Qaeda, their placement on international terrorist watch lists, and the elaborately

organized transnational schemes that ensured their arrivals in Syria, promoted their detention and consequently their torture.

While the men's detentions and subsequent torture were de-territorialized from the Canadian state, this does not mean that the Canadian state had released its grip on their lives. As I show in the following section, although SMI (Syrian Military Intelligence) agents administered the torture these men endured, the content of men's torture was defined by the actions of Canadian state officials. The assumptions of post-9/11 Canadian racial policing reflected the notion that these men's religious and cultural traits were proof of their inherent terrorist status and their possession of terrorist knowledge; therefore, they were transported into Syrian and Egyptian prisons. The strategies that were employed to render Elmaati, Almalki, Arar, and Nureddin to Syria are symbolic of how Said's Orientalism operates. In fact, the ways in which the men's rendition to Syria was organized is based on a self-and-other referential system whereby 'the Orient is Orientalized' by producing Syria as a torturing and human rights violating country while Canada can be narrated as a multicultural, liberal democracy that pays attention to human rights and citizenship rights. In the next section, I examine Canadian officials' implication in torture, and argue that the Syrian torturers and the tortured men became the referential subjects of Canadian state racism while at the same time building a hegemonic narrative of Canada's racial innocence.

The Politics of Pain

A plethora of literature has focused on the torture practices inflicted on Muslim men's bodies by U.S. military personnel in spaces such as Abu-Ghraib and Guantanamo Bay. Critical race feminists have analyzed torture as the enactment of "Western" white settler colonial ideology (Razack 2008), and the exaltation of nationalism (Thobani 2007) and patriotism (Puar

2005). Most of these scholars consider the torture practices inflicted on the Muslim male body as part of a colonial process of asserting domination over populations. In particular, Razack (2008) and Puar (2005) argue that “clash of civilizations” theories are enacted through gendered and sexualized torture practices. For these authors, torture practices constitute a display of sovereign power and reassert dominant white settler values such as white supremacy, capitalism, patriarchy, and heterosexuality (Philipose 2007; Puar 2005, 13; Razack 2008, 59–80). These analyses stand in stark contrast to assertions that torture is a way to extract knowledge to avert further terrorist attacks. Nevertheless, all these scholars generalize the utility of torture as the wielding of sovereign power, a display of domination, and the mastering of the other. Less attention has been placed on the purpose and content of torture that reveals an interplay between sovereign power and disciplinary power in the analysis of the purpose and content of torture.

An investigation of the purpose and content of torture is of crucial importance in dispelling the myths that the incarceration and torture of Elmaati, Almalki, Arar, and Nureddin were sovereign techniques of the violent Syrian state, administered by the Syrian torturer for purposes of sadistic gratification, revenge, and punishment. In fact, the following analysis of the torture Elmaati, Almalki, Arar and Nureddin endured, reveals that their torture in Syria constituted de-centred colonial encounters between ‘them’ and the Canadian state. Canadian sovereign racialized state violence was de-territorialized not only by including Syria and Egypt but also by including the four men in each other’s torture, thereby imprinting terrorist identities onto the men’s bodies and barbarism into the geopolitical contexts of Syria.

At this time, there is no evidence available to the public to suggest that the torture of Canadian citizens in Syria and Egypt was prompted by the Canadian government through military or economic threats, or through financial incentives. While I have been unable to find

evidence that the Canadian state, like the United States, provided financial incentives for detentions and torture in “Eastern” countries, it is very likely that economic relations played some role in the Canadian-Syrian collaboration.⁵⁶

However, what can be established from tracing the events outlined in the *Toope Report* (Toope 2005), the *Arar Commission Report* (O’Connor 2006a), and the *Iacobucci Inquiry Report* (Iacobucci 2008) is a pattern that links the timing of torture to CSIS agents’ visits with Syrian officials, and the content of torture to questions provided by the RCMP. In this section, I show that while Syrian officials administered the torture, the RCMP and CSIS provided its ideological content and purpose.

Ahmad Abou-Elmaati

Ahmad Abou-Elmaati was detained in Far’ Falastin prison in Syria from November 12, 2001, to January 25, 2002, and from January 25, 2002 to March 29, 2004 in various prisons in Egypt (Iacobucci 2008, 269). Questions were put to him, in both Syria and Egypt, which could only have come from Canadian officials. He was held mostly in animal-like conditions, such as solitary confinement in a “grave-like cell . . . approximately 1 metre wide, 4.6–4.8 metres high and not quite long enough for Elmaati to keep his legs fully extended when lying down” (ibid., 271). During his incarceration in both countries, he was repeatedly tortured, often for days at a time (ibid., 269–78). In December 2001, CSIS sent questions to the SMI, and instructed them to interrogate Elmaati about terrorist training in Afghanistan, flight lessons in Canada, the map showing government buildings, his brother, and associates who planned to bomb the Parliament

⁵⁶ For example, Suncor, better known as the Crown Corporation Petro-Canada, which is largely responsible for oil extraction in the Alberta oil sands, also operates oil and gas exploitation in Syria. In Canada, Consular Services responsible for affairs related to Canadian citizens abroad are situated within the Department of Foreign Affairs, Trade and Development. The dual mandate of fostering economic relations with a torturing country and the protection of Canadian citizens detained in this country is diplomatically difficult at best.

Buildings in Ottawa (ibid., 132). He told the interrogators the truth—that he had not planned a terrorist attack—but “the interrogators told Elmaati that this was not the story they wanted to hear, and accused him of not telling the truth” (ibid., 272). Over the course of three days, while Elmaati was beaten, whipped, and slashed, and cold water was poured over him, he was asked to confess to accusations put forward in a report that the Syrian authorities could only have received from Canadian officials. He was shown a report in which he was accused of “planning to blow up the United States Embassy in Ottawa” (ibid., 273). In the *Iacobucci Inquiry Report*, Elmaati’s experiences were re-told:

When Mr. Elmaati heard that accusation, it was “one of the longest moments” of his life, because he concluded that the Syrian authorities were probably planning to hand him over to the Americans. He said he thought that this was something “very huge” and they were trying to implicate him in something false that he had never done. He was concerned about being handed over to the Americans because he felt he would not have any rights in American custody, and wanted to be handed over to the Canadian authorities instead. Although he had never heard of Guantanamo, he had heard about the “terrorist hype” in the United States and did not know what would happen to him there. He assumed the accusation about the United States Embassy was because of the map of Tunney’s Pasture, and therefore decided to select another target in Ottawa, a Canadian target, to satisfy his interrogators. He chose the Parliament Buildings because they were the biggest target he could think of. The Syrian authorities seemed to accept Mr. Elmaati’s story about the Parliament Buildings being the target; they instructed him to give them the outline of the attack. The officer told Mr. Elmaati that his brother had given him the instruction for the attack and that it was going to be done with a truck bomb; Mr. Elmaati agreed. When the officer asked for other names, Mr. Elmaati told him that he did not have any other names because his brother had been going to take care of everything. (Iacobucci 2008, 273–74)

Elmaati’s anecdotes about his brothers Amr and Ahmad planning to bomb government buildings in Ottawa entered into the content of torture. Despite the fact that in mid-October 2001 an RCMP investigation had revealed that the map found in Ahmad Elmaati’s truck was in fact ten years old, and that the building it showed had been torn down years earlier (ibid., 110), the map became part of the content of Elmaati’s false confession.

Each time the torture stopped, Elmaati recanted his false confession; consequently, the torture resumed (*ibid.*, 274–75). For example when asked to write down his confession (probably so that the document could be passed on to Canadian officials), he initially refused but then wrote down that he had been falsely accused of terrorism in Canada. When the interrogators discovered what he had written, the torture continued. Justice Iacobucci stated:

They punched, kicked, and slapped him, and pulled his beard and hair. They took Mr. Elmaati upstairs, blindfolded him, handcuffed his hands behind his back, and brought him into an interrogation room. The interrogators cursed him and told him that he needed to change his story. One interrogator was smoking a cigarette; he told Mr. Elmaati that he was going to burn his eyes. Mr. Elmaati felt very scared. He was lying on the ground and the interrogators kicked him and burned his shin with a cigarette. (During his interview, Mr. Elmaati showed Inquiry counsel that he has a round scar on his left shin about 1.3 centimeters in diameter.) Mr. Elmaati screamed for them to stop and promised to write whatever they wanted him to write. The man with the cigarette said: “Okay, now we teach you how to behave.” From then on Mr. Elmaati wrote down whatever the interrogators told him to: that he wanted to blow up the Parliament Buildings; that his brother had instructed him to do so; and that he was going to drive the truck. He had trouble writing and wrote very slowly, sometimes getting his interrogators to dictate the story or write it out themselves. Approximately four or five days after Mr. Elmaati’s second statement was completed, he was brought back up from his cell and told to sign official papers. These papers had the words “Syrian General Intelligence” and an official stamp. Mr. Elmaati signed the papers without reading them and administered his thumbprint. (Iacobucci 2008, 274–75)

The continued dehumanization and application of physical violence is a clear indicator that the pain was not inflicted to kill him, or to erase his culture and his religion. The coercing of false confessions functioned to imprint a stable terrorist identity to his body and to denigrate his religion. In fact, Elmaati’s identity transformation, from innocence to terrorist, affirmed the racialized representation of Muslim and Arab-looking men as terrorists, and Muslim culture as inferior and a threat to “Western” values; furthermore, it verified the RCMP’s classification of Elmaati, as an Islamic fundamentalist terrorist, that was not grounded in facts but on racial t/lies. Based on his religious background and gender, Elmaati’s own identity formation was violently denied. Who he really is, was silenced as it did not match what the torturers and by extension,

Canadian state officials wanted to hear. His will was subordinated to what the RCMP wanted him to be and what Canadian politics of state governance required him to be: an Islamic fundamentalist terrorist. Whenever he recanted his false confessions and reasserted that *he was not a terrorist*, the torture resumed (Iacobucci 2008, 274–75).

After Elmaati signed the false confession, he spent the remainder of his time in Syria in isolation, and was then transferred to an Egyptian prison. In Egypt, he recanted the signed false confession he had made in Syria. For nearly two more years (January 25, 2002 to January 11, 2004) he was severely tortured until he reaffirmed his false confession (Iacobucci 2008, 275). Over and over again, he was asked very concrete questions that could have only come from the results of the searches of his home in Canada. For example, in March 2003, during a torture session involving electroshocks to his hands, back, and genitals, he was asked about his last will and testament (ibid., 291). His will could have been found by the RCMP officers during one of their house searches. On another occasion, when shown a map on a television screen (ibid., 281), he identified it as a map of Tunney's Pasture in Ottawa. He was made to confirm that he had planned to use this map to plot a terrorist attack in Canada.

Not only was he tortured in order to elicit the false confession that he was an Islamic fundamentalist terrorist operating in Canada and planning to bomb a government building, he was also tortured so that he would implicate others in terrorist activities. He was shown pictures of other Muslim and Arab-looking men and asked to identify them as men he had met in Afghanistan, where he had supposedly been trained as a terrorist. As a result of the torture, he falsely implicated his brother Amr, and also Ahmed Khadr and Abdullah Almalki (ibid., 280–84).

Abdullah Almalki

Abdullah Almalki was incarcerated between April 22, 2002 and February 29, 2004. On the first day of his detention he had to take off his clothes and shoes and was asked to lie on his stomach. Interrogators beat his feet with an electrical cable (Iacobucci 2008, 300). One stepped on his head and another person stepped on his back. A third person lashed him with an electric cable (ibid., 301). Throughout his detention, Almalki experienced severe torture while being asked questions derived from RCMP investigations. He was asked about his relationship to Elmaati and others, and, when he insisted that he did not know these individuals, he was slapped across his face (ibid.). In fact, on July 31, 2002, Project A-O Canada drafted a report regarding Almalki that was sent to the SMI. The report included twenty-three questions “derived from a criminal investigation” (ibid., 230) that were to be addressed to Almalki during SMI interrogations. The questions aimed to acquire information about “Mr. Almalki’s alleged military training in Afghanistan, his former employer, the Canadian Global Relief Foundation, the purpose of some of his business shipments, and his relationship with Mr. Elmaati, Mr. Arar, Mr. Khadr and others” (ibid.). On November 23 and 24, 2002, CSIS officials met with General Khalil in Syria to acquire critical evidence in support of Canadian investigations into Sunni Islamic terrorism pertaining to Almalki and Arar. The questions put to Almalki aimed to elicit information about whether he had knowledge of any terrorist threat against the Parliament Buildings in Ottawa (ibid., 218–20). Under torture, he was forced to implicate other Muslim-Canadian men, previously classified as terrorists, in terrorist activities.

As was the case for Elmaati, when Almalki answered questions based on facts, he was tortured; but when he confirmed the lies, the beatings stopped (ibid., 300). During one torture

session, the interrogators showed him a report that said that he was “an active member of al-Qaeda” (Iacobucci 2008, 302). The *Arar Commission Report* revealed that

. . . on January 15, 2003, the Canadian consulate, on the instructions of the Ambassador, delivered a letter from the RCMP to General Khalil enclosing a series of questions to be posed to Abdullah Almalki. In the letter the RCMP offered to share with the SMI large volumes of highly sensitive documents and information, seized during investigative efforts or obtained from confidential informants associated to terrorist cells operating in Canada. (O’Connor 2006d, 38)

Under torture, Almalki was made to falsely confess that he had received terrorist training in Afghanistan, had engaged in terrorist activities in Pakistan, was Osama Bin Laden’s right-hand man, had supplied al-Qaeda with money, had financed Osama Bin Laden, and had sold electronic parts to the Taliban and to al-Qaeda (Iacobucci 2008, 300–304). The torturers asked him about a man named “Abu Wafa” (ibid., 303). This question could only have come from Canadian officials because, as Justice Iacobucci stated, Abu Wafa “was a nickname that Mr. Almalki’s father had given to him when he was born. Mr. Almalki believes that the only place where that name was written was the inside cover of a Koran that Mr. Almalki stored in his home in Ottawa” (ibid.). Additional questions were asked relating to his personal life and business relations that could have come only from the RCMP house searches. For example, Almalki was asked about his business relations, bank accounts, and relief organizations with which he had been affiliated (ibid., 303). Almalki’s experiences are summed up verbatim in the *Toope Report*:

For every point they were asking me about . . . keep on beating me till I answer with something that they were satisfied; and then they would move on to another point and they would keep on beating me for that point till, you know, they get satisfied either that what I was saying was true or I get them what they wanted. (Toope 2005, 9)

The *Iacobucci Inquiry Report* (2008) found that Almalki received the harshest treatment—the *dulab*—in order to get him to state that “his Muslim-Canadian friend had a jihad mentality” (302). Almalki was asked to repeat that he was “the right-hand man of Osama bin

Laden” (Toope 2005, 7) and to identify other Canadians such as Khadr, Arar, and Elmaati as likewise connected to Bin Laden (Iacobucci 2008, 307). Almalki told Toope that “he ‘was prepared to say more or less anything about myself’ but that it was ‘another thing to implicate somebody else I did not know or did not know to have done anything’” (Toope 2005, 7). Over the course of his incarceration, in addition to other torture practices that he endured, Almalki received over one thousand lashes with a black cable to his feet, back, and genitals. He told Toope that he told his torturers the following: “‘I will sign a piece of paper, blank, and you fill it up with whatever you want or you can tell what you want me to fill it up’; and I was really, I, got to the point where I felt I cannot take any, you know, one more lash” (Toope 2005, 11).

Almalki’s statement vividly illustrates the connection between torture—the infliction of pain—and the elicitation of false confessions that confirmed the racial t/ies made up about him by the RCMP implicating himself and others in terrorist activities.

Maher Arar

Similar to the experiences of Ahmad Abou-Elmaati and Abdullah Almalki, Maher Arar was also forced to implicate himself and others in a Canadian connection to al-Qaeda. Despite the fact that Arar did not know Nureddin, Elmaati, or Almalki well enough to make any statements about them, he was forced to implicate them in terrorist activities. Arar told Toope (2005) that each time he told the interrogators the truth, the interrogators said “you are a liar” (15). During sixteen to eighteen hours of interrogation, he was repeatedly exposed to prolonged standing, and endured beatings with a black cable that “might have been a shredded electric cable” while being asked questions, particularly about Almalki (ibid.). Toope reported Arar’s experiences as follows:

After a while, he became so weak that he was disoriented. He remembers being asked if he had trained in Afghanistan. By this time, he was so afraid and in so much pain that he

replied: “If you want me to say so.” He was asked which border he crossed and whether he had seen Mr. Almalki in Afghanistan. Mr. Arar remembers urinating on himself twice during this questioning. He had to wear the same clothes for the next two and a half months. He was humiliated. (ibid., 16)

On November 3, 2002, the SMI provided the Canadian Ambassador to Syria, Franco Pillarella, with information obtained from Arar that “he had taken Mujahideen training in Afghanistan in 1993” (O’Connor, 2006d, 34). Consular Services relayed this information to CSIS, and CSIS officials traveled to Syria on November 19, 2002 to obtain more information about Arar (ibid., 35).

Muayyed Nureddin

Muayyed Nureddin was tortured in order to confirm his association with terrorist extremists and to confirm the RCMP suspicion that he “was acting as a financial courier for individuals believed to be supporters of Islamic extremism” (Iacobucci 2008, 253). Nureddin received the cable and the cold water treatment and he was coerced to state that he belonged to a terrorist movement called “Ansari Islam” (ibid., 263–64; Toope 2005, 6–7). For ten to fifteen minutes, he received lashes to his feet with a cable that was 2.5 cm thick. During the beating he was asked questions about the US\$10,000 that he had carried with him when he left Canada (Iacobucci 2008, 325–27). His torturer accused him of lying, and said that he had a report stating that Nureddin had US\$10, 5000 and EU4, 000. On January 6, 2004, he was forced to write and sign a false confession about his life and about two other individuals whose names were not disclosed in the *Iacobucci Inquiry Report* (ibid., 264). He was also forced to write a false declaration to the effect that he had not been tortured (ibid.). Nureddin told Toope that he had “signed three documents that he had not read; he did so after hearing screams of other torture victims, including women, which he found particularly upsetting” (Toope 2005, 70).

The *Arar Commission Report* (O'Connor 2006a) and the *Iacobucci Inquiry Report* (Iacobucci, 2008) revealed Canadian Consular Services implication in the men's torture. Over the course of up to five years, these men were subjected to extreme physical and psychological violence—violence directly resulting from the actions of Canadian state officials. At the time, by law,⁵⁷ the Canadian government should have offered consular services to these Canadian citizens abroad. Yet Canadian Consular Services contributed to the men's prolonged detentions and torture. They delayed their visits and in some cases failed to visit the men, and did not work to have them released from prison. In fact, Canadian Consular Services' deliberate non-interference and inactivity prolonged the men's detentions and experiences of torture. For example, the RCMP and CSIS knew about Elmaati's detention in Syria by mid-November 2001, yet he received his first consular visit almost one year later, on August 12, 2002 when he was already in the Tora prison in Egypt. He received seven more visits.⁵⁸

CSIS advised DFAIT on May 31, 2002 that Almalki was detained in Syria (Iacobucci 2008, 204). Canadian Consular officials and SMI officials exchanged diplomatic notes and visits, but Almalki himself never received consular visits (237–44). In contrast to Elmaati and Almalki, Arar received consular visits relatively soon after his detention began. He arrived in Syria on October 9, 2002 and received his first visit from Canada's Consul to Damascus, Leo Martel, on October 23, 2002 (O'Connor 2006d, 186–87; Iacobucci 2008, 217). He received eight other visits before his release on October 5, 2003. Nureddin did not receive any consular visits.

⁵⁷ By ratifying international law such as the Vienna Convention on Consular Relations (Article 36), when a Canadian citizen is detained in prison abroad, Canadian Consular Services must attempt to locate the person, give the person access to legal representation, notify family members, and ensure adequate nutrition and equitable treatment. Where treaties are in place, a transfer of offenders can be requested.

⁵⁸ These visits took place on September 1, 2002; September 11, 2002; November 13, 2002; January 21, 2003; February 27, 2003; September 19, 2003; and December 29, 2003 (Iacobucci 2008).

Razack (2010) refers to Canadian citizen Suaad Mohamud's treatment by the state as "abandonment," "delayed security," and "moments of racial prejudice" (89–90). Such "delayed security incidents" are governed by a racially ordered sense of belonging to Canada, wherein racialized citizens are perceived as not belonging to the white settler nation and are consequently excluded from Canadian citizenship rights (90). In the case of renditions to torture, the abandonment and delayed security of Muslim men had a very specific purpose: to elicit false confessions confirming the racialized ideological labelling of Muslim males as Islamic fundamentalist terrorists, which in turn produced a seamless continuation in Canada of racialized profiling, criminalization, incarcerations, and deportations.

Foucault argues that the production of identities as essential ontological truths is key to how governmental domination and specific punitive techniques of governing are legitimized in modern societies (Foucault 1997, 147–66; Foucault 1980, 131–32). He analyzes the confession as a form of self-categorization that is caught up in forms of knowledge production about certain (sexual) behaviour, through which individuals discipline themselves and modify their conduct according to dominant morals, goals, and values (Foucault 1978, 61–62). Foucault focuses on the confession as self-disciplinary power exercised within "the authority who requires the confession, prescribes and appreciates it," in order to legitimize forms of intervention (ibid.).

In the context of renditions to torture, the confession emerges out of the sovereign power of the Canadian state, operating in the form of de-territorialized physical violence. The torture inflicted upon the men's bodies was employed to subordinate their will: not to self-define but to confirm what the Canadian state would like them to be. The men's confessions did not emerge out of actual conduct that has been deemed immoral and unacceptable, but from sovereign racialized knowledge production and the racial t/ies classifying these men as terrorists. Coercion

to false confession through torture verified and transformed the racial t/ies into ontological truths. In fact, the men's self-identification was punished, and torture was continuously inflicted onto their bodies until they falsely confessed that their actions were terrorism related. As torture on the part of the Canadian state are morally and politically unacceptable, barbaric, and illegal; in this context, the Canadian state circumvented the men's Canadian citizenship rights and human rights and de-territorialized torture in ways that depended upon and inscribed conceptions of Syria and Egypt as barbaric.

An analysis of the content and purpose of the torture reveals that the administration of sovereign violence was rendered in the geopolitical contexts of Syria and Egypt, yet never left the control of the Canadian state. Visits from CSIS, and the questions and reports the RCMP sent to the SMI, need to be understood as political tools that de-territorialized torture. While SMI agents administered the physical violence, the questions providing the content of their torturous interrogations demonstrated a direct link between the Canadian state and the men's incarceration and torture in Syria. By sending questions to SMI agents to be put to these men during their interrogations, the RCMP and CSIS set up the ideological parameters of these violent encounters, whereby the detainees were coerced to confirm the racialized and gendered racial t/ies constructed by the RCMP. Torture was inflicted onto the men's bodies in the name of and by the Canadian state from a distance—not to kill, but to keep the detainees alive for the purpose of denouncing themselves and others as terrorists.

Whenever the men tried to self-define or recant their false confessions, the torture would resume, thereby continuously imprinting an individual terrorist identity as well as a group-based terrorist identity on their bodies. For each of these four men—Elmaati, Almalki, Arar, and Nureddin—the identity transformation from innocent to Islamic fundamentalist terrorist

constituted a gendered, racialized encounter with Canadian sovereign racialized power. Sovereign power included the men in the physical and psychological violence experienced by their fellow detainees. Individually coerced confessions that confirmed the previously established racial t/ies about their identities and activities also impacted the other men's experiences of torture, as their false confessions connected them to one another as members of a Canadian terrorist sleeper-cell with links to al-Qaeda and Osama bin Laden.

Violently coercing these detainees to declare their selves and other Muslim men to be terrorists is the most insidious layer of this racialized state violence. The burden of violence was placed either on the men's surrender or on their resistance to the pain/torture inflicted on their bodies. Thus, falsely implicating themselves and other Muslim men in terrorist activities functioned as a tool through which each individual man was made responsible for the violence inflicted on his fellow detainees. The explicit affirmation of racialized classifications through coerced individual and group self-declarations—"I am a terrorist / we are terrorists"—served to exonerate and purify the Canadian state's laws, budgets, and policing practices from charges of anti-Muslim racism. The false confessions were crucial tactics for justifying racially repressive measures as a form of protectionism against Muslim fundamentalist terrorism in Canadian society. In particular, the RCMP's treatment of the false confessions as evidence provided the legitimization for expanding racialized surveillance and policing into Muslim communities in Canada.

False Confessions as Evidence

The Canadian legal system treats a confession, if made voluntarily, as the highest form of admissible evidence and as satisfactory proof that a crime has been committed by the individual who made the confession. However, the RCMP decided to treat the information given under

torture as true, uncoerced evidence. While some CSIS officers questioned the credibility of the information received from Syria—that Elmaati had planned to blow up a Canadian parliament building (Iacobucci 2008, 127)—the RCMP treated the information as factual: “The Service considered the alleged threat to Parliament Hill to be credible. In late November, 2001, the Service issued a threat assessment based on this information” (126). The RCMP compared its own racial t/ies, embedded in the questions put to Elmaati, Almalki, and Arar by SMI officers during torture, to the information received from the SMI, and concluded that the information was reliable. Justice Iacobucci elaborated on this point:

The RCMP conducted an analysis of the alleged confession which involved comparing it to the information the RCMP had previously obtained. Despite the concerns expressed by some members of the Force, and the concerns communicated to the RCMP by representatives of the Service, the analysis corroborated significant portions of the alleged confession. For example: (1) the RCMP confirmed that Mr. Elmaati had taken flying lessons in August 1999, which, in its view, corroborated Mr. Elmaati’s alleged statement that he had been instructed by his brother in February 1999 to do so; (2) the RCMP confirmed that Mr. Elmaati was a truck driver and had made several trips to Ottawa in 2001, which, in its view, corroborated Mr. Elmaati’s alleged statement that he planned to bomb the Parliament Buildings using a truck bomb; and (3) the RCMP viewed the map of Tunney’s Pasture as corroborative of Mr. Elmaati’s alleged statement that his brother had sent him the map and instructed him to select a target location. The RCMP was therefore of the view that the alleged confession was reliable and valid. (Iacobucci 2008, 128)

Translating false confessions into true statements constitutes a continuation of sovereign racialized state violence operating through an interpretive power that continued to be governed by racial logic. For example, after his consular visits with Arar, Consular Service officer Leo Martel perpetuated the notion that Arar had not been tortured. Despite the fact that his visits with Arar always took place under the surveillance of an SMI officer, Martel did not recognize Arar’s submissive demeanour as an indication that he was being tortured (O’Connor 2006d, 189). Other Consular Service officials also chose to believe that Elmaati was not tortured when he told them

that he was treated well (Iacobucci 2008, 157). Elmaati was described as being “in good physical condition, good spirits,” “calm,” and “rational” (ibid.).

These assessments by Consular Service officials, which favoured the belief that no torture was being administered, were situated within the broader racial politics of state governance: racial t/ies were assumed to be ontological truths for the purpose of legitimating state violence as a protectionist measure, thereby creating impunity for and the continuity of sovereign racialized state violence. The view that the false confessions were made voluntarily, by rational men in good spirits, was shared by other sections of Project A-O Canada, DFAIT officials, the Solicitor General, Department of National Defence, Privy Council, Transport Canada, and Canada Customs (Iacobucci 2008, 157). The false confessions were then used to launch further criminal investigations in Canada, to search for so-called evidence: “When applying for search warrants the RCMP relied on information derived from Mr. Elmaati’s alleged confession in Syria” (138). For example, false confessions were used to seek warrants to enable searches of Elmaati’s friends’ and family’s houses. Search warrants for seven residences were granted and executed (138–42) and the expansion of police power into the economic, social, and cultural fabric of these men’s families and Muslim communities in Canada was thereby legalized. The stain of the violent crime of terrorism was imprinted onto Muslim and Arab male bodies, and onto the bodies of their families and communities. Furthermore, racial repression as a form of cultural ordering was legitimized, legalized in Canadian society.

Conclusion

Canadian renditions to torture constitute a modern imperial project whereby local colonial relations were negotiated on a transnational scale and were rendered into the geopolitical contexts of Syria and Egypt. I have outlined four processes of sovereign racialized (i.e.

colonial) violence that can be considered the hallmarks of modern imperialism. Canadian renditions to torture operated as a legitimizing process for justifying local race-based authoritarian practices through the production of the four Muslim-Canadian citizens—Elmaati, Almalki, Arar, and Nureddin—as Islamic fundamentalist terrorists that was organized on a transnational scale and transported to Syria and Egypt. Modern imperialism was organized through a variety of practices and processes whereby state centered sovereign racialized violence is de-centered from the Canadian state by circumventing Canadian citizenship rights; distributing terrorist production practices to “Eastern” countries; and by including ‘the colonized’ in colonial processes and racial repression. These de-centered forms of Canadian state violence served to promote Canada as a multicultural democracy on the heels of implementing increased racialized surveillance, criminalization without evidence, indefinite detention, and deportation.

The first process of sovereign racialized violence showed how policing practices shifted from evidence-based investigations to terrorist-producing practices. Muslim-Canadian citizens’ ordinary lives became the target of knowledge-production practices. Their income-producing and other everyday activities were interpreted as terrorist conduct. In the absence of any evidence, the RCMP created terrorist identities through a web of racial t/ies to produce Elmaati, Almalki, Arar, and Nureddin as Islamic fundamentalist terrorists connected to the al-Qaeda movement. In fact, the RCMP circumvented the legal imperatives associated with the men’s Canadian citizenship status, by assigning the men to concrete positions in the al-Qaeda movement and placing them on international watch lists. At this moment, colonial violence took a transnational turn: state violence was de-centred from the Canadian state, and inscribed into the geopolitical contexts of Syria and Egypt with the effect that cultural inferiority and barbarism could now be

associated with “Eastern” countries and “Western” (i.e., Canadian) respectability as a law-abiding, multicultural, liberal democracy could be narrated.

The second process showed how in a sense, the men’s Canadian citizenship became a liability as they without evidence of a terrorist crime committed could not be detained in Canada and deported from Canada. Sovereign and (self-) disciplinary policing technologies created an economic, social and geopolitical environment that prompted Elmaati’s and Almalki’s self-deportations, and prevented Arar and Nureddin from returning to Canada. The RCMP’s panoptic policing triggered the men’s detentions in Syria. The third process investigated the purpose and content of torture. The content of the men’s torture demonstrates that the purpose of the pain inflicted on their bodies by SMI officials was to confirm the RCMP’s racialized classifications of the men as Islamic fundamentalist terrorists and to confirm the existence of a Canadian sleeper-cell connected to al-Qaeda. These identity transformations that took place in Syria and Egypt were crucial for creating legitimacy of and expanded police and security apparatus in Canada. The fourth process of sovereign racialized violence includes the ways in which false confession were used as evidence to further inscribe, racialized surveillance and policing into Muslim communities in Canada.

The representation of Muslim men as terrorists, particularly the de-territorialized use of torture to coerce false confessions, whereby the four men became self-referential terrorist subjects; the implication of the men themselves and their fellow detainees in each other’s torture were crucial for this modern imperial project. The transformation of the men’s individual and group identities—from men innocent of terrorism to terrorist(s)—was especially important. It became the rationale that contributed to be able to portray Canada as multicultural liberal democracy while manifesting anti-Muslim state-centred police practices as necessary

protectionist measures against Islamic fundamentalist terrorism. The police state apparatus was expanded, as was the power of the police to profile, preemptively criminalize, and detain individuals based on their political dissent and religious affiliations.

The detention and torture of Canadian citizens in Syria was initially kept from the public. However, his wife, Monia Mazigh, brought Maher Arar's detention to the public's attention. As previously mentioned, she had also been labelled as an "Islamic extremist individual suspected of being linked to al-Qaeda" (O'Connor 2006d, 13), but had never been prevented from returning to Canada, nor detained in Syria. From the day her husband disappeared, she lobbied for his return to Canada (Mazigh 2008, 46–80). She held vigils to interest the public in her husband's ordeal, involved the media, retained lawyer Michael Edelson, and contacted politicians—Liberal Member of Parliament Marlene Catterall, New Democratic Member of Parliament Alexa McDonough, Director General of the Consular Services Bureau in Ottawa Gar Pardy, and Foreign Affairs Minister Bill Graham. She sought to convince the then Liberal Canadian government to act on her husband's right as a Canadian citizen to be repatriated to Canada (Mazigh 2008, 57–63, 80–104).

Through Mazigh's efforts to keep Arar's detention in Syria in the public eye and produce political pressure to bring her husband home, Arar, the third Canadian to be incarcerated in Syria, was the first person released from Far' Falastin prison. He was released on October 5, 2003, and was accompanied on his return to Canada by Martel (Iacobucci 2008, 217). On November 4, 2003, one month after his return, Arar gave a press conference in which he described his ordeal. He revealed to the Canadian public that he had been tortured while imprisoned in Syria, and stated his belief that the questions asked by the FBI while he was in American custody must have originated with Canadian officials. Arar also revealed to the public

that other Canadian citizens were incarcerated in Syria. He told the public that he had met another Canadian citizen, Almalki, in Far' Falastin. He stated that Almalki, who was still in Syrian custody, had also been tortured (Arar 2003).

Directly after this press conference, Minister Graham met with the Syrian ambassador to protest the treatment of Canadians in Syria: "After the meeting the Minister issued a press release calling on the *Syrian* [emphasis added] government to take allegations of torture seriously and quickly investigate all the details of the detention of Mr. Arar and others in Syria" (O'Connor 2006b, 253). However, it was not until January 11, 2004, two months later, that Elmaati was transferred to an Egyptian state security prison. He remained there for three days before his release was ordered by the Egyptian Ministry of Interior on January 14. He stayed with his mother and relatives in Egypt while recovering. On January 25, he approached the Canadian Embassy in Cairo to talk about the torture he had experienced. Later, on March 7, he was scheduled to return to Canada via Amman and Frankfurt, but Canadian state officials had not yet removed his name "from a list of persons of interest," and he could not return to Canada until March 29, 2004 (Iacobucci 2008, 192).

On January 13, 2004, Nureddin was released to Martel, and returned to Canada on January 15, 2004 (Iacobucci 2008, 330–31). The Syrian government put Almalki on trial for suspected terrorist activities. He was released on bail on February 29, 2004. On March 10, he was cleared of all charges by a Syrian court. On July 28, he finally left Syria (*ibid.*, 322).

While all four men were finally returned to Canada after years of imprisonment and torture in Syria and Egypt, their ordeals did not end. The RCMP continuously leaked lies to the press (O'Connor 2006d, 45–47) and, citing national security, suppressed evidence that potentially showed that the men they had called terrorists were in fact *not* terrorists.

In particular, Arar was the target of continued lies. For example, shortly after his return, “unnamed government officials” (O’Connor 2006d, 45) leaked untrue information about Arar to the press. Some of the press releases portrayed Arar “as someone who had been involved in terrorist activities” and as someone who had participated in a terrorist training camp in Afghanistan (45–46). Before and after Arar’s release in 2003, information was leaked to the press—information that could only have come from the RCMP—portraying Arar as a Muslim fundamentalist terrorist with links to al-Qaeda, and as a liar. For example, in *The Globe and Mail* on October 10 Jeff Sallot (2003) cited unnamed government officials as having stated that Arar was not tortured. On October 23, a *CTV* news broadcast by Joy Malbon (2003) stated that, according to “senior government officials in various departments,” Arar had information about al-Qaeda sleeper-cells operating in Canada. However, the most vicious assault against Arar after his return to Canada appeared shortly after his statement to the press. On November 8, 2003, the *Ottawa Citizen* published Juliet O’Neill’s (2003) front page *Ottawa Citizen* article, “Canada’s Dossier on Maher Arar,” claimed that “the existence of a group of Ottawa men with alleged ties to al-Qaeda is at the root of why the government opposes an inquiry in the case”. She also described details of Arar’s false confession as legitimate evidence that Arar and Almalki were al-Qaeda operatives (O’Connor 2006c, 485–91).

With the help of lawyers, NGOs, politicians, and concerned individuals, Arar and Mazigh lobbied for a public inquiry into Canadian officials’ actions related to his detention in the United States and detention and torture in Syria. After a period of political struggle and parliamentary debates, the *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* was announced in January 2004. The Honourable Dennis O’Connor was appointed by the Liberal government as the Commissioner of the Arar Inquiry. Two years later, on December 11,

2006, the Conservative government appointed the Honourable Frank Iacobucci as the Commissioner of the *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati, and Muayyed Nureddin*.

The next two chapters will provide a discourse analysis of the ways in which the men's detentions and experiences of torture in Syria and Egypt were explained to the public in the *Arar Commission Report* (O'Connor 2006a) and the *Iacobucci Inquiry Report* (Iacobucci 2008).

CHAPTER 4

THE ARAR COMMISSION:

LIBERAL SELF-REFLECTIVE RACIALISM AND CANADIAN RESPECTABILITY

Dear Mr. Arar:

On behalf of the Government of Canada, I wish to apologize to you, Monia Mazigh and your family for any role Canadian officials may have played in the terrible ordeal that all of you experienced between 2002 and 2003.

Although these events occurred under the last government, please rest assured that this government will do everything in its power to ensure that the issues raised by Commissioner O'Connor are addressed.

I trust that, having arrived at a negotiated settlement, we have ensured that fair compensation will be paid to you and your family. I sincerely hope that these words and actions will assist you and your family in your efforts to begin a new and hopeful chapter in your lives.

Yours sincerely,
Prime Minister Stephen Harper

As one of the outcomes of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher (2004-2006), this letter to Maher Arar and Mona Mazigh, published on the government website, served as Prime Minister Stephen Harper's apology (Harper 2007); together with the \$10.5 million Arar received in compensation for his detention and torture in Syria. The apology and the compensation emerged out of political struggle over launching an inquiry that would look into Canadian state officials' implication in Arar's detention and torture in Syria.

After Arar's highly publicized return to Canada, outrage and political discontent continued over Canadian officials' conduct in relation to his detention in the United States and

deportation to Syria. His wife, Dr. Monia Mazigh, called for a public inquiry into the Canadian officials' actions. With the help of NGOs, human rights organizations, lawyers, individual politicians, and media outlets, increasing pressure was placed on the federal government. The Liberal government had initially "adamantly rejected calls for a public inquiry" during parliamentary debates in the House of Commons (Abu-Laban and Nath 2007, 91). For example, "then Prime Minister Jean Chrétien stated that there [was] no need for a Commission of Inquiry because the RCMP Public Complaints Commission was looking into the case" (ibid., 91). However, several Liberals broke party ranks and voted for the New Democratic Party's (NDP) motion to launch an inquiry. By November 2003, the House of Commons Foreign Affairs Committee publicly supported the inquiry. The Liberal government announced the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar on January 28, 2004. Some Conservative party members attacked the Liberal government's decision as a "ruse" to delay discussion of the scandal until after the election in 2006 (ibid.).

The Honourable Dennis O'Connor was appointed lead investigator. On September 18, 2006, after two years of public and in-camera hearings, and having reviewed thousands of documents and submissions, Judge O'Connor released his report.⁵⁹ The *Arar Commission Report* cleared Arar of any involvement in terrorism: "there is nothing to indicate that Mr. Arar committed an offence or that his activities constitute a threat to the security of Canada" (O'Connor 2006d, 1). Judge O'Connor assigned responsibility for Arar's deportation and

⁵⁹ The report consists of several documents: *Report of the Events Relating to Maher Arar*, O'Connor 2006a; *Report of the Events Relating to Maher Arar: Factual Background Volume 1*, O'Connor 2006b; *Report of the Events Relating to Maher Arar: Factual Background Volume 2*, O'Connor 2006c; and the *Analysis and Recommendations*, O'Connor 2006d. His analysis and recommendations were grounded in the findings of the *Factual Background Volume 1* (O'Connor 2006b) and *Volume 2* (O'Connor 2006c). The *Analysis and Recommendations* (2006d) focused on the actions RCMP officers, CSIS agents, and DFAIT officials in relation to Arar's detention and torture in Syria.

detention in Syria to the conduct of Canadian officials. In particular, he stated that by falsely labelling Arar as a terrorist—providing false information about him to the United States, putting him on terrorist watch lists, and furnishing the SMI with interrogation questions to put to him—Canadian officials engaged in actions that “very likely” led to Arar’s ordeal (12–17).

At the time the apology for Arar’s ordeal was given, a Conservative government led by Stephen Harper, who assumed the office of Prime Minister in February 2006, had replaced the Liberal government. Harper’s apology was used to bolster his party’s popularity (Abu-Laban and Nath 2007, 92). In it, he did not pass up the opportunity to remind the public that the events in question had occurred during the previous government (*ibid.*). Harper’s apology lacked sincerity. During settlement negotiations, his government tried to undermine, deny, and censor Judge O’Connor’s findings. For example, the Minister of Public Safety and Emergency Preparedness, Stockwell Day, stated: “I want to highlight that the inquiry has determined . . . [that] there is no evidence that Canadian state officials participated or acquiesced in the American authority’s decision to detain Mr. Arar and move him to Syria” (Abu-Laban and Nath 2007, 92). By stating in his apology that Canadian officials “*may* have played” a role in Arar’s detention and torture in Syria, Harper, like Day, resisted taking even partial responsibility for Arar’s ordeal. Harper’s comments implicitly sanctioned the sovereign racialized policing practices, and implicitly condoned the RCMP’s attempts to continue to discredit Arar as an “Islamic fundamentalist terrorist.” Nonetheless, Arar was compensated “without dragging the matter through litigation” (Macklin 2008, 18).

The Conservative government’s denial of responsibility appears to contradict the findings of the *Arar Commission Report* (O’Connor 2006a). However, an analysis of the discourse through which Canadian officials’ actions were explained to the public reveals that, although

Judge O'Connor did acknowledge that officials were partially responsible for Arar's treatment, the existence of systemic anti-Muslim racism was obscured in the *Arar Commission Report* (2006a). A pattern emerged in the report whereby admissions of partial responsibility were accompanied by liberal explanatory rationalities, trivializing Canadian officials' involvement in Arar's detention and torture. In response to the public outrage over sovereign racialized state-organized violence, the events of Arar's detention and torture were narrated so as to preserve and re-establish Canada's reputation as an internationally respected, multicultural, law-abiding, liberal, democratic state. In fact, the Arar Commission and the report that followed produced impunity for sovereign racialized state violence.

In this chapter, I provide an analysis of the explanatory discourses put forward in the *Arar Commission Report* (O'Connor 2006a). I use the four processes of sovereign racialized state violence, discussed in Chapter 3 as (a) the production and distribution of racial t/lies; (b) Canadian citizenship rights as a liability; (c) the politics of pain; and (d) false confessions as evidence, as a backdrop to my analysis of how Canadian renditions to torture were explained to the public. I treat the *Arar Commission Report* as what Foucault (1997) referred to as a "regime of truth," representing a variety of competing discourses—stakeholders' initial submissions by for example Amnesty International and Arar's legal team. I examine the content of these submissions, which tried to expose little-known practices amounting to rendition to torture; to name the racism underwriting policing practices that led to Arar's ordeal; and to influence the inquiry's mandate, process, and outcome. I draw on Stuart Hall's (2002) work on the "politics of representation" to investigate the ways in which meaning was given to the four processes of sovereign racialized state violence; and how some intervenors' discourses were selectively integrated. Similarly to Razack (2004) who in the context of the *Somalia Commission of Inquiry*

Report (1997) analysed discourses that obscured racism, I examine the political rationalities that explained colonial violence in ways that made racism compatible with liberal rule. In this chapter, I also use Scott's (1999) concept of "colonial governmentality" to examine the explanatory discourses through which processes of sovereign racialized state violence were metamorphosed into liberal acceptable contexts.

I have divided this chapter in two sections. The first section examines the politics and power relations surrounding the Arar Commission Inquiry process. Further, I investigate the ways in which non-government organizations that had been granted intervenor status tried to bring attention to human rights violations, systemic anti-Muslim racism and racialized policing practices to the forefront of the Inquiry. In section two, I explore how the explanatory discourses put forward in the *Arar Commission Report* (2006) worked to make racism disappear or incidents of racial violence were transformed into something else, something the public could accept.

I show how Canada's image as a multicultural, liberal democracy was re-invigorated through a discursive form of modern imperialism best described as "liberal self-reflective racialism." In this context, I describe liberal self-reflective racialism as a form of "colonial governmentality" that acknowledges state officials' misconduct, but explains racialized policing technologies with reference to liberal values such as individual officers' lack of training, education and experience – a practice that makes racialized state violence compatible with liberal rule. This is combined with discourses through which responsibility for Arar's deportation, detention and torture was de-centered from the Canadian into the geo-political contexts of the U.S. and Syria. Liberal self-reflective racialism works to frame and contain the public's perception and understanding of sovereign racialized state violence in ways that obscures and

thereby *reproduces* systemic anti-Muslim racism *and* Canada's national narrative as multicultural, human-rights abiding, liberal democracy.

The Politics of Inclusion

In the Canadian context, an inquiry is a process through which the white settler state appears as a liberal state by investigating government officials' misconduct and systemic injustice, with the possibility to implement social change through policy recommendations. It is a response to the complaints of "the governed"—that is, popular demands for an investigation. By appointing a judge as the head of the inquiry, by holding public hearings, and by including the injured parties in the inquiry process, it presents itself as an "independent and impartial" process (O'Connor 2006d, 293; Macklin 2008, 11). However, the inquiry process never leaves the grip of the state and the governing party politics of the state. For example, under the *Federal Inquiries Act*, the Governor in Council, acting on recommendations of the federal cabinet, holds the power to call public inquiries. Similarly, the Governor-in-Council (federal cabinet) on recommendations of then Minister of Public Safety and Emergency Preparedness determines the Terms of Reference through which the Commissioner is appointed and the mandate is outlined.

The mandate of the Arar Inquiry was determined by then Minister of Public Safety and Emergency Preparedness, Anne McLellan. Judge O'Connor's mandate in relation to the "Factual Inquiry" was articulated as follows:

to investigate and report on the actions of Canadian officials in relation to Maher Arar, including with regard to the detention of Mr. Arar in the United States; the deportation of Mr. Arar to Syria via Jordan; the imprisonment and treatment of Mr. Arar in Syria; the return of Mr. Arar to Canada; any other circumstance directly related to Mr. Arar that Justice O'Connor considers relevant to fulfilling his mandate. (O'Connor 2006d, 280).

This mandate constitutes an investigative and possibly disciplinary mechanism directed at state officials. The mandate at first glance appears broad enough to give Judge O'Connor the discretionary power to look into the institutionalized race-politics underpinning state officials' conduct. However, this task was not directly spelled out and thus did not include O'Connor's mandate. In fact, the same Liberal party government that both legitimized and provided the legal and fiscal structures within which Arar's racialized and gendered experiences occurred determined the mandate and appointed Judge O'Connor to look over the inquiry process.

As Commissioner, he had the discretionary power to determine if and how to include issues related to systemic racism; who would be included in the inquiry process and evidentiary hearings; how to interpret statements; and to report on the outcome of the Inquiry. A Liberal appointee himself, Judge O'Connor appointed a liberal-leaning counsel team that helped to conduct the investigation.⁶⁰ Judge O'Connor granted different participatory statuses to various groups and individuals. There were three categories for eligible participation in the Inquiry: (a) party standing, (b) intervenor, and (c) witness (O'Connor 2006d, 285–286).⁶¹ In addition to the Attorney General of Canada and associated counsel, Judge O'Connor granted Arar, represented by his legal team, full party standing in the Inquiry. Despite intervenors' requests that the Inquiry include Canadian citizens Ahmad Abou-Elmaati, Abdullah Almalki, and Muayyed Nureddin

⁶⁰ For example, Judge O'Connor hired Paul Cavaluzzo and Brian Govern, both liberal-leaning civil and human rights lawyers, as lead counsel. Both men were also lawyers in the Walkerton Inquiry, which Judge O'Connor oversaw as Commissioner. Other lawyers were also part of the Commission team: Mark David (litigation lawyer), Veena Verma (labour rights lawyer), and Lara Tessarg (environmental rights lawyer).

⁶¹ Judge O'Connor granted party standing to "those with a substantial and direct interest in all or part of the subject matter of the Factual Background Inquiry," intervenor standing to those who did not have a substantial and direct interest, but had a "demonstrated concern in the issues raised in the mandate and a perspective and/or expertise that I considered would be of assistance to me in carrying out the mandate," and witness status to "those who would be entitled to representation by council when giving evidence" (O'Connor 2006d, 285–86). The difference between party standing and intervenor standing is that those with the former status could be involved in all aspects of the hearings (including the examination of witnesses), whereas those with intervenor standing could only participate by making submissions to the inquiry (286).

(given “the many similarities” and “a repeating pattern” shared by their cases and Arar’s) they were refused full party standing (O’Connor 2006d, 286; O’Connor 2006c, 650). Almalki and Elmaati “received limited standing that entitled them to participate in the evidentiary process” (O’Connor 2006d, 298). Judge O’Connor justified these decisions as follows:

Since the investigation of Mr. Arar was connected with his association with these two men (Almalki and Elmaati), it was necessary to hear evidence during the Inquiry that described the basis of the Project A-O Canada investigation as it related to those associations. I discuss some of the evidence at different points in the *Report*. Inevitably, I also heard evidence about some of the information collected and investigative steps taken with regard to Messrs. Almalki and Elmaati. However, the mandate for the Factual Inquiry directs me to investigate and *Report* on the actions of Canadian officials in respect of Mr. Arar and no one else. (267–68)

Arar never testified nor participated in the hearing process. He was still considered a terrorist threat and for national security reasons was prohibited from testifying in the hearing process. Arar’s experiences entered into the process as a summary, submitted by his legal team through their initial submission to the inquiry and expressed in the expert opinion of Professor Stephen Toope (Toope Report 2005). The power to produce knowledge about Arar’s experiences was transferred to Toope — an expert on human rights and international relations. Toope was hired to determine if Arar, Almalki, Abou-Elmaati, and Nureddin were tortured, and was interviewed as an expert witness in the public hearings. U.S. and Syrian officials were invited to participate in the Inquiry, but refused. Forty-nine RCMP and CSIS officers and DFAIT representatives, officials whose conduct was in question, were interviewed as witnesses (O’Connor 2006d, 279, 283–85, 295).

Despite Judge O’Connor’s proclamation that “this is a public inquiry [and it is] therefore essential that the proceedings be as transparent, accessible and open to the public as possible” (282), only five RCMP officers were interviewed during public hearings, between May 11 and August 31, 2005 (298). The majority of interviews with RCMP officers were conducted in

camera (294). Transcripts or summaries of the transcripts of the in-camera hearings were made accessible to all participants and intervenors, but the transcripts made available to the public had most of their content redacted. National security concerns were cited as the reason for this lack of public transparency (283). Judge O'Connor referred to the Order in Council⁶² as the authoritative guidelines and disciplinary tools that established and set out the direction of the Inquiry. This document required him to “prevent [the] disclosure of information that, disclosed, would be injurious to international relations, national defence or national security” (O'Connor 2006d). These guidelines ultimately influenced Judge O'Connor's use of section 38 of the *Canada Evidence Act* in relation to the public disclosure of information regarding the involvement of Canadian state officials in Arar's detention and torture in Syria.

In addition to the Liberal government's directives, throughout the inquiry process there was a struggle over public transparency. Judge O'Connor, who was trying to fulfill the political mandate of the Inquiry for public transparency, and the security apparatus—the RCMP and CSIS—resisted public disclosure. In the name of national security confidentiality, the Inquiry's mandate—with respect to public transparency and the participants' rights to see *all* available evidence and to challenge testimony—was infringed upon. Significantly, Arar, who had been granted full party standing, did not receive the security clearance from CSIS that would have allowed him to access information from the in-camera hearings—because he had been classified as a terrorist (O'Connor 2006d, 286).

⁶² Order in Council is an administrative decision that is defined by federal cabinet and issued by the Governor General of Canada. At the time the federal cabinet was constituted by a majority of Liberal ministers and chaired by Liberal Prime Minister Paul Martin.

Judge O'Connor granted sixteen organizations intervenor status. Representatives of government institutions such as the Ottawa Police Service (OPS), the Ontario Provincial Police (OPP), and NGOs including Amnesty International (AI), the Law Union of Ontario (LUO), the Canadian Council on American Islamic Relations (CAIR-CAN), the Canadian Arab Federation (CAF), the Muslim Community Council of Ottawa-Gatineau (MCCO-G), the Redress Trust (REDRESS), the Association for the Prevention of Torture (APT), the World Organization Against Torture (OMCT), the Council of Canadians, the Polaris Institute, the Canadian Labour Congress (CLC), the Centre for Constitutional Rights (CCR), the British Columbia Civil Liberties Union (BCCLA), and the International Civil Liberties Monitoring Group (ICLMG) were allowed to make submissions to the Inquiry.

The discourses that emerge in the initial submissions are not unfiltered articulations of investigative requests related to Arar's experiences. They are compelled by dominant power relations, and need to be considered as ideologically aligned with— yet not necessarily ideologically in sync with— dominant views. They must be considered as censored discourses; some try to preserve and maintain, while others try to rupture and displace, the political conditions—the colonial relations—that led to Arar's detention and torture. These discourses are the outcomes of political deliberations that take into account not only what can and cannot be said in that certain historical and geopolitical context, but also what was most likely going to prove liberal acceptability. In fact, the Liberal party politics informing the decisions made by Judge O'Connor and the counsel team constituted a form of disciplinary power—a panoptic gaze—through which the discursive terrain of the inquiry (what was said and how it was said) was established.

The following sections focus on the intervenors' initial submissions to the inquiry, which were made available to the public by Arar through his website.⁶³ I show how, in these opening statements, Arar's lawyers and some NGOs engaged in a struggle to bring Arar's experiences of detention and torture into understandings of institutionalized anti-Muslim racism.

The Struggle over Racism and Complicity in Torture

Intervenors such as the Canadian Council on American Islamic Relations, the Canadian Arab Federation, and the Muslim Community Council of Ottawa-Gatineau tried to influence the Inquiry so that racism and Canadian state officials' complicity in torture could not be easily dismissed from the inquiry. In the Canadian context, this is not an easy task as the processes under investigation are symbolic of the tension that arises when a white settler state produces colonial realities yet tries to claim a national identity as a human rights abiding and non-racist state. To lobby the Commissioner to not take a colorblind approach that would make race disappear from the inquiry and dissociate racism from state officials' conduct, most of the intervenors engaged in discourses that perpetuated the Canadian national narrative as a multicultural liberal democracy.

Arar's Legal Team

Arar's legal team chose to start their submission by highlighting Arar's Canadian hegemonic masculine enactments that make him a "good Canadian citizen other". Arar's legal team narrated his life as an immigrant success story: Arar was depicted as the embodiment of dominant Canadian national values; a hard-working immigrant, an entrepreneurial Canadian

⁶³ Arar's website, which provided information about his ordeal, his legal team, the Arar Commission, as well as updates and documentation in relation to his civil case in the United States, was shut down in 2013.

citizen, and a highly educated, heterosexual family man. In their opening statement, Arar's legal team emphasized that:

He work[ed] hard to get through school and graduate[d] with a Master's Degree in telecommunications engineering. He marrie[d] Monia, herself an immigrant who later earned a PhD in financial management, and together they ha[d] two children. He move[d] to Ottawa, seeking better employment opportunities, and spen[t] a period of time in Boston before returning to Ottawa to continue working as a consultant. (Waldman et al. 2004, 7)

This statement is grounded in the sovereign racialized violence Arar experienced by being labelled a terrorist and tortured to falsely confess to be a terrorist. This depiction of Arar tried to dispel the notion that Arar is a terrorist. Significantly, as I showed in Chapter 3, exactly the same subject positions that, in conjunction with his physical and religious traits, were used by the RCMP to construct him as an Islamic fundamentalist terrorist, were now used to portray him as an ideal Canadian citizen: somebody who is highly educated, a heterosexual family man and an entrepreneur. His Arab background and Islamic faith, facts that triggered his ordeal, were not mentioned. As Arar's Muslim and Arab background continues to represent "the other" and "the Islamic fundamentalist terrorists", Arar's lawyers (even in a venue such as the inquiry that could ameliorate Canadian state racism) have to erase Arar's Muslim religious affiliation. The emphasis on Arar's heterosexual and educational and entrepreneurial success, and the denial of his Arab national background and his affiliation to the Islamic religion, are discursive strategies that represent Arar as a model *Canadian* citizen, one who is deserving of the citizenship rights that were previously denied to him. As these discourses call up dominant understandings of the ideal Canadian citizen, they also reproduce racialized, gendered and hetero-sexualized delineations of who does and who does not belong to Canada.

Furthermore, Arar's legal team perpetuated the dominant assumption that his rights as a Canadian citizen had been violated by U.S. and Syrian authorities:

While transiting through the United States, [Arar] was detained by U.S. authorities and was held and questioned for twelve days. Although Mr. Arar is a Canadian citizen, U.S. authorities decided to send him to Syria. The United States has a policy of rendering terrorism suspects to despotic regimes where they can be interrogated under torture in order to extract information. (Waldman et al. 2004, 7)

In choosing this tactic—emphasizing Arar’s status and rights as a Canadian citizen—Arar’s legal team played on previously established notions of “us” versus “them.” The team implied Canadian cultural superiority by emphasizing Arar’s illegal detention in the United States, and by stressing his deportation to Syria. They highlighted that Arar’s most horrific experiences were administered by “despotic regimes,” “tyrannical governments that plague our planet” (Waldman et al. 2004, 7). Arar’s lawyers’ use of these discourses was in alignment with previously established understandings of Arar as a victim of the American extraordinary rendition program.

In this way, after they had indirectly established Canada as a superior geopolitical space, Arar’s lawyers asked the judge to investigate “the clear and undisputed connection [between] Canada and actions by government officials” and Arar’s detention and torture (Waldman et al. 2004, 7). The lawyers indicated that Canadian officials’ conduct had triggered Arar’s ordeal, when they specifically asked Judge O’Connor to investigate Canadian officials’ “shoddy intelligence work, racial profiling, reliance on statements given under torture and . . . refusal to interview Mr. Arar after he had retained counsel” (8). Furthermore, they demanded that the inquiry include in its mandate events related to information sharing with the United States, CSIS officials’ visits to Syria, and DFAIT’s actions during Arar’s detention in the United States and later in Syria. Arar’s legal team also asked concrete questions in regards to the RCMP’s having given credence to confessions from persons who were subjected to torture, as well as the RCMP’s attempts to discredit Arar after his return to Canada (8–10). These questions are clear indications that the lawyers wanted to include facts that proved that Canada ran its own rendition to torture program through which Arar was produced as an Islamic fundamentalist terrorist.

These questions were in alignment with what Arar wanted to get out of a federal inquiry. For example, Arar stated that in calling for an inquiry he had three objectives: first, he believed that a public inquiry would “clear [his] name”; second, he hoped to “hold those people [Canadian state officials] to account”; and finally, he wanted “to make sure that this does not [his detention and torture] happen to any other Canadian” (Arar 2004).

Intervenors: CAIR-CAN, CAF, and MCCO-G

While Arar’s legal team specifically focused on their client’s experience as an individual, the Canadian Council on American Islamic relations (CAIR-CAN), the Canadian Arab Federation (CAF), and the Muslim Community Council of Ottawa (MCCO-G) tried to bring systemic anti-Muslim racism to the forefront of the inquiry. For example, the lawyers representing CAIR-CAN and CAF, Khalid Baksh and Malvyn Green (2004), critiqued how some of the post-9/11 legal and policy shifts had disproportionately affected Muslim and Arab communities. They stated that Arab and Muslim communities had become fearful of police harassment as a result of a pattern of inappropriate questioning by CSIS and RCMP officers, including visits at home and at work, interviewing family members and neighbours, and racial profiling (*ibid.*). They pointed out that policing practices that targeted Arab and Muslim communities constituted forms of racialized discrimination, which served to erode civil rights and the rule of law “for Muslims and Arabs across the country” (3). The lawyers pointed out, in the post-9/11 context, Muslim and Arab communities had experienced a climate of fear related to state violence. The lawyers noted that institutional anti-Muslim racism had affected Arab and Muslim communities in Canada, which had then become the target of unwarranted and excessive state scrutiny. Baksh and Green asked Judge O’Connor to look into systemic issues related to Arar’s detention and torture, such as information-sharing between Canada and foreign

governments, CSIS and RCMP officials' conduct, "the use of racial profiling as an investigative tool," "oversight and accountability" mechanisms in national security investigations, and "the effect of anti-terrorism legislation on Canadian Muslim and Arab communities" in general (6). They called for a review of the *Anti-terrorism Act* (2001) and the amendments it triggered, particularly in the context of security certificates (4). They raised concerns that the *ATA* had dishonoured Canadian values such as democracy, human rights, and pluralism.

Baksh and Green framed their requests by reasserting Canada's national image as a multicultural, liberal democracy: they stated that "democratic and legal rights and liberties, pluralism, respect for human dignity and the rule of law are the principles that define us as Canadians" (Baksh and Green 2004, 1). They point out that these liberal principles had been sacrificed in the fight against terrorism. In their submission, the authors perpetuated the notion that the Canadian state was a law-abiding, multicultural democracy between World War II until 9/11, but had since "lost its character and identity and became a state that represses democratic rights and freedoms" (1). They referenced experiences of Japanese-Canadians in World War II, to point to Canada's history of giving in to "repressive impulses and the selective suspension of civil liberties in the face of heightened security concerns" (2). These statements produce the notion that since post WWII, Canada is a multicultural (non-racist), liberal democracy; thus disregarding systemic racisms continuously operating in Canadian state institutions, in law and policy.

The MCCO-G, represented by their lawyer, Colonel (Ret'd.) Michel W. Drapeau, requested that the inquiry investigate the Arar incident within the broader context of Canadian Muslim communities' experiences of discrimination by intelligence and law enforcement

agencies “on the basis of religion,” in light of Canada’s identity as a multicultural nation (Drapeau 2004, 3). Drapeau began his submission thus:

Muslims have been present in Canada for over one hundred and fifty years. Through the years, Muslims have immigrated to Canada for one overarching reason: the democratic and human rights afforded to Canadian citizens are second to none in the global village. And, Canadian citizenship represented a near certain guarantee that one could raise his family in safety and security and free from prejudice, intolerance and racism found elsewhere, even in established democracies. (ibid.)

Drapeau (2004) perpetuated the notion of Canada as a politically exceptional space, particularly in its manifestation of democratic principles concerning race politics. He also affirmed the Canadian state as non-racist and democratic that has lost its liberal identity in a time of crisis. For example, he emphasized how post-9/11 legal shifts triggered by the *ATA* had eroded rights “enshrined in the Canadian constitution,” rights that, it had been thought, would “prevail no matter what” (ibid.). He argued that Arar’s experiences had illuminated “the permeability of the protective legal walls in terms of basic human rights”—rights that, in fact, “ha[d] been shown to be rather fragile and porous” (3).

Drapeau (2004) further pointed out that the media and national security agencies had manufactured a distorted image of Muslim communities in Canada. Using rhetoric similar to that employed by Chrétien (regarding good versus bad Muslims), Drapeau emphasized that Muslims in Canada were not terrorists, but were also affected by Islamic fundamentalist terrorism, and had an interest in the fight against terrorist violence. He highlighted statistical evidence about the diversity of Muslim communities, their educational achievements, and their contributions to Canadian society (19–24).

Drapeau (2004) articulated major concerns about the individualizing nature of the inquiry. He too wanted to bring systemic anti-Muslim racism to forefront of the inquiry. He called the inquiry

. . . unduly narrow in scope in concentrating on what happened to Mr. Arar as opposed to what has happened and is happening to members of the Canadian Arab and Muslim community in Canada because, we are of the firm belief, the events surrounding the targeting, surveillance, arrest and deportation are symptoms of a larger campaign against Islamic people. (6)

He asked Judge O'Connor to investigate what happened to Arar not as an "isolated, one-off mischance" but as "part of a pattern" that was "the result of the unchecked actions of a security regime which has given 'carte blanche' to police and security officials in the post-September 11, 2001 tragedy" (69).

Intervenors: The Redress Trust, APT, OMCT, AI, ICLMG, and BCCLA

The joint submission made by the Redress Trust, the Association for the Prevention of Torture (APT), and the World Organization Against Torture (OMCT), presented by David Crossin and Kevin Woodall (2004); and submissions made by Amnesty International (AI), the International Civil Liberties Monitoring Group (ICLMG), and the British Columbia Civil Liberties Association (BCCLA) were very similar. All were concerned with the human rights and civil rights violations connected to Arar's detention and torture in Syria.

The joint submission the Redress Trust, the APT, and the WOT, reproduced Canada's image as a human rights-protecting nation-state, which had sacrificed its commitment to human rights in "times of perceived danger" (Crossin and Woodall 2004, 2). Crossin and Woodall largely perpetuated the notion that Canada was drawn into the American extraordinary rendition program; they asked Canada to review its knowledge-producing and knowledge-sharing policies, specifically in relation to racialized policing. They called for an investigation into the ways in which government officials might have violated conventions against torture, the international law principle of *non-refoulement* (forbidding a victim of persecution to be rendered to his or her persecutor), and Canadian obligations to protect Canadian citizens abroad (1-18).

Similarly, the counsel for AI, Alex Neve (2004), framed his requests to investigate systemic racism by starting his submission depicting Canada as a human rights abiding state in contrast to the United States, Jordan and Syria. He noted that, in relation to Arar's ordeal, governments such as the United States, Jordan, and Syria had violated a wide range of basic human rights, as well as international conventions against torture (3–4). Neve too began with the notion that Arar was a victim of the American extraordinary rendition program; then, he asked Judge O'Connor to investigate Canada's role in government institutions including CSIS, RCMP, and DFAIT, and the Prime Minister's Office (3). AI's submission explicitly asked for an investigation into Canada's intelligence sharing practices (5), Canada's diplomatic and consular practices related to Arar's detention in the United States and in Syria, and Canada's commitment to the prohibition of torture (6). By requesting that the inquiry look at similar cases (7), the submission tried to shift the focus of the inquiry from Arar's individual experiences with a U.S.-related extraordinary rendition program to an investigation of Canadian institutionalized racialized (policing) practices in relation to Almalki, Elmaati, and Nureddin—a pattern suggesting a Canadian renditions to torture program.

The ICLMG, represented by Warren Allmand and Denis Barette, also seemed to be advancing the notion that the United States bore most of the responsibility for Arar's ordeal. The group asked Judge O'Connor to shed light on “what role, if any, was played by Canadian security agencies in the United States's decision to arrest and deport Maher Arar, and what information may have influenced this decision” (Allmand and Barette 2004, 3). This organization was also interested in the precise roles that Canadian government officials played in Arar's detention and torture, and in any actions that may have violated Arar's constitutional and human rights (2). However, the submission only indirectly articulated the suspicion that

Canadian officials might have organized their own renditions program. For example, the ICLMG asked, “if there was collaboration among Canada, the United States and Syria in the case of Mr. Arar, was such collaboration a ‘way around’ to obtain information from him?” (ibid.)

The BCCLA, represented by Joseph Arvay (2004), requested that Judge O’Connor make recommendations regarding the RCMP’s policies around accountability and procedural oversight. They asked that he “rectify the RCMP’s resistance to police accountability via a review mechanism” (2); they asked for “a National Security Review Committee that has jurisdiction and adequate authority to review all federal and provincial agencies engaged in national security work” (ibid.); and they asked that Canada’s government “propose reforms to ensure that all Canadian officials neither engage in torture nor are complicit in facilitating the torture of any person” (ibid.).

Intervenors: LUO, the Polaris Institute, the Council of Canadians, OPP, OPS Services, and CLC

This set of intervenors submissions were aligned with the interests of Canadian state officials. Although, they acknowledged Canadian state officials’ wrongdoing from the outset, they asked Judge O’Connor to investigate the contexts within which the conduct emerged. For example, the joint submission of the Council of Canadians, the Polaris Institute, and the Canadian Labour Congress (CLC) directly linked Arar’s experiences to government policies.

This submission critiqued the fact that

. . . whether it is the events of the sponsorship scandal or the abuses at the Abu Ghraib prison, when government plans go awry there is a consistent tendency on the part of the architects of the scheme to shift responsibility to those responsible for carrying it out. It may be that Canada’s role in the shameful treatment of Mr. Arar can be attributed to a few “rogue” RCMP officers, as the former Solicitor General has suggested, but there is a great deal of evidence to suggest that, contrary to this speculation, members of the RCMP and other Canadian officials involved with the Arar case were simply carrying out, rather than trying to subvert, government policy. (Shrybman and Onyalo 2004, 1)

This submission requested that Judge O'Connor not blame individuals, nor take their conduct out of context, but rather focus on the ways in which the *ATA*, the \$7.7 billion budget, and the Canada–U.S. Smart Border Declaration created the environment within which Canadian officials' actions emerged (Shrybman and Onyalo 2004, 1–2). The submission further cited post-9/11 pressure from the United States and a “lack of policy coherence” in relation to knowledge-sharing activities with foreign countries, as well as the conflicting messages between the Canadian police apparatus and the Consular Services sent to the Syrian officials (8–9).

Irina Ceric (2004), counsel for the Law Union of Ontario (LUO), expressed concerns about “unlawful activity, illegal activity, deception on the part of the government and its agents” carried out in the name of national security (1). In her submission, she provided a framework how to think about Canadian officials' conduct. The submission cited lack of training and lack of government oversight, rather than anti-Muslim racism, as the root cause of Arar's experiences. In particular, the submission critiqued the fact that “there was no meaningful attempt by Parliamentarians to review past intelligence operations, to ascertain whether the new powers given by Bill C-36 were needed or whether the return of the RCMP to the national security intelligence field was necessary or advisable to deal with the perceived problem” (5).

The submission critiqued CSIS agents as “not well informed, or well trained. . . . They relied on dubious and/or unreliable sources of information and . . . did not understand the culture or political dynamics of the community they had under surveillance” (Ceric 2004, 5). LUO's submission asked: Who was policing the national security establishment? In addition to requesting a legal review of the *ATA*, the organization asked for a policy review related to the conduct of CSIS officials, and in particular asked for independent institutional oversight. The LUO submission tried to broaden the Arar Commission's mandate to include cabinet ministers

and the prime minister in the fact-finding and policy-review processes, and to make links between the national security establishment and party politics governing the state.

Leslie McIntosh and Darell Kloeze, legal counsel for the Ontario Provincial Police (OPP) pointed out that OPP officers, who were part of the joint investigative team that had formed Project A-O Canada, had simply done their duty, and “continue[d] to function and operate effectively in the interests of ensuring the safety and security of Canadians” (McIntosh and Kloeze 2004, 4). The Ottawa Police Service (OPS) submission also clearly stated that its police officers’ conduct was within the mandate of the RCMP project: “the Ottawa Police Service was asked to participate in a joint investigation with RCMP, ‘A’ Division, the Ontario Provincial Police and other police partners” (1). McIntosh and Kloeze asked Judge O’Connor to focus his investigation on issues related to the overall governance of institutions, inter-institutional governance, and joint task force mandates related to national security and procedural information sharing (3–4). They requested that the officers in question be interviewed as witnesses. No individual officer was to be held responsible, or treated as an accused.

Most of the intervenors’ requests to the judge to include systemic racism in the investigation were framed by, and tied to, dominant liberal conceptions of Canada as a multicultural, liberal democracy. In submissions by for example CAIR-CAN, CAF, MCC of Ottawa-Gatineau, the discursive use of Canada’s national narrative is born out of the concern about sovereign racialized violence. However, the representation of sovereign racialized violence as an aberration of an otherwise non-racist state reproduced Canada’s national myth. Systemic and institutionalized forms of racialization inherent to the white settler state are depicted as episodes of Canada’s colonial past that have resurfaced in the post 9/11 context. The effect was that some discourses emerging from the submissions could be easily integrated into liberal

frameworks that look at racism and understand racism as something that is aligned with the idea of the Canadian state as non-racist. Even though some of the intervenors such as the LUO and the OPP requested a closer investigation into the political mandate of post 9/11 policing, they do not mention anti-Muslim racism as a form of governing the state in particular national security and policing institutions. In fact, the motive behind the OPP and OPS of such a request is to remove responsibility from individual CISIS agents and RCMP officers in ways that reinvigorate memories of how Adolf Eichmann and other war criminals in the Jewish genocide in Germany have claimed innocence by stating that they were just doing their diligent duty (Arendt 1963).

In the sections that follow, I illustrate how Judge O'Connor's selectively took up some of the intervenors' discourses, folding them into broader explanatory frameworks that rendered the Canadian state innocent of racial violence—thereby reproducing Canada's image as a respectable, law-abiding, multicultural, liberal democracy.

Liberal Self-Reflective Racialism: The Production of Racial Innocence

At first glance, a clear bias in favour of the requests of Canadian state officials was evident in the Inquiry process and report. Judge O'Connor favoured Canadian state officials' requests for in-camera hearings, and privileged secrecy over transparency (O'Connor 2006d, 283–84). In addition, he decided to support the OPP's request that police officers be questioned as witnesses. He argued that, while the inquiry had “trial-like features,” it was not a criminal investigation (283), and he would not be ruling on either civil or criminal liability (288). Judge O'Connor explained that, while the Inquiry had a fact-finding mandate, he did not find in the mandate “the requirement that I report only on actions that caused Mr. Arar's fate” (ibid.). He officially did not support the request put forward by “Government counsel and counsel for certain RCMP officers” that he “should not make any negative or critical findings with respect to

their clients” unless he was “able to find as a fact that the actions of their clients caused or contributed to what happened to Mr. Arar” (287). However, he indirectly supported this request by deciding that he would only comment “on the actions of Canadian officials that created or increased a risk that Mr. Arar would be subjected to unacceptable treatment” (288). By ruling to only make findings related to state officials’ actions that “created or increased a risk that Mr. Arar would be subjected to unacceptable treatment,” he clearly (if implicitly) established that the inquiry, and the report thereof, would avoid findings that *directly* linked Canadian state officials to Arar’s detention and torture and the systemic issues underwriting Canadian state officials’ conduct. Consequently, officials evaded direct responsibility and accountability for Arar’s detention and torture in Syria.

However, a more in depth analysis of how Arar’s labelling as a terrorist, his detention and torture in Syria (the forms of sovereign racialized violence that I have outlined in Chapter 3) was explained to the public revealed a much more complex maneuvering of racism that can be best described as liberal self-reflective racialism – a discursive form of modern imperialism. I use self-reflective racialism to draw attention to a pattern that emerged throughout the *Arar Commission Report* (O’Connor 206d) that explained sovereign racialized state violence through a liberal framework. I use the phrase “liberal self-reflective racialism” as distinct from colour-blind approaches. Colour-blindness is a liberal notion that disregards how racial characteristics influence for example policing practices. Underlying colour-blind approaches is the idea that in liberal democracies people are treated equally regardless of their race, gender, class, nationality and religion. Liberal self-reflective racialism is a practice whereby wrongdoing is acknowledged but is not attributed to racism but to other social problems that are compatible with liberal values that are in line with Canada’s national narrative as a multicultural liberal democracy. Liberal

self-reflective racialism directly and indirectly reproduces racism – the idea of racial hierarchies and notions of cultural superiority and inferiority – and racialized practices are redirected and transformed into liberal acceptability. In the context of the *Arar Commission Report* (2006a) liberal self-reflective racialism made racism disappear from public discourse through discourses of denial, trivialization and culturization (Jiwani, 77-82). These discursive manoeuvres produced limited accountability for state officials’ racialized (policing) practices by including ‘the racialized’ into the Inquiry process and de-centering sovereign racialized violence from the Canadian state.

For example, the report achieved one of Arar’s goals: it cleared him of all allegations of terrorist activity, and declared Canadian state officials to have been indirectly responsible for some of the aspects of his ordeal. Judge O’Connor (2006d) stated that, having heard “evidence concerning all of the information collected about Mr. Arar in Canadian investigations, . . . there is nothing to indicate that Mr. Arar committed an offence or that his activities constitute[d] a threat to the security of Canada” (9). The judge concluded that RCMP officials provided the United States with “inaccurate” information that portrayed Arar “in a negative fashion” (O’Connor 2006d, 14), and that, “by equipping the SMI officers with questions to put to Arar, the RCMP very likely sent the wrong signal to Syrian authorities” (15). He admitted that “before and after Mr. Arar’s return to Canada, Canadian officials leaked confidential and sometimes inaccurate information about the case to the media for the purpose of damaging Mr. Arar’s reputation or protecting their self-interests or government interests” (16).

On the surface, these statements appear to acknowledge unjust labelling practices, and to admit to Canadian state officials’ complicity in Arar’s ordeal. However, officials’ actions were explained through discourses that obscured anti-Muslim racism. A closer look at the explanatory

discourses emerging in the report reveals that Judge O'Connor did not completely release Arar from the colonial grid of a terrorist identity and he did not work to remove the suspicion of terrorism from Muslim and Arab communities. In fact, he upheld the institutionalized racialized policing practices that had produced Arar as a “person of interest” in terrorism-related investigations in the first place (O'Connor 2006d, 13). He found them legitimate measures in the fight against Islamic fundamentalist terrorism.

Throughout the *Arar Commission Report: Analysis and Recommendations* (O'Connor 2006d), a pattern emerges whereby statements of responsibility for Arar's ordeal are qualified by explanatory discourses that give the impression that anti-Muslim racism had nothing to do with Arar's rendition. In fact, in the report, Arar becomes the vessel through which Judge O'Connor revitalized Canada's national image as a non-racist, equality-based, law-abiding state. By claiming Arar as a “model minority citizen,” a member of the Canadian geopolitical territory in which “the right to be free from torture is absolute” (O'Connor 2006d, 51), Judge O'Connor's discourse transformed Canada from what it was—a white settler colonial state—into what it wanted to be seen as: a nation-state that had left its colonial past behind.

Claiming Arar as a Model Minority Citizen

Throughout the *Arar Commission Report*, aspects of Arar's enactment of hegemonic masculinity were highlighted in the process of constructing him as an ideal minority Canadian citizen. For example, the opening statement of the *Arar Commission Report, Analysis and Recommendations* reads as follows:

Maher Arar is a Canadian citizen. He is married and has two children. He has a Bachelor of Engineering in Computers from McGill University and a Master's degree in Telecommunications from the University of Quebec's Institut national de la Recherche Scientifique (ibid., 9).

Similar references occur throughout the document: “Mr. Arar is a hardworking person who values his professionalism immensely, is strongly committed to his family, and derives a large part of his sense of self from his ability to provide for it” (ibid., 53). The values of post-secondary education, professional experience, self-made middle class status (achieved by hard work and an entrepreneurial spirit), and the nuclear hetero-normative family are all emphasized. However, Arar’s religious background is not mentioned in this context.

The ways in which Arar’s subject positions were taken up in the report function to uphold an ideal type of Canadian citizen: one who is a white, male, middle class, heterosexual entrepreneur. Here it becomes clear, that even though the white settler state is constructed as having evolved into a multicultural society, citizenship “continuous to be structured by a racial hierarchy” (Razack 2002, 1). In this representation of Arar, particular power relations (of men over women, of the middle class over the working class or people living in poverty, of the married heterosexual family over an unmarried or queer family, and whiteness over Arabic and Islamic background) were reproduced as the ideals of Canadian citizenship.

As noted above, similar claims about *who Arar is* were put forward by Arar’s legal team. Arar’s legal team described him as a hard-working, entrepreneurial Canadian citizen and a highly educated, heterosexual family man were articulated in these representations in an apparent effort to contradict racist representations. These discourses operated as discursive strategies, undermining depictions of Arar as an Islamic fundamentalist terrorist, and reasserting his status as a Canadian citizen—someone who had the right have rights. They were taken up by Judge O’Connor when he espoused the ideal type of Canadian immigrant, one who had been assimilated into white settler neo-liberal nationalism. Aspects of Arar’s subject positions were

then highlighted throughout *Arar Commission Report*, constructing him as a model minority citizen.

Puar and Rai (2004) show how representations of “model minorities” in popular culture symbolizes a form “Western” colonialism that has historically operated by discursively “setting itself off against the Orient as a sort of surrogate and even underground self” (Said 1978, 3). Thus, by narrating—over and over again—normative immigration histories about itself as the land of opportunity, the home of racial and gender equality, “Western” states (i.e. the United States) continue to claim national exceptionalism over other countries (Puar and Rai 2004, 76). The geopolitical positioning of the “West” as culturally superior operates alongside the construction of model minority citizens expressed through educational excellence, entrepreneurial spirit and upward class mobility also delineates otherness and is prevalent in immigration policies (i.e. Canada’s point system), determining who and who does not belong to Canada.

In the *Arar Commission Report*, the geopolitical cultural ordering of Canada as superior to the United States and Syria depends upon Canada’s adoption of Arar as a model minority citizen, who becomes a surrogate for Canada’s self-image. Arar’s subject position as a Muslim man and “racialized other,” which triggered his rendition to torture, was erased. Arar was depicted not as the victim of Canadian renditions but of the American extraordinary rendition program. For example, Judge O’Connor promoted the notion that Arar’s ordeal started not in Canada, but in the United States: “on September 26, 2002, while passing through John F. Kennedy International Airport in New York” where he was arrested, subsequently detained, and deported to Syria (O’Connor 2006d, 9). In O’Connor’s statements, Canada is depicted as Arar’s safe haven from torture, a nation that would provide him with the rights that he was not granted

in the United States or in Syria, including the right to legal assistance, and the right to liberty and equality before the law. By stating that “the inquiry was called because of what Mr. Arar lived through from September, 2002 when he boarded an airplane in Switzerland, to October 6, 2003 when he arrived home in Canada” (54), Judge O’Connor promoted the notion that Canada would give Arar the justice that was denied to him in the United States and Syria.

While Judge O’Connor critiqued Arar’s classification as a terrorist with links to al-Qaeda, he seemed to assign a different terrorist subjectivity to Arar. For example, he critiqued the RCMP’s labelling of Arar and Mazigh as “Islamic Extremist individuals suspected of being linked to the Al Qaeda movement,” and the RCMP’s placing of the two on U.S. terrorist watch lists (O’Connor 2006d, 13). Nevertheless, the judge supported earlier racialized terrorist-producing practices through which the RCMP constructed Arar as “a person of interest” in their terrorist-related investigations (13). Here Judge O’Connor reaffirmed racialized discourses that produced Muslim and Arab looking men as potential terrorists and risks to national security as well as the racialized policing practices that equated Muslim men with terrorism. He perpetuated the racialized surveillance and policing practices that had led to Arar’s ordeal, by deeming the policing practices that identified and implicated him as this “person of interest” (78) as a “reasonable step” taken in connection with the racialized surveillance of Almalki (ibid.). He further reaffirmed legalized racialized policing practices such as round-the-clock racialized surveillance, and the gathering of information about Arar, as legal and dutiful police work (O’Connor 2006d, 78–79). The judge also concluded that “Project A-O Canada had sufficient reason at the time to request a lookout for Mr. Arar” (19). Through these statements, Judge O’Connor perpetuated the sleeper-cell logic through which a signature on a residential lease and

a meeting with a friend—Arar met Almalki in a café in Ottawa—could be construed as suspicious, terrorist-related activities.

By affirming state officials conduct that produced Arar as a terrorist suspect, O'Connor upholds the post-9/11 anti-Muslim terrorist-risk paradigm that governed the national security and police apparatus. By failing to challenge the notion that when an Arab-looking Muslim man meets with a friend, and this friend signs a lease for him, possible terrorist activities are taking place, Judge O'Connor supported the conspiracy theory that promote Muslim men living in "Western" countries as enemy aliens inside.

In fact, Judge O'Connor outright denied that police officers' conduct was informed by anti-Muslim racism. He admitted that the early investigative steps in which surveillance was conducted and information was gathered by Project A-O Canada were targeting Muslim communities (*ibid.*, 78-79). However, he claimed that "there is nothing in the evidence to suggest that the decision was motivated by the fact that Almalki and Arar were Muslims or of Arab origin, or that the surveillance was the result of racial profiling" (*ibid.*, 78). Through discourses of racial denial (Jiwani 2006) – that is, the denial of racism – and the affirmation of Arar's classification as "a person of interest," Judge O'Connor confirmed anti-Muslim racialized policing and surveillance practices as rightful police conduct.

Judge O'Connor assented to requests by OPP and OPS representatives that he investigate the environment within which the actions of Canadian officials emerged. For example, Judge O'Connor accepted that the RCMP followed their "unwritten policy against racial, religious or ethnic profiling," and that the profiling and surveillance of Muslim and Arab-looking men and their communities was merely a reflection of the nature of terrorist investigations in the post-9/11

era (O'Connor, 2006d, 356). As Judge O'Connor affirmed the RCMP's representations of Arar as somebody who was potentially connected to, or aware of, terrorist activities, the officers' activities were constructed as consistent with the role of policing in a post-9/11 context. Referencing the *ATA* (2001), the judge assented to requests by OPP and OPS representatives that he investigate the environment from which the actions of Canadian officials emerged. He asserted that racialized policing practices were in fact dutiful conduct on the part of the officers within the post/11 environment.

He was asked by CAIR-CAN, CAF, the LUO, Redress Trust, APT and others to critique the "security budget" and the *ATA*, both of which had produced the environment in which racialized policing and suspensions of the rule of law occurred. At no point did he do so. Instead, he sought to determine the boundary between acceptable state violence and human rights violations in ways that depicted Canada as bound by the rule of law and as a rights-protecting and non-torturing country. For example, Judge O'Connor defended the legalized suspension of human rights, emphasizing that "some human rights, such as the right to privacy, may be lawfully suspended under certain conditions in the name of public emergency" although "the right to be free from torture . . . is absolute" (O'Connor 2006d, 51). He clearly stated that Canadian state officials engaged in such legalized suspension of Arar's rights, and that they therefore did not violate international conventions against torture as outlined in the *Charter* and the *Criminal Code of Canada*, subsection 269.1 (1); the judge insisted that Canada had been "adhering to these treaties" (52).

Judge O'Connor exploited Arar's experiences as being part of the United States rendition program, retelling Arar's experiences in ways that suggested that he had been a victim of the United States extraordinary rendition program. He emphasized that Arar was detained and

deported to Syria by American FBI and CIA officials, which had the effect of taking focus off the Canadian geopolitical context. In one section of his report, entitled “Maher Arar and the Right to Be Free from Torture” (O’Connor 2006d, 51–60), the judge implicated Syrian state officials in particular, in Arar’s horrific experiences of torture. Judge O’Connor detailed how Arar had been pulled aside in a U.S. airport, fingerprinted, he and his passport photographed, placed under arrest, strip-searched by American customs officers, and finally detained in the Metropolitan Detention Centre in New York City for twelve days. Judge O’Connor emphasized that Arar was not accorded his rights as a Canadian citizen while he was held in custody in the United States; he had been detained without a warrant, and questioned without legal representation (8–10). The *Arar Commission Report* reasserted the notion that Canada was a law-abiding nation-state, one that complied with conventions against torture, as well as prohibitions that disallowed “a state from expelling, returning or extraditing a person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture” (O’Connor 2006d, 52).

In the next section, I detail how the practices used by Canadian state officials that compelled U.S. officials to detain and deport Arar, and Syrian officials to detain and torture him, were explained to the public.

Deficiency Discourses and Liberal Acceptability

Throughout the *Arar Commission Report: Analysis and Recommendations*, deficiency discourses were used to explain sovereign racialized state violence. By deficiency discourses, I refer to the discourses explaining the production of Arar as a terrorist connect to the al-Qaeda movement as a result of insufficient training and lack of education, and/or as innocent mistakes.

Judge O'Connor took the RCMP officers' version of events as his dominant explanatory framework. RCMP officers' disciplined fictions—liberal tales of racial innocence—were what the Liberal-appointed judge integrated in his report. He accepted that the profiling and surveillance of Muslim and Arab-looking men and their communities was merely a reflection of the nature of terrorist investigations in the post-9/11 era (O'Connor 2006d, 356). For example, he quoted RCMP Inspector Mike Cabana as saying that “it was a race against the clock to ensure that nothing else happened” (quoted in O'Connor 2006d, 35). The judge affirmed the notion that the first coordinated investigative steps, which later became Project A-O Canada, emerged from the “shock” of the terrorist attacks on the World Trade Center and the Pentagon, and that the RCMP had been overwhelmed with tips from the public (O'Connor 2006b, 13-14). The data that RCMP officers passed on to U.S. agencies were trivialized as unintended human errors of knowledge sharing practices, the result of the pressure that the FBI placed on Canadian officials to produce signs of cooperation and inter-agency coordination (ibid.).

The judge admitted that, in the documents entitled “Bin Laden's Associates: Al Qaeda Organization in Ottawa,” officers had included false statements to the effect that Arar was a primary suspect in a Canadian anti-terror investigation; and that Arar had an important connection to Almalki, who had direct links to al-Qaeda. Judge O'Connor even pointed out that officers also included false descriptions of Arar and Mazigh as “Islamic extremists suspected of being linked to the al-Qaeda movement” (O'Connor 2006d, 24). He stated that “these descriptions were either completely inaccurate or, at a minimum, tended to overstate Mr. Arar's importance in the Project A-O Canada” (ibid.). He called the terrorist classification of Arar “improper and unfair labels” that emerged out of the 9/11 threat of terrorism and that “understandably arouse fear and elicit emotional responses that, some cases, lead to

overreaction” (ibid.). He described “the inaccurate information” that was passed on to the U.S. as “erroneous notes” (ibid., 25). Judge O’Connor called for more “accuracy and precision when sharing information in terrorist investigations” (ibid.).

Each time Judge O’Connor acknowledged that the RCMP’s terrorist-labelling practices were not based on evidence but on unfounded allegations (O’Connor 2006d, 24–25), he validated RCMP officers’ actions as unwitting mistakes, rooted in a lack of education and experience in relation to their national security mandate. For example, Judge O’Connor stated that

few of the team members assembled for the Project A-O Canada had formal training in national security investigations, nor were they trained in RCMP policies on national security investigations and sharing information with external agencies (O’Connor 2006d, 21).

Judge O’Connor admitted that “Project A-O Canada supplied the American agencies with a good deal of inaccurate information about Mr. Arar, some of which was inflammatory and unfairly prejudicial to him” (ibid., 24). By characterizing the manufactured evidence as “inaccurate information,” the judge trivialized the role that this mis-information-sharing played in Arar’s detention. He played down these racialized fabrications as individual human “errors,” and “unintended mistakes” (24–26) — incorrect information that was simply not screened before it was passed on to the FBI (ibid.).

Throughout the report, Judge O’Connor accepted the explanations given to him by RCMP officers. For example:

I accept that the members of Project A-O Canada did not intend to provide inaccurate information to American authorities. However, proper screening would have prevented most, if not all, of the inaccuracies. In any event, this is an instance where the Project members’ lack of training and experience in national security investigations appears to have played a part. (O’Connor 2006d, 26)

Judge O’Connor’s rationalization of the RCMP’s “erroneous notes” is framed by a liberal value

system, in which the conduct of state officials is understood to be race- and gender-neutral. This rationalization transformed officials' racism into a lack of education and training, and denied the existence of systematically organized racialized policing practices.

Judge O'Connor (2006d) also excused the manufacturing and distribution of fabricated evidence as the result of a lack of communication between Project A-O Canada front-line officers and senior RCMP and CSIS officials (26). Denying the existence of institutionalized anti-Muslim racism, he blamed a lack of cross-institutional oversight, and a collapse in the chain of command. He emphasized that differences between the mandates of CSIS and the RCMP caused these mistakes to occur (O'Connor 2006b, 17, 23–28; O'Connor 2006d, 1–13). The lack of policy directives in the immediate aftermath of 9/11, and the hasty establishment of Project A-O Canada, which involved inexperienced members from local police forces who had never worked as intelligence officers, were cited as excuses for the organization of Canadian renditions to torture.

Arar's prolonged detention and his torture in Syria were explained as the result of a power struggle between the RCMP, who believed that Arar posed a threat to national security, and Canadian politicians such as Minister of Foreign Affairs, Bill Graham, who publicly advocated for Arar's release and his return to Canada. Policing institutions—the RCMP and CSIS—had spent months resisting Arar's release, O'Connor said, stating their objections in a “one voice” letter, composed by the security establishment and Canadian government officials, which was delivered to the Syrian government. The judge implied that the security establishment and the police had the ability to control political governance, ignoring the fact that the recent extension of police power had been legitimized, legalized, and promoted by Liberal leadership. Judge O'Connor repeatedly returned to the RCMP's supposed institutional impermeability to

explain why he had been unable to discover who had leaked some of the lies about Arar to the press, during and after his detention in Syria. The judge described these leaks (particularly those published in the *Ottawa Citizen*) as coming from “unnamed government sources” who apparently could not be traced.

The judge consistently admitted to false labelling practices but attributed responsibility for Arar’s illegal detention and deportation to the United States. For example:

The RCMP requested that American authorities place lookouts for Mr. Arar and his wife, Monia Mazigh, in U.S. Customs Treasury Enforcement Communications Systems (TECS). In the request, to which no caveats were attached, the RCMP described Mr. Arar and Dr. Mazigh as “Islamic Extremist individuals suspected of being linked to the Al Qaeda movement.” The RCMP had no basis for this description, which had the potential to create serious consequences for Mr. Arar in light of American attitudes and practices at the time. (O’Connor 2006d, 13)

O’Connor (2006d) qualified this statement by declaring that “there is no evidence that Canadian officials participated or acquiesced in American authorities’ decisions to detain Mr. Arar and remove him to Syria” (14). Thus, he produced the impression that Arar became part of the U.S. rendition program without Canada’s complicity. By attaching the phrase “no evidence” to verbs such as “participate” and “acquiesce,” a direct link between Canada and Arar’s deportation, detention, and torture was denied, and Arar’s ordeal was depicted as the result of American imperialism and its extraordinary rendition program.

Other Responsibilization

Central to the organization of Canadian renditions to torture was the de-centering and distribution of sovereign racialized violence to different geo-political contexts. Similarly, in the *Report*, Arar’s detention in Syria was depicted as the result of the American extraordinary rendition program. The practices that triggered Arar’s detention in the United States were constructed as the outcome of the FBI’s unofficial assertion of authority over Canadian policing institutions (O’Connor 2006d, 29–30), thus shifting the status of “victim of state violence” from

Arar to Canadian RCMP officers. The officers who provided the FBI with CDs containing manufactured evidence were portrayed as innocent, naïve, compliant victims of the United States's domineering police apparatus. Individual officers involved in Project A-O Canada were accused of violating RCMP and CSIS institutional policies in relation to information-sharing with other nations—but the officers' responsibility for violating these policies was trivialized by statements that the officers could not have predicted that the United States would send Arar to Syria (29). For example, the Report had revealed that an FBI agent had contacted RCMP officer Corporal Flewelling, telling him of Arar's request to be returned to Canada. The FBI agent was quoted as saying that "the United States did not have enough information to charge Mr. Arar and was looking to remove him," and that "Washington wanted to know whether the RCMP could charge him or refuse him entry to Canada" (29). In quoting Flewelling's answer to the FBI agent, Judge O'Connor accepted Flewelling's version of events: "there was not enough evidence to charge Mr. Arar in Canada and . . . It was likely that he could not be refused entry" (ibid.). Judge O'Connor did not interpret this statement as Canadian officials' consent to Arar's deportation to Syria, a country where Arar would most likely be detained and tortured. Rather, the judge accepted Flewelling's stated rationale: "at the time, the Canadian officers believed that Mr. Arar would be denied entry to the United States and promptly sent back to Zurich" (27); and "Project members believed that the American authorities would extend a person in Mr. Arar's position similar protection to that provided by the Canadian law" (29). Judge O'Connor accepted an explanation that portrayed the FBI as untrustworthy and in disregard of Canadian and international law.

Judge O'Connor also accepted descriptions of the United States as an impermeable imperial power, one that constantly reasserted its socio-economic and political power over

Canada. He implicitly concurred with representations of Canada–U.S. relations as those between “the gentle giant and the giant empire,” similar to the discursive framings articulated in Prime Minister Jean Chrétien’s post-9/11 speeches. The judge recalled RCMP Inspector Cabana’s testimony, in which the post-9/11 environment was blamed for the false labelling of Arar as a terrorist threat, thereby placing him and his wife on terrorist watch lists: “Inspector Cabana testified that intelligence sources indicated that 9/11 was [to be] the first of a number. Concern about an imminent threat gave a sense of urgency to the investigation” (O’Connor 2006b, 35). To explain why the RCMP provided American agencies with information about Arar, Judge O’Connor used phrases such as “increased requests from the Americans” (ibid.), and reasserted some of Cabana’s statements, using language such as “the border between Canadian and American agencies came down” (ibid.), and “the need to share information in real time” (37). However, the judge failed to address the question of why the RCMP constructed these racial t/ies and terrorist identities in the first place. Instead, Judge O’Connor pointed to the United States-led War on Terror as having created ambiguous geopolitical zones, within which Canada could only assert partial nation-state sovereignty in relation to the deportation and detention of its citizens. For example, in the *Report*, the Canadian state was constructed as a feminized, innocent victim of the American imperial bully: powerless, and without the ability to resist requests of information-sharing regarding potential Islamic fundamentalist terrorists living in Canada:

The fact that the request was made in the post-9/11 environment was certainly of consequence. Many witnesses have indicated that, in the aftermath of 9/11, American authorities were more aggressive than their Canadian counterparts in taking intrusive steps against those allegedly involved in terrorist activities, in particular men of Muslim or Arab origin. (O’Connor 2006d, 86)

In this quote Judge O’Connor constructed racial profiling as an excessive response to the 9/11 events peculiar to the United States. Throughout the *Report*, the United States was constructed as a geopolitical space in which the rule of law was disregarded, and in which equal treatment was

not assured in the application of law and policing practices. For example, the Inquiry found that Arar did not get immediate access to Canadian legal counsel while he was interrogated and detained at JFK. It also found that the FBI had not informed the RCMP that they planned to deport Arar to Syria. Thus, the U.S. was portrayed as having ignored Canada's sovereignty, in denying Arar the right to be deported to Canada—the nation-state that would have given Arar legal protection. Canada was thereby produced as a rights-protecting and law-abiding geopolitical space; the United States, in contrast, was guilty of racial profiling, which Canadian officials denied was a systemic practice in their own state policing agencies.

Arar's dual Canadian–Syrian citizenship was constructed as a liability in the context of U.S. imperial power. His right as a Canadian citizen to be deported to Canada was taken away by the United States when it refused to send him to Canada. Responsibility for Arar's deportation to Syria was placed on the FBI and the CIA, as the agencies assumed the right to order Arar's deportation to Syria (O'Connor 2006b, 174–7).

Judge O'Connor mostly derailed discussion about any links between the questions sent by the RCMP to SMI officials (as well as CSIS officials' visits with SMI officials) and Arar's experiences of torture, focusing instead on Arar's prolonged detention in Syria. The judge explained that the questions sent by the RCMP contributed to Arar's ordeal only in that they “had an effect on the time taken to release Mr. Arar” (O'Connor 2006b, 229, 15). This interpretation severed to obscure the direct links between Arar's experiences and the Canadian state officials' practices of policing that had compelled torture outside of Canada's geopolitical territory.

Instead, the judge discursively confined the use of torture to the territorial boundaries of Syria:

Mr. Arar was questioned about his relationships with various people, his family, his bank accounts, and his salary. His interrogators could not understand what he did for a living. They did not believe his description of providing services in the computer sector or the amount he said he was paid in salary, which they thought was impossibly high. Mr. Arar was beaten for these “lies.” (O’Connor 2006d, 229, 56)

In this quotation, Judge O’Connor disconnected the content of Arar’s torture from any Canadian context. He connected it instead to SMI officials’ lack of understanding of what a computer engineer does, and their disbelief at how much money Arar received as a salary—in other words, the judge linked Arar’s torture to the SMI agents’ disbelief at Canada as such a land of opportunity. Reference to the normative Canadian multicultural immigration narrative of upward mobility regardless of race, nationality, or religion—as purely the result of hard work—had the effect of identifying torture as inherent to the Syrian geopolitical context. Syria was depicted as culturally, politically, and economically inferior. The *Report* describes Syria in Orientalist terms, highlighting Syrian officials’ practice of making arbitrary arrests, detaining individuals for long periods of time without trial, torturing detainees for the purpose of extracting confessions, and holding unfair trials in the security courts. These “serious human rights abuses” thereby come to be identified as particularly Syrian problems (O’Connor 2006d, 235–6). Judge O’Connor failed to mention, however, that Canada had resorted to similar practices in its security certificate process, and, from a distance, through Canadian renditions to torture.

In addition, Judge O’Connor indirectly denied that Canada had organized the outsourcing of torture. He explained that the RCMP did not know that Syria was a country in which torture occurred. The judge admitted that DFAIT had failed to recognize that Arar was being tortured and therefore failed to inform the RCMP of this fact. He stated that: “on receiving a summary of a statement made by Mr. Arar while in Syrian custody in early November 2002, DFAIT distributed it to the RCMP and CSIS without informing them that the statement was likely a product of torture” (O’Connor 2006d, 15).

Judge O'Connor portrayed Canadian police officers as the innocent victims of U.S. agencies, advancing the idea that the Canadian state apparatus had effectively lost its sovereign status as a result of U.S. post-9/11 imperialism. Canada's complicity in the United States extraordinary rendition program was limited to innocent mistakes related to intelligence-producing and intelligence-sharing activities. RCMP officials were constructed as having a lack of knowledge about Syrian torture practices and other human rights violations.

Conclusion

In the *Arar Commission Report* (O'Connor 2006d), "a kind of rationality" (Foucault 1991, 89) was articulated that I have describe as a form of modern imperialism that operated on a discursive level through "liberal self-reflective racialism". Liberal self-reflective racialism, in this context, operated as a set of discourses that were critical of state officials conduct, showed compassion toward Arar's ordeal and acknowledged partial responsibly. However, explanatory discourses transformed racialized policing practices into innocent errors accounted for by problems unrelated to racism but acceptable within liberal values. Declarations of partial responsibility were accompanied by discourses that reframed acts of sovereign racialized state violence as conduct acceptable to liberal moral and legal governing imperatives.

The discourses through which Arar's legal team and some non-government organizations had attempted to expose and challenge systemic racism were incorporated in ways to make the Canadian state appear as non-racist and rights abiding. For example, discourses trying to reassert Arar's rights as a Canadian citizen were appropriated to represent Arar as a "model minority citizen" in ways that worked to dismiss and contain charges of systemic anti-Muslim racism on the part of Canadian officials. While the RCMP's mandate, as well as their terrorist (knowledge)-producing and knowledge-sharing activities were governed by the post-9/11 anti-Muslim racist

assumptions that Muslim and Arab looking men are potential terrorists, in the *Report* they were de-linked from Canada's anti-terrorism legislation and the "security budget." Instead, this conduct was explained as innocent mistakes reparable through more institutional oversight, more training, and more education in national security-related knowledge-producing and-sharing activities.

Judge O'Connor tapped into the ways in which Canadian renditions to torture were organized. He highlighted that the physical and psychological violence of Arar's deportation, detention and torture occurred in the geopolitical contexts of the U.S. and Syria. Representational forms of orientalism that animated the renditions to torture program were reproduced by making Syria (and the U.S.) responsible for Arar's detention and torture, while Canada was portrayed as a respectable, culturally superior, rights-abiding nation-state.

Judge O'Connor's (2006d) recommendations (311–63) reflect the failure to acknowledge anti-Muslim racism as a systemic issue. Like his explanations of Canadian state officials' conduct, the judge's recommendations were free of anti-racist analysis. For example, O'Connor placed partial responsibility for Arar's labelling on Canadian state officials, and recommended that the Canadian government should compensate Arar "for his ordeal" (362). However, he explained that Canadian state officials' conduct was the result of insufficient administrative policy directives, and a lack of education. He recommended that, as a law enforcement agency, the RCMP should clarify its broader mandate and intelligence-related activities, develop standards and agreements in cooperation with domestic and foreign police forces, and create a process for centralized oversight (312–22). The judge also recommended that DFAIT provide the RCMP with annual reports on countries that tortured, and develop a protocol regarding interactions with such countries (349). Further, he further recommended that the RCMP establish

policies “about the use of border lookouts” (358). RCMP officers should receive training related to the national security aspect of their mandate (ibid., 323); training in screening information for relevance, reliability, accuracy and privacy; training in wording and distributing caveats (334); training in information-sharing with other domestic and international agencies (339), and, in particular, training in assessing interactions with countries with “questionable human rights records” (ibid.). CSIS agents and RCMP officers should “receive training in bias-free policing in their interaction with members of Muslim and Arab communities” (355–57). By recommending that “the Government of Canada should register a formal objection with the governments of the United States and Syria concerning the treatment of Mr. Arar” (361), the judge once again de-territorialized Canadian state-centred colonial violence, and created impunity for Arar’s detention and torture. Furthermore, Judge O’Connor suggested that the experiences of Almalki, Elmaati, and Nureddin should be investigated. He stated that “the cases of each of the other three men—Messrs. Almalki, Elmaati and Nureddin—raise troubling questions about what role Canadian officials may have played in the events that befell them” (276). He recommended that these three cases “should be reviewed” (278).

The *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati, and Muayyed Nureddin* was announced in December 2006 in part as a result of Judge O’Connor’s findings. In the next chapter, I investigate the rationalities put forward in the *Iacobucci Inquiry Report* (Iacobucci 2008), which explained state officials’ conduct in relation to these three men to the Canadian public.

CHAPTER 5

THE IACOBUCCI INQUIRY:

GOVERNANCE THROUGH SECRECY AND EXCLUSION

On December 12, 2006, the *Internal Inquiry into the Actions of Canadian State Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati, and Muayyed Nureddin* was announced. The Canadian Conservative federal government, under the leadership of Prime Minister Stephen Harper, appointed Justice Frank Iacobucci as Commissioner.

In the *Arar Commission Report: Analysis and Recommendations* (O'Connor 2006d, 267–278), Judge O'Connor remarked that, throughout his investigation, evidence had revealed that—like Arar—Elmaati, Almalki, and Nureddin had been labelled as terrorist suspects, and detained and tortured in Syria and Egypt. He decided that: “the many similarities in what happened to Mr. Arar and what happened to the others” warranted an inquiry (268–69). He detailed how “a pattern of investigative practices” (274) was emerging, “whereby Canadian agencies interacted with foreign agencies in respect to Canadians held abroad in connection with suspected terrorist activities” (ibid.). He recommended a different version of the Arar Inquiry, one that would be less expensive but “investigate the matters fully and, in the end, inspire public confidence in the outcome.” He did not recommend a large-scale public inquiry such as Arar’s (278).

Regardless of whether he intended it as such, Judge O'Connor’s recommendation for another inquiry had far-reaching implications. An investigation into state officials’ conduct in relation to Elmaati, Almalki, and Nureddin would reveal that Canada had, in effect, engaged in its own program of renditions to torture. In this case, in contrast to the results of the *Arar Commission Report*, Canadian state officials’ acts of sovereign racialized state violence could

not be explained as a pattern of compliance with the United States and that country's policing agencies.

In this chapter, I had originally intended to produce a discourse analysis of the explanatory rationalities put forward in the *Iacobucci Inquiry Report*, similar to that provided in chapter 4. However, in analyzing this report I found that Justice Iacobucci did not explain state officials' actions to the public, nor did he articulate recommendations. I therefore decided to use the concept of *colonial governmentality* with which to examine the discursive and organizational practices that produce impunity for sovereign racialized state violence. I show how particular discursive and procedural practices framed and ultimately determined the findings of the Iacobucci Inquiry. In addition to analyzing the discursive strategies through which the mandate was expressed, I also examine the practices of exclusion and secrecy that marked the inquiry process as authoritarian and the outcome of the inquiry as pre-determined.

I have divided this chapter into four sections. In first section, I provide a discourse analysis of the Inquiry's mandate, and examine the ways in which the phrasing of the mandate directed its outcome. In the second section, I illustrate how certain NGOs, particularly, those with expertise in Muslim and Arab relations, such as the Canadian Islamic Congress and the Canadian Arab Federation; in torture, such as the International Coalition Against Torture; and in constitutional law and civil liberties, such as the International Civil Liberties Monitoring Group and the Centre for Constitutional Rights were excluded from participating in the process. In contrast, one non-governmental organization, which advocated for the additional policing and surveillance practices in a post-9/11 context, was included.

The third section illuminates how the inquiry process was governed by secrecy. I show how public transparency regarding Canadian state officials' conduct related to renditions to

torture was prevented. Just as Canadian renditions to torture were organized in secrecy, the testimonies of state officials, and of Elmaati, Almalki, and Nureddin, were kept from public view.

In the fourth section of the chapter, I focus on Justice Iacobucci's findings. I show how he remained silent regarding anti-Muslim racialized policing, yet engaged in a form of power that mirrored the sovereign power the men had endured during their torture in Syria and Egypt: namely, the imposition of terrorist identities. Justice Iacobucci documented Canadian state officials' conduct—conduct that I have traced in chapter 3 as four processes of sovereign racialized state violence: (a) the production of racial t/ies; (b) Canadian citizenship as a liability; (c) the politics of pain; and (d) the reliance on false confessions as evidence. However, Iacobucci (2008) determined that none of these four processes “directly” resulted in the men's detention and torture (36, 38–39).

The Mandate

From the outset, the Conservative government directed the outcome of the Iacobucci Inquiry. Stockwell Day who at the time was the Minister of Public Safety and Emergency Preparedness defined both its mandate and terms of reference. The Commissioner was directed to determine:

- i. whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances,
- ii. whether there were deficiencies in the actions taken by Canadian officials to provide Consular Services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt, and

- iii. whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati, and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances. (Iacobucci 2008, 29)

The ways in which Canadian renditions to torture were organized and explained to the public in the *Arar Inquiry Report* (2006) became the governing framework of the mandate for the Iacobucci Inquiry. The words *directly or indirectly, deficient in the circumstances*, emerge out of the modern imperial processes through which torture was organized from a distance and the ‘deficiency’ discourses through which O’Connor made state officials’ acts of sovereign racialized violence thinkable through a liberal self-reflective framework.

For example, the words *directly or indirectly* equivocated the way that Canadian renditions to torture were set up. These renditions operated without Canadian state officials’ direct involvement in any unlawful transfers (i.e., kidnappings), detentions, and torture. Canadian officials could claim innocence or only “indirect” involvement in racialized state-centred violence. Features of the Canadian renditions to torture included panoptic surveillance techniques that triggered what I refer to as self-deportations; the use of international terrorist watch lists, which resulted in the men’s detentions in Syria; and the reliance on Syrian state officials to commit acts of torture. The processes of sovereign racialized violence that were organized in ways that circumvented Canadian state officials’ direct involvement, did not enter the content of the mandate and consequently predetermining the outcome of the Inquiry. For example, Justice Iacobucci stated that the terms of reference for the Inquiry did not authorize him “to investigate the propriety of the initial decision to investigate the three men” (44). The Inquiry did not include an investigation into the racialized policing practices that produced racial t/ies

and the men's self-deportations, and via the organization of renditions to torture, Canadian state officials could not be directly implicated in the men's detention and torture.

The mandate implicitly used the discourses put forward in the *Arar Inquiry Report* (2006a), discourses (based on liberal values) that rendered impunity to Canadian state officials' conduct, and made their racialized state violence thinkable through a liberal frame. The term *deficiency* mirrored Judge O'Connor's application of self-reflective racialism, when he acknowledged partial responsibility for Arar's ordeal but obscured and mutated anti-Muslim racism into acceptable discursive liberal framings such as lack of training and institutional oversight. The use of the term *deficiency* indicated that the Inquiry would not centre on Canadian state officials' conduct that resulted in the men's detention and torture in Syria and Egypt. Instead, Justice Iacobucci was asked to redirect the investigation to their possible failure to act — from what the officials did do, to what they might have failed to do. This framing foreclosed a ruling of responsibility in relation to Canadian officials' use of racialized practices such as the production of racial t/lies, panoptic investigations that triggered the men to self-deport from Canada, and questions sent to Syrian officials to be put to the men during torture. As the state violence the men encountered was mostly the result of conduct rather than a lack of conduct, the *deficiency* phrasing significantly reduced the possibility that the Inquiry would look for evidence indicating that Canadian officials' actions directly resulted in the men's detentions and torture. The only government institution that could be said to have been guilty of a lack of conduct was DFAIT's Consular Services, for either rendering no services at all, or very limited services, to the men during their detention.

Further, "deficiency" indicates a previously established acceptable norm, which was established through the *Arar Inquiry Report* (2006a). O'Connor explained state officials'

practices of racial profiling as reasonable steps in the aftermath of the 9/11 terrorist attacks and as well as lack of training and experience. This explanatory paradigm became the platform for Justice Iacobucci to arrive at conclusions similar to those of Judge O'Connor, who had explained anti-Muslim racist practices, some of which were rooted in legal changes and policing mandates, as merely banal, innocent mistakes caused by the pressure of the post-9/11 environment and a lack of bureaucratic oversight.

Justice Iacobucci was required to establish whether Canadian state officials had acted in ways that were deficient in the circumstances, and whether such a lack of conduct *directly caused* the men's detention and torture. He did not hold state officials accountable, for he "found no evidence that any of these officials were seeking to do anything other than carry out conscientiously the duties and responsibilities of the institutions of which they were part" (ibid.). Similar to Judge O'Connor, Judge Iacobucci situates institutions such as CSIS and the RCMP, in their governance and in their organization, within the post 9/11 context and human error. Throughout the Inquiry, the issue of political and institutionalized anti-Muslim racism as a form of governance was never addressed. In fact, institutional and individual responsibility and accountability was averted, by pointing out that Commissions of Inquiry are not criminal investigations; in such an inquiry, no finding of criminal or civil liability can be made with respect to any person (Iacobucci 2008, 33).

While Justice Iacobucci emphasized that the Inquiry was not a criminal trial, the *deficiency* framing— which asked the Justice to consider whether Canadian officials' actions were negligent rather than directly implicated—simulated the conditions of a trial. In legal proceedings, the phrase *in the circumstances*, which appears in the mandate, generally refers to the evidence provided in a particular case rather than the social and political context. However,

in both the Arar Inquiry and the Iacobucci Inquiry, the socio-economic and political context within which Canadian state officials' actions occurred entered the evidentiary hearings. Judge O'Connor referred to "the shock" of the 9/11 terrorist attacks, and the prevailing fear that more attacks would occur, as well as the pressure exerted by U.S. agencies on Canada to engage in information-sharing, to explain state officials' actions in ways that created impunity for state violence. Similarly, in the Iacobucci Inquiry, the phrase *in the circumstances* referred to the post-9/11 context and indicated that the Commissioner would be investigating the conduct of Canadian state officials in the three institutions involved—CSIS, the RCMP and DFAIT—in light of the realities of the United States-led War on Terror. In fact, Justice Iacobucci devoted the whole of chapter 3 of his report to a description of the highly bureaucratized institutional operations of CSIS, the RCMP, and DFAIT, and to a description of the post-9/11 context as an exceptional time, in which exceptional pressures were placed on state officials (Iacobucci 2008, 93):

In the weeks and months after the terrorist attacks on September 11, 2001, there was an intense pressure on intelligence and law enforcement agencies, including CSIS and the RCMP, for maximum cooperation and collaboration. . . . In this environment, there was an emphasis on maximum cooperation and maximum sharing of information. The American led this push for maximum cooperation and information-sharing. A CSIS official testified at the Arar Inquiry that after the 2001 attacks there was a lot of pressure on everybody around the world to cooperate with the Americans. The same CSIS official stated that, post 9–11, the Americans took a very aggressive approach towards security intelligence, so much so that the rest of the world found it was difficult to keep up with them. (ibid.)

This quotation makes clear that in the Iacobucci Inquiry the phrase *in the circumstances* came to refer to the post-9/11 context. Justice Iacobucci perpetuated Judge O'Connor's discursive practices through which responsibility was placed onto the geopolitical context of the United States. Once again, the Canadian security and policing apparatus was portrayed as the victims of the United States's bullying practices. The quotation also normalizes the notion that

Islamic fundamentalist terrorism needed to be seen as a pressing problem for Canada in the 21st century. The mandate indirectly asked the Commissioner to consider Canadian state officials' conduct as measures taken by dutiful officers in the course of protecting the nation against terrorism. These measures and state officials' conduct that are informed by anti-Muslim racism and specifically sleeper-cell logic, (the idea of the Muslim men-as-terrorist) became normalized as acceptable measures in the fight against Islamic fundamentalist terrorism.

The mandate and the directives outlined by the terms of reference indicated a process that would reproduce the notion that Elmaati, Almalki and Nureddin are terrorists and liars. In particular, the phrasing of the mandate provided the racist ideological conditions through which impunity for racialized state violence could be reproduced. Emphasizing the *any* in the mandate's phrase, *any mistreatment*, implied that the men might have lied about their experiences, thereby evoking anti-Muslim racism; it also undermined the findings of Judge O'Connor and Professor Toope, who had previously established that the men had indeed been tortured. The *mistreatment* wording was critiqued by Alex Neve (on behalf of Amnesty International, AI), and by Almalki's lawyer, Jasminka Kalajdzic, for inviting a too-narrow interpretation of torture. On April 17, 2007, both Neve and Kalajdzic submitted objections to the Iacobucci Inquiry regarding the use of the phrase *any mistreatment*. They stated that the mandate of the Iacobucci Inquiry was not to determine whether or to what extent Elmaati, Almalki, and Nureddin had been tortured, since the issue of torture had already been clarified by Judge O'Connor's fact-finding report, and by Professor Stephen Toope's report (Kalajdzic 2007, 9). Both AI and Almalki's lawyers asked the Commissioner to refocus on Canadian state officials' conduct, and to interpret *any mistreatment* not as pertaining only to torture but

. . . also [to] cruel, inhuman and degrading treatment. It must also consider the consular obligations of officials dealing with Canadians detained abroad and in particular, in

circumstances where risk of torture, cruel, inhuman and degrading treatment is high. Mistreatment must encompass the right to due process of law in any investigation of alleged terrorists, or terrorist links. (Neve 2007, 1)

By using the word *mistreatment*, the mandate avoided acknowledging that the Canadian state may have been involved in torture, and may have failed to uphold its obligations to prevent torture as per international human rights law—for example, the *Convention against Torture*. Neve (2007) and Kalajdzic (2007, 9) also argued that the phrase *any mistreatment* worked to obscure Canada's national and international obligations to repatriate citizens, as per the *Charter* section 24(1), and the *International Covenant on Civil and Political Rights* (Neve 2007, 4–7).

Particularly, the terms of reference tried to prevent the possible disclosure to the public of Canadian state officials' involvement in torture and that Canada is not a human rights abiding country. The Conservative government directed the Commissioner to hold the Inquiry in secret, and to work from a perspective that would result in rulings consistent with government policy. For example, the terms of reference (Day 2006, section 1) directed the Commissioner,

. . . if he disagrees with the opinion of the Minister referred to in subparagraph (k) . . . or [if] the disclosure of the information would be injurious to international relations, national defence and national security, he shall, without adjudicating the matter, so notify the Attorney General of Canada, which notice shall constitute notice under section 38.01 of the *Canada Evidence Act*. (Iacobucci 2008)

This directive required the Commissioner not to make an independent decision and/or publicly disagree with the government or government institutions, but rather to “notify” the Attorney General of Canada, who represented the Canadian institutions in question. In a further directive controlling the outcome of the Inquiry, and limiting public knowledge of its findings, section (o) asked the Commissioner, “if he disagrees with the Minister (of Public Safety and Emergency Preparedness),” to invoke the national security confidentiality clause (38.201) of the *Canada Evidence Act*, and immediately notify the Attorney General. The outcome of the Inquiry was further limited by section (m) of the terms of reference (Day 2006), which asked the

Commissioner to “submit on or before January 31, 2008, both a confidential report and a separate report that is suitable for disclosure to the public” (Iacobucci 2008). Justice Iacobucci accommodated to the sovereign power of the state and complied with the terms of reference: he held all evidentiary hearings in secret, and provided the government with a confidential report.

Iacobucci did express discontent with some of the evidence that did not enter the public report. He pointed out that certain evidence that was “directly relevant” to his mandate, and “should [have been] disclosed to the public,” but was not (33). He stated, “the responsible Minister is of the opinion that disclosure of this information would be injurious to national security, national defence, and/or international relations” (ibid.). While Justice Iacobucci seemingly had no influence over the mandate or the terms of reference, that defined some of the procedures of the Inquiry, he made use of his discretionary power to exclude and include participants and intervenors in the inquiry process.

The Politics of Exclusion

The use of a political appointee system to establish and maintain political governmental interests is not a new phenomenon and was applied in the Arar Inquiry. Like Judge O’Connor, Justice Iacobucci has embodied the ideal Canadian-Canadian (white, male, middle-class citizen), whose political and economic life is in sync with the party politics of the government that appoints him. However, it is striking how Justice Iacobucci’s counsel team was aligned with the Conservative party’s values⁶⁴: Iacobucci used his discretionary power as Commissioner (Day

⁶⁴ Justice Iacobucci has a track record of association with the Conservative party in Canada. In 1991 then Prime Minister Brian Mulroney of the Conservative party appointed him to the Supreme Court of Canada. In 2008, the Conservative government contracted him to chair the committee of commissioners appointed to the Indian Residential Schools Truth and Reconciliation Commission. In 2009, he was contracted “to review all relevant documents relating to the Afghan detainee scandal back to 2001” (Taber 2010), and in 2011 he was asked to “inquire into and report on First Nation representation on Ontario jury rolls” (Waboose 2011).

2006, sections [f] and [g]) to appoint a team four of whose nine members consisted of colleagues from his law firm, Torys LLP.⁶⁵ The four from Torys were: John Laskin as lead counsel; John Terry as co-lead counsel; Jennifer Conroy as counsel; and Sarah Huggins as counsel. Laskin, Terry, and Iacobucci were partners at Torys. Laskin and Terry, experts in corporate law, white-collar crime, and defending corporate clients against class action suits. A review of Laskin's and Terry's profiles and clients showed that these lawyers and their clients' business interests were politically aligned with conservative economic politics. For example, Prime Minister Harper's emphasis on privatization and the corporate exploitation of Canadian natural resources such as oil and water, and his attempts to dismiss and circumvent Indigenous peoples' land rights and environmental conservation measures, were in line with the corporate interests of the clients represented by Torys. Torys represented mining and oil pipeline businesses in their negotiations with Indigenous populations, and they also represented the Canadian government in cases involving Aboriginal rights in the context of the privatization and exploitation of Canadian natural resources.

The other five counsellors worked for different law firms, mostly located in Montréal: Daniel Jutras was appointed special counsel; and Danielle Barot, Simon Richard, Tessa Kroeker, and Annik Wills as counsellors. Jutras worked for Borden Ladner Gervais LLP.⁶⁶ Barot, who specialized in criminal law, was the only woman appointed to a senior counsel position, and the only counsel who had also served as legal counsel in the Arar Inquiry. Conroy, Kroeker, Huggins, and Wills had recently graduated from law school (Iacobucci 2008, 46).

⁶⁵ Torys LLP operates in New York, Toronto, and Calgary. An expert in corporate and tax law, Iacobucci holds the position of senior counsel in this international law firm, which specializes in advising government, industry, and corporate entities (Torys LLP, 2013).

⁶⁶ Ladner Gervais LLP specializes in business law and corporate litigation.

Initial public hearings were held to determine participatory status and funding, in which Justice Iacobucci excluded several individuals and non-governmental organizations from the inquiry process. In contrast to Judge O'Connor who publicly invited organizations to participate (O'Connor 200, 285-287), without offering a rationale, Iacobucci allowed only half the number of intervening organizations that had participated in the Arar Inquiry. He granted participatory status to the Attorney General of Canada, as the representative of CSIS, the RCMP, DFAIT, the OPP, and the OPS; and also to Almalki, Elmaati, and Nureddin.

Iacobucci excluded Benamar Benatta and Mohamed Omary from participatory status. These two were refugee claimants to Canada who were deported to the United States by Canadian officials. Their initial submissions claimed that Canadian state officials had been similarly involved in the men's experiences of being labelled as terrorists, deported, detained, and tortured. Submissions for participatory standing made on their behalf explained that a great deal of evidence linked their experiences with those of Elmaati, Almalki, Arar, and Nureddin. However, Justice Iacobucci denied these submissions. He did not explain his decision in the report, but simply referred to the terms of reference (Day 2006) that described the inquiry as "an internal inquiry into the actions of Canadian state officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin" (Iacobucci 2008, 29). Benatta and Omary had been cleared of any suspicion of terrorism and at the time were living in Canada, but one might conclude that their refugee status was a contributing factor in the Justice's decision to exclude them from this inquiry.

A variety of NGOs that had been included by Judge O'Connor, such as the LUO, the Polaris Institute, and the CLC were not granted the intervenor status. In their submissions to the Arar Inquiry, these organizations had articulated concerns about how Canada's anti-terrorism

legislation and other security measures infringed on *Charter* rights, as well as on civil and human rights. They had argued that Canadian anti-terrorism measures should not override Canada's commitments to civil rights, human rights, and international conventions against torture.

Justice Iacobucci did grant intervenor status to other NGOs, most of whom had been granted this status in the Arar Inquiry: Amnesty International (AI), Human Rights Watch (HRW), the British Columbia Civil Liberties Association (BCCLA), The Council on American Islamic Relations Canada (CAIR-CAN), Canadian Civil Liberties Association (CCLA), International Civil Liberties Monitoring Group (ICLMG), and the Canadian Arab Federation (CAF). He also included the Canadian Coalition for Democracies (CCD), in the Inquiry.⁶⁷ The NGOs' initial submissions to the Iacobucci Inquiry raised concerns similar to those noted in their submissions to the Arar Inquiry. Once again, CAIR-CAN and CAF argued that the Inquiry should recognize and address the systemic and institutionalized anti-Muslim racism that had governed Canadian state officials' conduct.

Interestingly, Elmaati's, Almalki's and Nureddin's legal representatives, and most of the NGO and governmental organizations that were granted intervenor and participatory status, took

⁶⁷ Having never heard of the CCD, I did a web search for the site noted in their submission. The website <http://canadiancoalition.com> has since been removed from the Internet. I traced information about this group through the signatures on the submission; these included Alastair Gordon, CCD President, and Naresh Raghubeer, Executive Director. In 2005, the names of Gordon and Raghubeer emerged in press releases reporting a political smear campaign scandal, in which the CCD had targeted the Liberal candidate for Mississauga-Erindale, Omar Alghabra (Liberal Party of Canada 2005; Clay 2005). The CCD's efforts included the expression of anti-Muslim and anti-Arab racism in the form of a press release suggesting that the possible election of the Liberal candidate, in a Mississauga riding, constituted a Muslim takeover of Canadian politics (Heckbert 2005). In response, the Muslim Canadian Congress filed a police report, and asked the Attorney General's office to investigate the CCD's role in producing anti-Muslim hysteria. The Liberal party launched a libel suit against Gordon as President of the CCD; under the threat of legal action, the organization retracted its allegations. In other news articles, a connection between the CCD, the Harper government, and the Torys law firm was also apparent. At the time of the Alghabra scandal, Peter Kent and Peter Clement were CCD board members. Kent, a former U.S.-Canada media mogul, in 2015 Minister of the Environment, was a great supporter of oil sands development, who made headlines in 2011 when Canada withdrew from the Kyoto Protocol. Similarly, Clement was Minister for the Federal Economic Development Initiative for Northern Ontario (FedNor). On October 30, 2012 it was reported that FedNor and Gold Corp Inc. had co-funded a \$40 million project to build a gas pipeline in the Northern Ontario Red Lake region; Gold Corp Inc. (represented by Torys' law firm) would be the natural gas supplier ("Union Gas Celebrates" 2012).

up and integrated some of Judge O'Connor's findings in their submissions. For example, Vincent Westwick (2007), counsel for OPS officers in the Iacobucci Inquiry, who had also been their counsel in the Arar Commission, took up Judge O'Connor's findings and recommendations regarding Canadian police officers' lack of training in carrying out national security investigations:

It is entirely likely, given the fact that the Ottawa Police Service is responsible for policing the National Capital Region, that the Ottawa Police Service will, in the future, participate in investigations of matters of national security or other matters of a similar nature. Therefore, as a learning institution, the Ottawa Police Service needs to benefit from any lessons learned throughout the Inquiry. (Westwick 2007)

Westwick implicitly referenced Judge O'Connor's framing of racialized policing practices in Arar's case as rooted in a lack of education and training, and as the result of a sudden shift to national security policing and information-sharing procedures. Liberal self-reflective racialism, which acknowledged partial responsibility for Arar's ordeal, framed race-based policing technologies in ways that would prove acceptable to a liberal value system. That is, race-based policing was reframed as non-racist. In particular, Westwick's use of the phrase "as a learning institution" affirmed the liberal self-reflective racialism apparent in the *Arar Commission Report* and its denial on the ways in which anti-Muslim racism governed policing practices. The sentence "the Ottawa Police Service needs to benefit from any lessons learned throughout the Inquiry" indicates the underlying assumption that the Iacobucci Inquiry would result in findings and recommendations similar to those of the Arar Commission.

Submissions by the lawyers for Elmaati, Almalki, and Nureddin⁶⁸ emphasized the men's Canadian citizenship status, in the attempt to clear their names of the suspicion of terrorism.

⁶⁸ Paul Copeland and Jasminka Kalajdzic represented Almalki. Elmaati's lawyers were Barbara Jackman and Hadayt Nazami, and Nureddin's lawyers were John Norris and Barbara Jackman.

Here too the discourses emerging in the submissions are governed by the violence, particularly the tortured false confessions, the men encountered. Similarly to Arar, the men's Canadian citizenship status and therefore their right to be free from torture and have access to Canadian constitutional rights, was emphasized. The submissions made on behalf of the three men were almost identical in the way they referred to Judge O'Connor's findings. For example, in clearing Maher Arar's name, Judge O'Connor highlighted his Canadian citizenship, and downplayed his dual citizenship with Syria as well as his religious affiliation. For his part, Almalki stated:

I am a Canadian citizen. I have lived in Canada for the past 19 years. In May 2002, I was detained in Syria, imprisoned for the next twenty-two months, and tortured repeatedly. I believe my detention, interrogations, mistreatment, and torture resulted either directly or indirectly from the actions of Canadian state officials. I also believe that Canadian officials failed to provide me with Consular Services and otherwise impeded my timely return to Canada. . . . I believe that it goes without saying my reputation largely rests in the hands of this Inquiry. I am not a terrorist. (Almalki 2007)

Elmaati stated: "Like Maher Arar, I am a *Canadian* citizen who was detained and tortured in Syria and then transferred to Egypt and tortured there. I believe Canadian officials were responsible for this" (Elmaati 2007; emphasis added). He also stated, "I am not a terrorist and I do not believe that my reputation should be maligned" (2007).

HRW and AI were the only NGOs to directly bring up Canadian renditions to torture. These organizations pointed out that they were the only organizations involved in the Inquiry with longstanding expertise in relation to the legal background and policing practices of the American extraordinary rendition program. In fact, they had been involved in bringing arbitrary detentions and torture to the public's attention since 2003. Since 2002 these organizations had consistently critiqued U.S. and Canadian policing practices as violating basic human rights and policies about the prevention of torture. In particular, HRW offered its expertise on extraordinary renditions in the context of "policies and practices with respect to Canada, the United States, Egypt, and Syria" (Rosenberg-Rothstein et al., 2007, 2). Secretary General of AI, Alex Neve,

emphasized that he had been involved in the cases of Elmaati, Almalki, Arar, and Nureddin since their respective imprisonments in Syria. He provided a concrete timeline of his efforts to bring the then Liberal government's attention to the men's detentions and possible torture in Syria and Egypt (Neve 2007).

The CMCLA made a joint submission with CAIR-CAN, highlighting that Elmaati, Almalki, and Nureddin were Canadian citizens and Muslims, and that their Muslim background influenced their labelling as terrorists, and their subsequent experiences of detention and torture. In their submission, the two organizations emphasized their support for the rule of law, as well as the government's responsibility to "protect Canadians from threats of terrorism or other dangers, both external and internal" (Syed 2007, 2). They reinforced the liberal notion that the fight against terrorism should not "trample on human and civil rights and disregard the rule of law" (3). These organizations outlined how Canada's anti-terrorism legislation disproportionately affected Muslim populations, and had been particularly implicated in the torture of Elmaati, Almalki, and Nureddin. James Kafieh, writing on behalf of the CAF, emphasized the organization's expertise and experience in advising "the Government of Canada including Parliament, the Prime Minister's office and various ministries in the fields of human rights, anti-racism advocacy and training and security issues" (Kafieh 2007, 2). He explained that anti-Muslim racism must not be viewed solely as a question of individual incidents, but needed to be understood as systemic and institutional in relation to anti-terrorism legislation. The Arab community in Canada had been disproportionately affected by Canada's security measures, and "a pattern of human rights abuse directly affects Arab Canadians as a class" (Kafieh 2007, 4). In fact, Kafieh argued that the "*Charter* right to security of the person for the entire Arab community may be at stake" (5).

Murray Mollard (2007), executive director of the BCCLA, emphasized that organization's expertise in "national security intelligence, anti-terrorism legislation and police accountability in Canada" (4). The BCCLA had developed particular expertise in ensuring that Canadians' "basic rights and freedoms" were integrated into security measures (Mollard, 4) in ways that avoided "problems created by unique lines of authority" (ibid., 5). The ICLMG, represented by Warren Allmand, pointed out that his organization played an active role during all the stages of the Arar Inquiry on issues related to policy and policing practices (Allmand 2007, 6). He stated that the ICLMG would like "to fully take part" in the Iacobucci Inquiry, as they had done in the Arar Inquiry. Allmand asked the Inquiry to address concerns "about the impact of new anti-terrorism legislation and other counter terror measures with regards to civil liberties, human rights, refugee protection, racism, political dissent, and governance of charities, international cooperation and humanitarian assistance" (Allmand 2007, 2).

The CCD was the only NGO applying for intervenor standing in the Iacobucci Inquiry which had not previously participated in the Arar Inquiry. Iacobucci granted them intervenor standing. Their submission stood out from the others, as it did not offer to contribute any relevant expertise in the context of torture, human rights or civil liberties. The CCD argued for the right to intervene based on its members' influence on media coverage, and on government officials in Canada and the United States. For example, David Harris, counsel for the CCD, stated: "Members of the Coalition have appeared on Public Broadcasting Service (PBS), Cable News Network (CNN), Fox News, Microsoft and the National Broadcasting Company (MSNBC), British Broadcasting Corporation (BBC) and have been quoted or published in foreign print media ranging from *US News and World Report* to the *New York Times* and the *Jerusalem Post*"

(Harris 2007, 4). Harris claimed that CCD members had influenced public perception and policy directives in relation to terrorism:

The Canadian Coalition for Democracies has advanced its goals through, *inter alia*, close study of development and policy bearing on intelligence, terrorism and national security. This study has, since the CCD's founding, benefited from the participation of Coalition Executive and Senior Fellows who have served, or otherwise had serious involvement in, related fields in law, intelligence, counterterrorism, academe, journalism, and public policy, and some of whom have testified as experts before Canadian parliamentary and American Congressional bodies in relation to these subjects. Reflected in these efforts has been the Coalition's commitment to the need to mount a vigorous, responsible defence against terrorism and associated subversion, in order to safeguard free and democratic societies at home and abroad. (Harris 2007, 2–3)

This quotation, and in particular the last sentence, implicitly reflected the anti-Muslim idea that Muslim and Arab populations were potential terrorists, and that Islamic fundamentalist terrorism was a pressing threat to Canada's national security. The sentence implied that Canadian state officials' acts of racialized violence against Elmaati, Almalki, and Nureddin were justified in the context of anti-terrorism efforts, and that actions taken by government officials—actions that had been critiqued as violations of international human rights law, conventions against torture, and *Charter* rights—were in fact necessary to prevent terrorist attacks.

The CCD tried to influence the Inquiry report and consequently public perception and politics. In fact, in the CCD's submission to apply for intervenor status, Harris stated that the CCD was in direct contact with the Office of the Prime Minister (PMO):

The Coalition maintains regular and direct contact with parliamentarians and government leadership, consulting with and making frequent representations to the office of the Prime Minister, Ministers of the Crown and diverse other senior Canadian offices and officials. The Coalition also works informally on issues of terrorism and democracy with NGOs in Canada and the United States of America. (Harris 2007, 3)

The CCD's final submission to the Iacobucci Inquiry promoted anti-Muslim and anti-Palestinian rhetoric—specifically, the notion that Muslims are terrorists. The CCD tried to discredit concerns (articulated by other organizations) that Canadian state officials' conduct amounted to race-based

suspensions of the rule of law (Harris 2008, 7). Harris argued that organizations that had critiqued Canada's anti-terrorism legislation were guilty of "silenc[ing] critiques of Islam" (ibid.,

7). For example, in the final submission, Harris stated:

During the course of the Inquiry hearing, the Commissioner has heard suggestions that Canadians of Muslim background may face particular difficulties owing to alleged anti-Muslim racism in this country. The CCD believes that such assertions, if not completely supported by evidence, have significant and potentially damaging implications for social cohesion and, ultimately, public safety. (Harris 2008, 6)

In addition to denying the existence of anti-Muslim racism, the CCD also raised fears about the effects of acknowledging the existence of such racism. In this quotation, resistance to anti-Muslim state violence is figured as a threat to democracy and pluralism. Further, the submission cited the work of Dr. Sam C. Holliday (a graduate of West Point, the American military academy), who has argued that "Islamophobia is a term [used] to shut down legitimate and vital debate about the threat of the Third Jihad" (quoted in Harris 2008, 6). Harris uses political resistance against Islamophobia as a way of inducing fear for Islamic fundamentalist terrorism. For example, Harris insisted:

Today, pluralist democracies and other states live in an era of extremist infiltration and developing mass-casualty threats. Individually and collectively, citizens of these countries face threats to their safety and security, including the potential for their civil liberties to be menaced by severe remedial government action that might be made necessary or unavoidable by mass-destructive or mass-casualty assaults. It is submitted that this is the backdrop against which the matters confronted by the Commissioner must be measured and resolved. (Harris 2008, 5)

This quotation perpetuated anti-Muslim racism and sleeper cell logic by suggesting that Muslims in the West represent a threat to national security. It reproduces the racist ideologies that triggered the legal and budgetary shifts, and terrorist-producing policing technologies, through which Canadian officials had infringed on liberal principles such as the rule of law, habeas corpus, and *Charter* rights, and engaged in tactics that amounted to renditions to torture. By asking the Commissioner to consider Canadian officials' conduct in the context of "extremist

infiltration and developing mass-causality threats,” the CCD asked Justice Iacobucci to uphold Canadian state officials’ conduct as dutiful protective measures against Muslim men as terrorist threats.

The CCD indirectly suggested that Arar is a terrorist. The following statement indicates that the Arar Inquiry was biased and did not hear evidence in support of the RCMP’s claim that Arar is a terrorist suspect:

The CCD is concerned that certain weaknesses in the Arar Inquiry’s approach and procedures left questions unresolved. Examples of such weaknesses include the failure of the Arar Inquiry to hear certain important evidence under oath, and the possible impression of the Toope fact-finding investigation as a belated, and *pro-forma*, exercise in reaching largely-predetermined conclusions. (Harris 2008, 6)

The CCD’s attempts to discredit the Arar Inquiry process must be understood in light of the fact that Judge O’Connor’s findings were at odds with this organization’s conservative ideological position. The CCD worked to undermine Judge O’Connor’s and Professor Toope’s findings that Arar was not a terrorist, and that he and the other three men had been exposed to the same torture practices. Here the CCD indirectly suggested that the Toope findings about the men’s experiences of torture were grounded in lies. This quotation ignores the fact that Arar, Elmaati, Almalki, and Nureddin had been under intensive investigation by the RCMP, which was unable to find evidence that any of them had engaged in terrorist activities, or had ties to terrorist groups. Their statement described the Arar Inquiry as a politically biased process, and suggested that its outcome was the result of “largely predetermined conclusions” (Harris 2008, 6).

An analysis of the procedural practices of the Iacobucci Inquiry, as set out in the subsequent report, showed that Justice Iacobucci took the CCD’s claims very seriously. In fact, doubts regarding the truthfulness of Elmaati, Almalki, and Nureddin shadowed the inquiry process as well as the report. For example, Iacobucci did not accept the men’s testimonies as given to Professor Toope regarding their torture, nor did he accept Professor Toope’s (2005)

report. He requested new reports by Dr. Judith Pilowsky, a psychologist, and Dr. Rosemary Meier, a psychiatrist, assessing Almalki's, Elmaati's, and Nureddin's claims of physical and psychological torture (Iacobucci 2008, 41–49). Further, he ruled that only counsel for the participants and intervenors “but not their clients could review the draft factual narratives on a confidential basis” (ibid.).

In the following section, I show how Justice Iacobucci perpetuated the notion that Elmaati, Almalki, and Nureddin were terrorists by preventing evidence from surfacing that showed that their false confessions were rooted in the violence that Canadian state officials' have triggered and promoted. I show how Justice Iacobucci issued procedural instructions that implied that the men could not be trusted with supposedly confidential information. In addition to giving the impression that Elmaati, Almalki, and Nureddin were potential terrorists, withholding evidence from the men mirrored the secret trial-like conditions of the security certificate process.

Governance through Secrecy

Just as renditions to torture were secretly organized by Canadian state officials, the Iacobucci Inquiry, which was supposed to make facts about Canadian state officials' conduct transparent to the public, was governed by secrecy. Kalajdzic (2010), the legal scholar who, along with Copeland, served as Almalki's lawyer in the Iacobucci Inquiry, critiqued Justice Iacobucci's reliance on section 38 of the *Canada Evidence Act*. The notion of national security enabled him to conduct much of the Inquiry in secret (163–64). Kalajdzic pointed out that Iacobucci “called no witnesses in public, disclosed no documents, and gave the three men in whose name the inquiry was called no opportunity to test the evidence of government witnesses” (163). Further, she argued that the Inquiry marginalized and excluded “the three men at the heart of the Inquiry and, to a lesser extent the general public” (164). This governance through secrecy

constituted a form of sovereign racialized power; impunity for racial violence was created in ways that reflected Canadian renditions to torture and the security certificate process.

Shortly after the three men were granted participatory status, and selected NGOs were granted intervenor standing, the men's lawyers and all the NGOs (except the CCD) submitted objections to Justice Iacobucci regarding the way the terms of reference (Day 2006) defined the inquiry as an internal inquiry. While the terms of reference directed the Commissioner to conduct the Inquiry in private, section (e) gave Justice Iacobucci some discretionary power to decide which portions of the Inquiry would be conducted in public, and which in camera. Iacobucci could have taken the above objections into account; he could have appealed the participants and intervenors and conducted some of the witness hearings in public. Instead, he chose privacy over public transparency at each opportunity.

Based on claims about national security, Judge O'Connor had also been confronted by constant requests by the legal representatives of RCMP officers for secrecy. However, he negotiated the supposed dilemma between public transparency and national security confidentiality by holding a portion of the CSIS evidentiary hearings in camera, and a portion of the RCMP and DFAIT witness hearings in public (O'Connor 2006c, 655). In the Arar Inquiry, Arar had full participatory standing, and Elmaati, Almalki, and Nureddin had limited participatory standing. All four men and their respective counsel were allowed to participate throughout the evidentiary hearings. Arar's legal team was given the opportunity to cross-examine witnesses, and to view evidentiary documents. Intervenor groups also attended, and although they could not examine witnesses, they could pose questions to Arar's and the Inquiry's counsel (O'Connor 2006d, 297–299).

In contrast, Justice Iacobucci consistently ruled in favour of the national security establishment's request that he conduct the Inquiry in private. He did this by invoking section 38 of the *Canada Evidence Act* in order to prevent facts from becoming public knowledge—facts about Canadian state officials' racialized policing practices and implication in torture that might have caused political uproar if they had been widely publicized. Of over twenty-two months of hearings, interviews with forty-four Canadian government officials were all conducted at in camera hearings that were held in secret locations (Iacobucci 2008, 57; Kalajdzic 2010, 163). Justice Iacobucci even ordered changes of location to ensure that the hearings received no media coverage, and were kept from the public.

Elmaati, Almalki, and Nureddin, their legal representatives, and most NGOs were entirely excluded from the Inquiry process. No documents—even non-confidential documents—or transcripts were made available to the men, or to the public. The men were not even allowed to read the final submissions delivered on their behalf by their lawyers (Kalajdzic 2010, 176). The men and their lawyers were prevented from questioning Canadian officials' testimonials, and from viewing the evidence that vindicated the men from the accusations of terrorism made against them—and directly implicated Canadian officials in the men's false confessions elicited through torture. Kalajdzic has pointed out that the lack of disclosure of evidence, the lack of public transparency, and the men's inability to challenge evidence all violated the "traditional objectives" and "key functions and aspirations of inquiries" (184).

Here, governance through secrecy not only undermined the most basic principles of liberal rule—it also replicated the secret organization of Canadian renditions to torture, and the secret evidence on which the terrorist producing practices of the security certificate process are based. The Justice's decision to deny the men, and (at times) their representatives, the ability to

participate in the hearings, to view and challenge evidence, and to access government documents represents another form of sovereign racialized state violence.

Justice Iacobucci's decision to exclude the men from evidentiary hearings affirmed the anti-Muslim racist idea that Muslim and Arab-looking men were terrorists. Not only that: Almalki described the ruling that excluded him from hearing and viewing evidence as "the reoccurrence of his experiences in Syria, where he was powerless to defend himself against the words and actions of his accusers" (Kalajdzic 2010, 181). Iacobucci's decision to give the men's counsel limited access, and to deny Almalki, Elmaati and Nureddin access, to non-confidential "draft factual narratives"—summaries of the testimonies and documents reviewed by counsel for the Commission—reproduced the notion that these Muslim men could not be trusted, since they were likely to be guilty of terrorism. Furthermore, "government parties, the intervenors and the lawyers for the men were given access to the narratives, but were not permitted to discuss [them] with the men themselves" (Kalajdzic 2010, 179; see also Iacobucci 2008, 58–59). All these decisions affirmed Orientalist understandings: us versus them, good versus evil, and innocent versus terrorist.

The CCD was the only NGO that was given direct access to the Commissioner and to the Inquiry counsel. They were confident that their views had been heard (Harris 2008, 8). In their final submission, the CCD acknowledged having had various discussions with, and having made a number of representations to, the Commissioner and Inquiry officers. All the other NGOs were excluded from the hearings, and were neither granted access to Inquiry counsel, nor to the Commissioner. On October 4, 2007, AI sent a letter to Prime Minister Stephen Harper. It was signed by the BCCLA (Shirley Heafey, Board Member); CAF (Khaled Mouammar, President); CAIR-CAN (Faisal Kutty, Vice Chair and Legal Counsel); the CCLA (Anwaar Syed, Executive

Director); the HRW (Hehal Bhuta, Special Advisor on Terrorism and Counter-Terrorism); and the ICLMG (Warren Allmand, Legal Counsel). In the letter, the signees jointly articulated their concerns about the secret nature of the Inquiry process:

Dear Prime Minister:

It is of crucial importance that this Inquiry process be open to a greater level of public scrutiny and participation. It is a well-established principle of rights law that investigations—particularly where linked to compliance with human rights obligations—require public scrutiny to secure accountability in practice and in theory. In a climate where Canadian security concerns have escalated, there is an increasing need for greater openness and transparency so that public trust in our police and security forces can be restored. In addition and very importantly, these three Canadian men need and deserve to be able to participate more fully in the process. In the context of an obligation to permit public scrutiny, while it is accepted that the degree of scrutiny required may well vary from case to case, in all cases the victims are entitled to be involved in the procedure to the extent necessary to safeguard their legitimate interests. We believe to date that standard has not been met. This Inquiry is the only opportunity they have had to determine why they were detained and tortured, and why Canadian officials used the media to accuse two of them of having terrorist links. This Inquiry offers a crucial opportunity for all of them to clear their names and restore their reputations. (Neve 2007, 2)

These objections and concerns were discredited, ignored, or dismissed. Subsequently, some lawyers resigned over the issue, and were replaced by other lawyers. One NGO, the BCCLA, withdrew entirely from the Inquiry process.⁶⁹ Paul Champ, legal representative for the BCCLA, wrote:

The present Inquiry represents a significant departure from the principles that underlie the very purpose of such inquiries: open and transparent inquiry into matters of public concern, in a manner which assures the public that the issues are being thoroughly investigated and addressed. Public inquiries into the functioning of public institutions or the action of government officials are particularly significant in a democratic society. They provide the means by which the public can hear, discuss, and form opinions on matters of significant public concern. Like court proceedings, the final outcome of a public inquiry is not in any way determinative of public opinion on a particular issue or

⁶⁹ BCCLA lawyer Paul Champ withdrew from the Inquiry on October 3, 2007, and was replaced by Shirley Heafey. The BCCLA withdrew completely from the Iacobucci Inquiry on December 11, 2007 (Iacobucci 2008, 47). Two other lawyers withdrew from the Inquiry: Copeland withdrew as counsel for Almalki on June 4, 2008, and Norris withdrew as Nureddin's lawyer on June 9, 2008 (Iacobucci 2008, 46).

subject, and for this reason citizens must be allowed to follow and engage the process as much as reasonably possible. (Champ 2007, 2)

Withholding evidence from the public and from the participants, in the name of national security, constituted a reproduction of sovereign racialized violence that ultimately resulted in the identity transformation of Muslim-Canadian citizens innocent of terrorism to Islamic fundamentalist terrorists (Canadian renditions to torture).

In fact, the Iacobucci Inquiry and its *Report* is a form of sovereign racialized violence: in its ability to document racialized state violence, and rule that Canadian state officials had nothing to do with it. Although the Inquiry documented the violence the men experienced, it simultaneously de-centering the violence that they had experienced from the Canadian state, continuously discrediting and disempowering the men. This had the further effect of legitimizing the actions of Canadian officials who operated and organized torture from a distance. By documenting facts that demonstrated Canadian state officials' involvement in the men's detentions and torture, and then ruling that Canadian state officials' actions only indirectly contributed to the men's so-called mistreatment, the Inquiry constituted a direct display of sovereign racialized power—the racialized delineation of who is innocent of violence, and who is prone to (terrorist) violence. Despite engaging in torture (from a distance) the Canadian state was portrayed as innocent of racialized violence; and Elmaati, Almalki, and Nureddin were reproduced as Muslim men who possibly engage in terrorist violence.

The Sovereign Power to Rule

The public version of the *Iacobucci Inquiry Report*,⁷⁰ released on October 21, 2008, seemed to surprise the civil liberties and human rights advocacy community. For example, Kerry Pither (2008b) stated in a press release, “it’s no wonder CSIS, the RCMP and the government wanted to keep the Iacobucci inquiry so secret. Despite all the faults with the process, the inquiry’s report offers up a startling and shameful record of Canadian complicity in torture” (Pither 2008b). The *Iacobucci Report* broadly confirmed everything the three men had stated in their affidavits.

However, the report revealed a disconcerting pattern: there were discrepancies between the so-called factual narratives provided by Canadian officials (Iacobucci 2008, 109–267); the narratives and statements provided by Elmaati (269–95), Almalki (297–322), Nureddin (323–31); and Iacobucci’s findings (345–455).⁷¹ In the report, Justice Iacobucci documented some of the Canadian state officials’ conduct that revealed that the three men had been victims of Canadian renditions to torture; however, in each case he ruled that the officials’ actions did not directly contribute to the men’s detentions and mistreatment in Syria and Egypt.

⁷⁰ Justice Iacobucci pointed out that the public report contained 20 percent less information than the secret report for the government (Iacobucci 2008, 60).

⁷¹ In the report, the Commissioner recapped his lawyers’ interpretations of the forty thousand documents and diplomatic notes selectively released by the Attorney General. Also in that report, Iacobucci summarized the summaries of the already censored statements made by Canadian state officials at in-camera hearings. He provided summaries of summaries of Elmaati’s, Almalki’s, and Nureddin’s individual testimonies describing their experiences of deportation, detention, and torture in Syria and, in Elmaati’s case, also in Egypt. Filtered through the discursive framings of Inquiry counsel, the men’s experiences were relayed to the public in chapters 7, 8, and 9 of the report (Iacobucci 2008, 269–331). The chapters providing factual narratives reveal the remote but causal involvement of CSIS and the RCMP in the men’s departures from Canada, and in their detentions and torture in Syria and Egypt.

Justice Iacobucci documented (in part) but neglected to rule on the use of panoptic surveillance, and the leaks to the media that had triggered Elmaati's and Almalki's self-deportations from Canada. In his findings, the Justice also neglected to mention the RCMP's use of the false confessions as evidence. These forms of racialized violence were crucial to the organization of renditions to torture in the geopolitical contexts of Syria and Egypt and its significance for the Canadian context. The ways in which Elmaati's and Almalki's departure from Canada was narrated gave the impression that they left Canada of their own volition. Justice Iacobucci referenced personal reasons for their departure from Canada and promoted the believe that the RCMP had nothing to do with their departures. For example, Justice Iacobucci stated that: "Mr. Elmaati traveled to Syria of his own accord for the purpose of getting married" (Iacobucci 2008, 347), he said and, similarly, Almalki "travelled to Syria to visit his ill grandmother" (297). These statements omit any mention of the sovereign-disciplinary policing techniques that drove the men out of Canada, ensuring their arrival in Syria. In the chapters that summarized the three men's testimonies, details of racialized labelling and surveillance were revealed; however, evidence of racialized policing and anti-Muslim racism were not acknowledged as such by Iacobucci, nor did he note these as contributing factors in the men's experiences.

In fact, Justice Iacobucci's findings reflected the mandate's limited focus, on whether Canadian officials' actions were "deficient in the circumstances" in relation to Elmaati's, Almalki's, and Nureddin's detentions and "mistreatment" in Syria and Egypt. He responded to the mandate's use of the phrase *in the circumstances* by contextualizing Canadian officials' conduct with reference to the War on Terror (Iacobucci 2008, 65–66, 93–96). Throughout summaries of the Canadian state officials' factual narratives, Iacobucci interwove the 9/11 events

as circumstances into his descriptions, suggesting that Canadian officials' conduct was consistent with both the post-9/11 environment and the Canadian state officials' and their institutions national security mandate. In the report, the Commissioner included RCMP officers' explanations, which had also informed Judge O'Connor's findings. These included a lack of training, and accounts of pressure exerted by American authorities on Canadian officials, particularly about sharing information with foreign agencies (Iacobucci 2008, 114). Justice Iacobucci described some of the labelling practices—in which Elmaati was defined as a terrorist linked to the al-Qaeda movement—and information sharing practices with the CIA, FBI, and Syrian authorities, as *deficient conduct*—yet he ruled that these labelling practices had not directly contributed to Elmaati's detention and torture in Syria and Egypt. This was the conduct Iacobucci described as deficient:

- a. In September 2001, the RCMP described Mr. Elmaati to various foreign law enforcement authorities, including Syrian authorities, as “linked through association to al Qaeda” and “an imminent threat to public safety.”
- b. In 2000 and 2001, CSIS described Mr. Elmaati to foreign intelligence agencies as, among other things, “involved in the Islamic extremist movement” and “an associate” of an Osama Bin Laden aide.
- c. On November 10, 2001, the RCMP notified the FBI and CIA of Mr. Elmaati's intended departure the following day and provided them with his itinerary. Handwritten notes on a briefing note dated November 15, 2002 suggest that the CIA was unaware of Mr. Elmaati's travel plans until advised by the RCMP. Although it may well be that the CIA would have able to obtain Mr. Elmaati's itinerary through its own sources, the fact is that the itinerary was provided by the RCMP.

While these statements demonstrate clear links between Canadian state officials' conduct and Elmaati's detention in Syria, Justice Iacobucci ruled that “the Inquiry found no evidence to suggest that Canadian officials requested that Mr. Elmaati be detained or advised Syrian authorities that Mr. Elmaati was travelling to Syria” (Iacobucci 2008, 248). The effects of how Canadian renditions to torture were organized and the discursive articulation of Iacobucci's

mandate become apparent in the ways in which he documented sovereign racialized state violence and then produced impunity for it. He affirmed Judge O'Connor's liberal self-reflective racialism in finding that racialized policing practices amounted to nothing more than a lack of institutional oversight, a lack of RCMP training in relation to intelligence gathering activities, problems in intelligence sharing with foreign countries (65), and a lack of consular training "in recognizing the signs of torture and abuse of Canadians detained abroad" (90). The exertion of pressure on Canadian officials to provide American officials with information about a possible "second wave of terrorist attacks" (93), and a lack of training and clear institutional hierarchies among and within CSIS, the RCMP, and DFAIT (73–75, 86–87), were normalized.

Like Judge O'Connor, Justice Iacobucci accepted RCMP officers' explanations as truth. For example, he quoted the officer in charge of Project A-O Canada, Inspector Michael Cabana in saying:

The RCMP had a mandate to work in an integrated fashion with the CIA and the FBI, which meant that the RCMP shared everything in "real time" with American agencies. In sharing information with third parties other than the United States authorities, Inspector Cabana stated, the RCMP would first send information to its foreign liaison officers. They, he stated, have the appropriate training to know how to structure requests of foreign authorities, and could therefore modify the language of the communication as appropriate for the particular country. (Iacobucci 2008, 114)

In this quotation, it becomes evident how O'Connor's explanatory discourse have provided the framework for testimonies in the Iacobucci Inquiry and entered the public report. Through repetition these (liberal self-reflective racialist) understandings of what and why it happened are normalizing techniques that essentially influence public perception.

Justice Iacobucci documented the torture experienced by the men in Syria and Egypt (as I outlined in chapter 3), and he did so in ways constituting a form of Orientalism. He promoted the ideas that Syrian state officials acted on their own volition and that Muslim men inflicted violence on other Muslim men. For example, from the men's testimonies, Justice Iacobucci

represented their experiences of torture as independent from Canadian state officials' actions, and only included their "experiences in Syria" (Iacobucci 2008, 269–332). In Elmaati's case, he inscribed the notion of Syrian cultural inferiority when he detailed Syrian state officials' actions as inhumane and barbaric:

The interrogators laughed at his screaming and begging, and told him that they did not accept his story and that he would have to change it. From the voices in the room, Mr. Elmaati understood that the General, another high ranking officer, and several guards were in the room during the interrogation. Mr. Elmaati recalls that those who hit him also swore and cursed him, using filthy words. At one point during this interrogation, the interrogators told him that they were going to bring in his wife and rape her in front of him (273).

Here Elmaati emerged, both as a terrorist and as a victim of Syrian state violence. Syrian interrogators are portrayed as barbaric who engage in torture for their own individual gratification. Muslim women emerged not only as victims of Muslim men but also of the Syrian political and military regimes. The *Iacobucci Inquiry Report* gave the impression that Syria and Egypt are culturally inferior by violating Canadian citizens' rights and the International Convention against Torture, while Canada was indirectly represented as a non-torturing country, culturally superior to Syria and Egypt.

Justice Iacobucci documented but trivialized the Consular Services non-intervention that prolong the men's detention and promoted repeated torture. He referred to the *Manual of Consular Instructions*, stating that "some countries will not recognize the right of Canadian consular officials to formally intervene in these cases, and that consular officers may be limited to making informal representations" (Iacobucci 2008, 91). Here he clearly blames the men's dual citizenship, their citizenship with Syria and Egypt for their experiences of detention and torture. In fact, the report points out that "DFAIT and diplomatic missions WILL NOT provide services to dual nationals in the country of their nationality if that country does not recognize the prisoner's Canadian citizenship" (ibid.). Responsibility for the men's ordeals was clearly

assigned to Syria and Egypt. Canadian state officials' violations of the men's Canadian citizenship rights, in particular their right to receive consular visits and legal advice were obscured.

The detailed documentation of torture in the public report needs to be understood as a display of sovereign racialized power. Justice Iacobucci documented sovereign racialized state violence, but ruled that Canadian officials only indirectly contributed to Elmaati's, Almalki's and Nureddin's detentions and torture. In all three cases, Justice Iacobucci ruled that Canadian officials did not directly contribute to the men's experiences of detention and "mistreatment". He documented some conduct—such as state officials' labelling the men as terrorists, and sharing information with foreign intelligence agencies—as deficient, yet ruled that this conduct only indirectly contributed to the men's experiences of torture.

CSIS agents were implicated the least; the RCMP's information-sharing practices and the Consular Services' lack of conduct were deemed "deficient in the circumstances" (Iacobucci 2008, 29–39):

Elmaati's detention in Syria [did not result] directly from any action of Canadian officials. However, I do conclude that the combination of three instances of sharing of information by Canadian state officials in the period leading up to Mr. Elmaati's detention likely contributed to his detention, so that the detention can be said to have resulted indirectly from these actions. I also conclude that these actions were deficient in the circumstances. I do not find that Mr. Elmaati's detention in Egypt resulted, directly or indirectly, from any actions of Canadian officials. (36)

The Commissioner concluded that Elmaati was tortured in Syria and Egypt, but found that Canadian officials' conduct only indirectly contributed to his torture. The actions that he found "deficient in the circumstances" and likely contributing to Elmaati's mistreatment in Egypt included: "the failure of Canadian state officials to advise DFAIT's Consular Affairs Bureau"; "CSIS's sending questions to a foreign agency to be put to Mr. Elmaati while in Syrian detention"; and "the RCMP's attempts to interview Mr. Elmaati in Egypt and the RCMP's

sharing of information” (36). In particular, Consular Services had failed to act in a number of instances: they failed “to locate and obtain access to Elmaati” (37), they failed to visit him while he was in Syria, and they failed to recognize his mistreatment (ibid.).

Justice Iacobucci said he could not determine whether Canadian state officials’ conduct had indirectly contributed to Almalki’s detention. He stated that: “while it is possible that information shared by Canadian state officials might have contributed in some way to the decision by the Syrian authorities to detain him, in my judgment that possibility does not meet the threshold of likelihood required for me to infer an indirect link” (Iacobucci 2008, 38). However, the Justice concluded that Almalki’s torture in Syria indirectly resulted from the RCMP having shared its databases with SMI, and from the RCMP’s provision of questions to be put to Almalki to SMI. Similarly, he concluded that CSIS and RCMP information-sharing practices had indirectly contributed to Nureddin’s detention and mistreatment in Syria. He did find that DFAIT had provided Nureddin with prompt Consular Services (38–39).

In all three findings, the organization of Canadian renditions to torture and the phrasing of the mandate—the use of the terms *indirect* and *deficient in the circumstances*—enabled the production of impunity for the racialized state violence enacted by the national security establishment and the police apparatus. Justice Iacobucci avoided making statements that would have indicated a clear cause-and-effect relationship between Canadian state officials’ actions and the men’s experiences of torture. In particular, the use of the word *indirectly* foreclosed the possibility that officials would be held fully accountable, as Canadian renditions to torture were organized in ways that circumvented Canadian state officials’ direct involvement in deportations, detentions, and torture. Ultimately, some of the most important characteristic features of Canadian renditions to torture, such as the panoptic surveillance techniques that triggered the

men's self-deportations, the use of international terrorist watch lists that triggered the men's detentions in Syria and Egypt Justice Iacobucci avoided to document and rule on. The use of Syrian state officials to commit torture, enabled him to claim only indirect involvement on the part of Canadian officials, and thus to produce impunity for state violence.

Conclusion

In previous chapters, I focused on how impunity for sovereign racialized violence was produced through a form of modern imperialism under Liberal state governance. In chapter 3, I analyzed this process on a material level, and in chapter 4, I analyzed it on a discursive level. In this chapter, I focussed on how impunity for sovereign racialized state violence took a different political turn under Harper's Conservative government. The *Iacobucci Inquiry Report* did not produce impunity for sovereign racialized state violence through the pillars of modern imperialism such as legalization, rationalization (i.e., justification and explanation), reorganization of colonial projects, and the integration of the colonized subject into colonial projects. While the mandate was governed by modern imperial processes, the inquiry did not exhibit pertinent micro-level discursive and material technologies such as the inclusion of "the colonized" through which modern imperialism could mutate, obscure, trivialize, and de-centre sovereign racialized state violence in and from the Canadian state. Rather, the Iacobucci Inquiry (re)produced impunity for racialized state violence through *direct* forms of sovereign racialized power: political influence was brought to bear on the inquiry process, exclusionary practices were used, and the Inquiry was conducted in secrecy—preventing the participants from viewing evidence and the public from knowing the full scope of Canadian renditions to torture. Through these methods, the Inquiry undermined and chipped away at (it did not to circumvent) Canada's multicultural, liberal democratic principles.

Both inquiries reproduced impunity for racialized state violence, thereby perpetuating race-based authoritarian governance; but the Iacobucci inquiry process and report raised even more concerns about the violation of liberal and democratic principles. The Iacobucci Inquiry was governed by practices that prevented public transparency, and silenced, excluded, and discredited NGOs' and individuals' concerns about anti-Muslim government conduct and resistance to the autocratic governance of the Inquiry. Further, the Inquiry included an NGO that had promoted anti-Muslim racism and expressed the ideological belief that Muslim-Canadians constitute a terrorist threat.

The Iacobucci Inquiry's documentation of racialized state violence, combined with its subsequent ruling that Canadian officials were not directly implicated in this violence, constitutes a display of sovereign racialized power. It operated on a discursive level, whereby state violence was documented but direct responsibility was denied. The Iacobucci Inquiry revealed the organizational practices of *Canadian* renditions to torture, yet Justice Iacobucci concluded that there was no direct connection between Canadian state officials' conduct and the men's experiences of detention and torture. Consequently, no institutional shifts or changes in policing were recommended, and no changes in laws were suggested. No apology or compensation was offered to the men. Justice Iacobucci's findings and the Canadian government's refusal to acknowledge wrongdoing—let alone provide an apology or any compensation—constituted a display of blatant white settler domination over the Muslim male other.

Even though the Iacobucci Inquiry process, report, and rulings focused on Canadian state officials' conduct, and even though Elmaati, Almalki, and Nureddin were not under investigation by the Inquiry, Islamic fundamentalist terrorist identities continued to be imprinted on the men

throughout the Inquiry. Their reputations were maligned, doubt was cast on the truthfulness of their statements, and evidence that demonstrated that they were not terrorists was ignored. In particular, the ruling that state officials' conduct did not directly result in their detentions or in the torture that coerced them to falsely implicate themselves and others in terrorist activities meant that the stain of terrorism remained imprinted on their bodies, and would continue to shadow their lives.

These practices constituted a display of sovereign racialized power, specifically the white male political élite's ability to define who is innocent of violence, and who is a terrorist. Justice Iacobucci's findings, and the Conservative government's refusal to acknowledge wrongdoing, perpetuated the notion that Canada was and still *is* under the threat of Islamic fundamentalist terrorism.

CONCLUSION

MODERN IMPERIALISM:

CANADIAN RENDITIONS TO TORTURE AND THE PRODUCTION OF IMPUNITY AND CONTINUITY FOR SOVEREIGN RACIALIZED STATE VIOLENCE

This dissertation has shown how Canadian renditions to torture took a modern imperial turn in its transnational organization. Modern imperialism is neither a new phenomenon nor a structurally transformed version of older and ongoing forms of colonialism and imperialism. Modern imperialism is similar to what Loomba defines as neo-colonialism (1998, 7-8). She uses the term to describe a post-colonial condition in which older forms of Western European colonialism and imperialism have been ruptured, yet continue to be reproduced. She draws on a variety of geopolitical contexts in which official imperial and colonial rule has ended (as a result of anti-colonial independence movements in the post WWII context), and yet colonial rule has not been erased but is rather perpetuated. Colonial domination and resulting inequalities persist and are re-inscribed through a variety of programs and practices such as renditions to torture. While modern imperial projects resemble older forms of colonial and imperial rule, in their racial (and economic capitalist) macro structures, they cannot simply be equated with or generalized as the equivalent to earlier and ongoing forms of imperialism in the ways they are legitimized and organized. Modern imperial projects are colonial practices, re-configured and re-coded so as to be acceptable in modern, liberal, democratic political contexts. Modern imperialism operates through re-configured race-logics – such as those identified by Fanon in his references to “Manichean dualism” (1963) and by Said in his work on “Orientalism” (1978) that legitimize

colonial projects and colonial practices in ways that allow Western states to narrate a break from earlier forms of colonialism and imperialism.

I demonstrated how, in the Canadian context, renditions to torture emerged within the politically legitimized legal and fiscal shifts that reproduced a deeply racialized security/policing apparatus. But most importantly, I emphasized how sovereign racialized state power such as detentions, deportations and torture was not directly applied by the state and its agents but was organized in ways that reproduced Canada as multicultural liberal democracy. Colonial power took a transnational/ modern imperial turn by de-centering sovereign racialized violence from the state by (a) de-territorializing detentions and torture and (b) incorporating ‘the colonized’, ‘Eastern’ nation-states and non-governmental groups into the organisation of deportations, detentions and torture as well as justification and legitimization processes.

Canadian state officials, particularly RCMP officers, engaged in knowledge-producing activities that manufactured racial t/ies and knowledge-sharing practices that triggered the four men’s detention in Syria and Egypt. The men’s banal, everyday activities and economic ventures were transformed into Islamic fundamentalist terrorist conduct, first on a discursive level and then on a material level through torture to coerce false confessions. Canadian knowledge-producing and knowledge-sharing practices de-centred illegal and illiberal acts of sovereign racialized state violence such as deportations, detentions, and torture from the Canadian state. By engaging in panoptic surveillance techniques that induced Canadian citizens to self-deport, and using international terrorist watch lists as well as the American renditions program to detain the men in Syria. Canadian state officials included the men in their own removals from Canada as well as incorporated other geopolitical contexts into the Canadian state’s deportation and detention schemes.

Although these practices, which amounted to Canadian renditions to torture, were often explained within the context of post-9/11 American imperialism and the program of extraordinary rendition, the United States did not remove or transfer Muslim-American citizens from American territory. Inducing self-deportations of Canadian citizens and preventing Canadian citizens from returning home to Canada, were the peculiar practices specific to Canada. These are just two examples of the modern imperial techniques whereby the Canadian state reproduced white settler domination by expelling unwanted Muslim-Canadian *citizens* via the circumvention of both Canadian citizenship rights and *Charter* rights that allow citizens to remain in and return to Canada (*Canadian Charter of Rights and Freedoms* 1982, s. 6).

Canadian state officials de-territorialized the men's detentions and their torture to Syria and Egypt, countries known for the use of torture in controlling political dissent, as well as in punishing and intimidating populations. The elaborately organized outsourcing of torture did not simply function as a display of sovereign racialized power; it produced terrorist identities through torture that resulted in false confessions. The RCMP sent questions to Syria that were put to the men during torture; in which the men implicated themselves and others in terrorist activities. Through the coerced identification of themselves and others as terrorists, Canadian officials' racial t/lies—that these four men were members of a Canadian sleeper-cell connected to the al-Qaeda movement—were produced as “truth”. The transformation of the men from individuals innocent of terrorism to Islamic fundamentalist terrorists legitimized the Canadian state's racially repressive laws, and the expansion of the investigative power of the national security and police apparatus. In fact, Canadian renditions to torture entailed national, individual, and group identity transformations. The outsourcing of torture transformed four Muslim Canadian citizens – Ahmad Abou-Elmaati, Abdullah Almalki, Maher Arar, and Muayyed

Nureddin – men who were innocent of terrorism, into what the Canadian state would like them to be: Islamic fundamentalist terrorist group connected to the al-Qaeda movement. This form of terrorist production transformed sovereign racialized state violence (practices of racialized surveillance, criminalization in the absence of evidence, indefinite detentions and deportations targeting Muslim men, women and communities) into legitimate protectionist measures against Islamic fundamentalist terrorism. The de-centering and de-territorialization of sovereign racialized violence are political strategies that enabled the Canadian state to be marked as a rights abiding and transformed Canadian national identity from what it is: a white settler colonial state into what it would like to be seen as: a multicultural, liberal democracy.

Non-governmental organizations such as Amnesty International, as well as many individuals, groups, and journalists, have done tremendous work in bringing public attention to the issue of renditions. However, no public outrage or political lobbying has been effective in reversing the legal changes within which Canadian renditions to torture emerged. In fact, what might be termed *sites of resistance* made available by the Canadian state—the Commissions of Inquiry—were conducted in ways that worked to reproduce impunity for these forms of state violence, and the continuation of colonial relations. The Arar and Iacobucci Inquiries, as well as their respective *Reports*, affirmed the existing sovereign racialized practices of cultural ordering and belonging such as preemptive detentions and deportations as protectionist measures against Islamic fundamentalist terrorism.

The Arar Inquiry and its *Report* (O'Connor 2006a) took a critical view of some of the knowledge-producing and knowledge-sharing practices used by the RCMP. It incorporated some of the discursive interventions of NGOs as well as those of Arar's own legal team, and provided the public with the illusion of democratic self-reflectivity and improvement, through issuing a

series of recommendations. I argue that it is precisely through these practices of inclusion that the inquiry functions as tool of modern imperialism, an instrument through which the modern state can obscure sovereign racialized state violence, and through which it can be narrated as non-racist. In the Arar inquiry process, the Canadian white settler state interwove public outrage, demands for change, and multifaceted critiques of state officials' conduct into the dominant relations of colonial rule. Within this context, modern imperialism was not confined to the legitimizing discourses through which the Liberal government legalized racially repressive policing practices (see chapter 2), or to the material sovereign-disciplinary policing practices through which Arar's rendition to torture was organized (see chapter 3). In fact, modern imperialism continued to function through the explanatory discourses put forward in the *Arar Commission Report* (O'Connor 2006a). The explanatory discourses put forward in the *Arar Commission Report* (O'Connor 2006a) worked to make racism disappear or transformed racism into liberal acceptable discourses.

The variety practices that operated to make racism disappear in the *Arar Commission Report*, I have called 'liberal self-reflective racialism'. Liberal self-reflective racialism operated in the following ways: (a) it included "the colonized" in the inquiry process; (b) it acknowledged partial responsibility for Arar's ordeal; (c) it represented the knowledge-producing and knowledge-sharing practices constructing and distributing racial t/ies as racially innocent mistakes and rendered them thinkable and remediable through existing liberal priorities such as education and training; and (d) it de-centred, and de-territorialized torture on a discursive level. These explanatory discourses, made acts of racial violence compatible with liberal values. Canadian (inter)national respectability was re-established, and Canadian innocence (of racism) was affirmed, through practices that denied, trivialized, and obscured anti-Muslim racism.

Similarly the discursive practices of the *Somalia Commission of Inquiry Report* (1997) “that enabled the nation to reaffirm its innocence” (Razack 2004, 119), the discourses explaining sovereign racialized violence in the *Arar Report* (2006) and *Iacobucci Inquiry Report* (2008), effectively protected anti-terrorism legislation, changes to the *Criminal Code*, the racialized “security budget,” and terrorist-producing policing practices as legitimate protectionist measures against Islamic fundamentalist terrorism. Thus, impunity was produced for state violence. While this Inquiry had the potential to document, confront, and politicize colonial experiences, it predominantly reproduced white settler domination.

In contrast to the Arar Inquiry process, the Iacobucci Inquiry’s investigation of Canadian officials’ conduct was markedly exclusionary. The federal government set up the process of secrecy and exclusion to keep the organization of Canadian renditions to torture out of the public’s view. The Inquiry excluded Elmaati, Almalki, and Nureddin, and many NGOs from attending the hearings, viewing evidence, and reading transcripts of the hearings. This governance through secrecy prevented the men and their counsel from questioning the accuracy of the evidence provided to the Commissioner and statements made by state officials. Consequently, this process allowed the cover up of the transnational organization of renditions to torture that produced Islamic fundamentalist terrorists needed to legitimize its race-based authoritarian practices of governance.

While the *Arar Commission Report* cleared Arar and his wife of the suspicion of terrorism, the Iacobucci Inquiry failed to do the same for Elmaati, Almalki, and Nureddin. In fact, governance through secrecy fundamentally undermined the men’s ability to clear their names from terrorist suspicion. Instead, secrecy enforced in the name of national security further imprinted the stain of terrorism onto the three men. In particular, the refusal to rule on CSIS’s

and the RCMP's knowledge-producing, racialized labelling practices reproduced the sovereign power the men experienced during torture: the imposition of terrorist identities.

The *Iacobucci Inquiry Report* did not manoeuvre racialized state violence into liberal spaces but openly displayed sovereign racialized power on a discursive level. State violence such as labelling and surveillance practices that showed direct responsibility for the men's detention in Syria and Egypt were documented but then ignored in the Justice's ruling. Justice Iacobucci ruled that Canadian state officials' conduct, such as knowledge-sharing practices, were only indirectly responsible for the men's experiences of detention and torture. Both reports avoided establishing a cause-and-effect relationship between Canadian officials' conduct and the men's experiences of detention and torture in Syria and Egypt. The organizational details of Canadian renditions to torture were cited as indications that Canadian officials' conduct was inadvertent and largely immaterial when it came to the three men's experiences of torture.

Although the Arar Commission and the Iacobucci Inquiry engaged in very different processes, they both produced impunity for racialized state violence by absolving individuals and their actions and in large part institutions from anti-Muslim racism and responsibility for torture. On the contrary, the reports affirmed the anti-Muslim race logics that governed policing and surveillance practices of the police apparatus and the national security establishment. Neither Inquiry critiqued the gendered and racialized content of the legal and budgetary changes, nor the shifts in policing that had facilitated the institutionalization of anti-Muslim racism.

In the aftermath of the release of the *Arar Commission Report* (2006), RCMP Commissioner Giuliani Zaccardelli resigned, after giving "contradictory" statements to the House of Commons, but "no disciplinary proceedings against any Canadian officials [were] initiated" (Macklin 2008, 17). An article published by the *Ottawa Citizen* pointed out that RCMP

officers in charge of Project A-O Canada had been promoted (“RCMP Rewards Officers Involved in Arar Case” 2006). For example, Inspector Mike Cabana, who had been in charge of the entire project, became Criminal Investigations Officer for Québec, and “was made responsible for national security and border integrity.” Former Inspector Garry Clement, who had supervised the Ottawa division of Project A-O Canada, was promoted to chief of the police force in Cobourg, Ontario. The same article reported that Assistant Commissioner Richard Proulx and his supervisor, Deputy Commissioner Garry Loeppky, were honoured with the Order of Merit of the Police Forces.

After the Canadian government’s compensation and apology to Arar and his family, Arar and his wife Monia Mazigh became contemporary Canadian national heroes. Arar’s third identity transformation—from terrorist suspect to victim of the United States extraordinary rendition program to Canadian national hero—was used to inform Canada’s national image as a multicultural liberal democracy. While Arar has repeatedly been depicted as a victim of the United States extraordinary rendition program, Canada’s national image as a multicultural, law-abiding, equality-based, and non-racist nation-state was revitalized in the explanations of Arar’s experiences that appeared in the *Arar Commission Report* and in media coverage. For example, he became a national hero for his bravery in standing up against American imperialism and protecting human rights, receiving the Canadian Human Rights Award in 2005, and in 2006 the Letelier-Moffitt Human Rights Award (Democracy Now, 2006).

Mazigh and Arar both hold PhDs (in economics and telecommunications engineering, respectively), but as of the date of this writing, neither have been able to find jobs in their professions. Instead, Arar has occasionally been hired by a variety of U.S. and Canadian media outlets as a political commentator, and as an expert on Syrian state violence in light of the recent

revolutionary uprisings (“Maher Arar on Syrian Conflict” 2011; Radia 2012). Mazigh, who tirelessly lobbied the Canadian government to repatriate her husband and to launch an inquiry into Canadian officials’ conduct in relation to his detention and torture in Syria, became the embodiment of Canada’s national narrative as a multicultural, human rights-protecting, and law-abiding nation-state. During the 2004 federal election, she ran as an NDP candidate in an Ottawa riding. In some academic literature and media representations, she has been portrayed as a persistent and determined, cool, modern, politically active, Muslim, hijab-wearing woman (Macklin 2008). Specifically, in one *Toronto Star* article, she was hailed as “the Laura Secord of Our Time” (Meynell 2007). Just like Laura Secord, who supposedly prevented a U.S. invasion of Canada in the War of 1812, Mazigh is constructed as having saved contemporary Canada from falling prey to American imperialism, a dangerous force that sought to undermine the “principles of justice that define Canada” (ibid.). Mazigh has been celebrated as the feminine defender of democracy and human rights, who refused to surrender Canadian values to the race-based authoritarian security regime of the United States. In the Arar case the RCMP and other government bodies continuously were able to represent themselves innocent of torture. For example, on September 1, 2015 the RCMP publicly announced that it would lay charges against Syrian Col. George Salloum and stated that it will attempt to extradite him to Canada to face a charge of torture (CBC News 2015).

While Arar has made many headlines over the past several years, the experiences of Elmaati, Almalki, and Nureddin—experiences that revealed a Canadian renditions to torture program—never received as much media and public attention. Today, these three men continue to suffer, socially and economically, from the terrorist subjectivities that were imprinted on their bodies through torture. Post-traumatic stress disorder, physical disabilities stemming from

torture, and the stain of terrorism have prevented them from returning to active lives. Despite the fact that the House of Commons, in the *Report of the Standing Committee on Public Safety and National Security* (Breitkreuz 2009), recommended that the government officially apologize to Elmaati, Almalki, and Nureddin, the Conservative government has not apologized, nor has it offered compensation for state officials' deficient actions and their indirect involvement in the men's detention and torture. Even civil litigation undertaken in 2009 has failed to obtain compensation for the men for their physical and psychological suffering.

The struggle to access documents that could provide evidence of Canada's direct involvement in the men's detention and torture continues. In 2012, a collective law suit, *Almalki et al. v. Canada*, through which the men and their families sought access to evidence in order to pursue compensatory damages from the Government of Canada, was turned down by the Supreme Court of Canada. Once again, national security confidentiality (*Canada Evidence Act*, s. 38) was used to deny access to evidence, and to prevent public knowledge of Canadian state officials' conduct. More research needs to be done to investigate the effects of renditions to torture, and the effects of the inquiries, on the men's lives, their families, and on Muslim communities in Canada.

The discursive and material production and reproduction of impunity for racialized state violence, as well as the collective failure to resist these state-centred and de-centred forms of racialized violence administered in the name of national security, have contributed to the production of colonial continuity through race-based authoritarian mechanisms. These have been expanded under Stephen Harper's political leadership. Since 2006, a disregard for democratic process, a lack of public transparency, and a lack of political debate—especially about government budgetary and legal shifts—have increasingly become the guiding principles of the

Canadian Conservative government. In particular, legal shifts that have come into effect through massive omnibus bills and private member bills have foreclosed political and public debate, and take effect in the absence of careful research or community consultations regarding the effects they will have on communities and on Canadian society as a whole.

Judge O' Connor's recommendations regarding the establishment of an independent RCMP civilian oversight body, the review of surveillance techniques and knowledge-producing and knowledge-sharing practices have triggered the revision of the already existing Commission for Public Complaints against the RCMP (1988). A new legislation *Enhancing Royal Canadian Mounted Police Accountability Act* (2014) established the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police. The committee (one chair and four members) is appointed by the Governor in Council and is supposed to operate independently and with more expansive access to information in "investigating complaints of misconduct made by members of the public" and to provide "a civilian oversight of RCMP's national security functions" (Raaflaub 2006, 8). This complaints procedure is mimicking already existing complaints processes and can not be considered as an independent and effective review mechanism. It is led by political appointments to investigate Canadian state officials' misconduct, hold public hearings and publishes findings and recommendations that are not legally binding.

Judge O'Connor also recommended extended powers to the existing Security Intelligence Review Committee (SIRC) that would enable the committee to review CSIS classified information reports and oversee national security activities in immigration, foreign affairs and law enforcement activities of the Canadian border agency. Historically SIRC has been composed of appointed retired politicians from varying parties. The Inspector General was appointed as the

liaison between the Canadian political institutions and its national security apparatus. In 2012, the Conservative government abolished the office of the Inspector General, which ensured that the Minister of Public Safety was appropriately informed of CSIS's activities.

The then Conservative political government has expanded the national security establishment and police apparatus. For example, recent spending priorities and legal shifts reveal the expansion of race-based authoritarian governance. According to the Rideau Institute, in 2001–2002, the national security budget was \$7.7 billion. Between that budget year and 2011, a total of \$92 billion was allocated to national security (Rideau Institute 2011). The Rideau Institute estimates that, in the 2011–2012 fiscal year, Canada spent \$34 billion on national security, excluding national defence and military expenditures. In addition, “Security and Public Safety programs have nearly tripled in spending, from \$3 billion to almost \$9 billion annually” (ibid.). This money has been distributed across the national security establishment, which includes the RCMP, CSIS, and the Canada Border Services Agency, whose existence and operations hinge in part on the production and maintenance of terrorists and Islamic fundamentalist terrorist organizations.

In the name of national security and fighting Islamic fundamentalist terrorism, authoritarian governmental mechanisms such as preemptive criminalization, arbitrary detention, and deportation have been expanded. The Canadian state continues to deploy punitive mechanisms of social control and cultural ordering, such as the criminalization of racially and politically dissenting groups, in the absence of evidence that a crime has been committed. The security certificate program continues to allow for a variation of secret trials whereby an individual with security is appointed to view secret evidence but defendants are still denied access to evidence and denied the opportunity to cross-examine witnesses. The deportation of

foreign nationals deemed possible security threats, to countries where torture remains a disputed but ongoing practice. The *IRPA*, which was amended in 2010, 2012, and most recently on January 27, 2013, is governed by classed, racialized, and gendered assumptions that migrants to Canada, who are not part of the provinces' overseas quota selections under the economic, family sponsorship, or convention refugee categories, are likely to be “criminals”, “terrorists”, and/or “health care exploiters.” The most recent amendments, triggered by the *Faster Removal of Foreign Criminals Act* (2013), which was passed by the House of Commons in January, 2013, further entrench the reproduction of white settler domination through forms of criminalization found in Canadian immigration legislation.

Practices of domination include not only the process of immigrant selection but also forms of criminalization and penalization that widen the possibilities for detaining and deporting foreign nationals upon their arrival, and for deporting permanent residents who become criminalized. Section 20.1(1) of the *IRPA* designated a new category of migrants—irregular arrivals. Canadian border agents are required to detain members of this group upon their arrival, and hold internal reviews to determine whether they are admissible. The category of irregular arrivals includes migrants “who do not meet the provinces' selection criteria” (*IRPA* s. 25.2.3); the claims of refugees or asylum claimants can be refused based on a so-called safe-country list. For example, migrants claiming refugee status are deemed inadmissible to Canada if they arrive from a country that the Canadian government deems safe. Canada's list of safe countries consists of twenty-nine mostly European countries, and includes Hungary and Croatia, as well as Israel and Mexico. This policy essentially closes the door to a range of refugee claims, such as those based on Roma-Hungarian identity.

Foreign nationals can be detained without a warrant and deported from Canada if they do not possess a passport or other proof of identity, if they are suspected of involvement in organized crime, or if they have been associated with a group that has been listed as a terrorist organization by the Canadian government. As of January 2013, forty-four organizations based in a number of different geopolitical contexts have been labelled as terrorist entities. With the exception of the International Sikh Youth Federation, the World Tamil Movement, and Las Fuerzas Armadas Revolucionarias de Colombia, defined groups defined as terrorists are mostly Muslim organizations. The list includes Hamas, the Kurdistan Workers Party, and the Popular Front for the Liberation of Palestine, as well as al-Qaeda and Hezbollah (Government of Canada, Ministry of Public Safety 2013). Muslim and Arab-looking men have been disproportionately affected by these changes; they have been deemed possible terrorist threats based on their looks, nationalities, and religious identities, as well as for belonging to, or being associated with, one of these organizations.

In addition, the right of permanent residents to stay in Canada has been dramatically curtailed. Previously, permanent residents had the right to stay in Canada unless they were convicted of a crime punishable by a federal sentence of more than two years. Since 2001, the threshold of criminalization for political dissent and association with religious groups has been further lowered, and mandatory minimum sentences have widened the state's ability to criminalize, detain, and deport people from Canada. Furthermore, the *IRPA* appears to have widened the hierarchical distinctions between refugees, permanent residents, and citizens. Recent amendments to the Canadian *Citizenship Act* (1985) through the Strengthening Canadian Citizenship Act (2014, Bill C-24) also infringe on citizenship rights. Amendments to the *Citizenship Act* can increasingly exclude certain groups from Canadian citizenship rights by

restricting entry to Canada, preventing permanent residents from acquiring Canadian citizenship, and attempting to revoke the right of Canadian dual citizens to remain in Canada if they are convicted under a federal offence (Macklin and Crépeau 2010). The Conservative government has increasingly undermined the role of the state as the guarantor of rights; the legal protector against racial, gender, sexual, and other forms of discrimination; and the protector of Canadian citizens inside and outside of Canada. Macklin and Crépeau (2010, 11) have pointed out that, increasingly, legal protections for Canadian citizens abroad are a matter of Canadian Consular discretion rather than a universal right. This shift from universal citizenship rights to ministerial discretionary power often means that some citizens are repatriated to Canada, while others (particularly those with dual citizenship) are prevented from returning home.

Government spy agencies in Canada and the United States have, with assistance of private companies, engaged in legal and illegal domestic and international telecommunications surveillance and knowledge-sharing practices targeting a variety of populations who do not conform to the ideal white settler citizen: middle-class, entrepreneurial, able-bodied, white male. For example, in 2013, Ellen Richardson was refused entry to the United States based on mental health information about her that the Toronto Police Services and the OPP had uploaded to the Canadian Police Information Centre (CPIC), which the RCMP shares with the FBI and U.S. customs (Hauch 2013).

Further, so-called evidence gained from regimes that engage in torture is still used by Canadian officials. Evidence from questionable sources is used to dismiss refugee claims on the basis of terrorism and national security. In fact, in February 2012, the *National Post* reported that then Public Safety Minister Vic Toews had directed CSIS to make use of information obtained through torture (Bouzane 2012). Lorne Waldman, Arar's lawyer, stated in an interview with Jim

Bronskill that he saw “immigration proceedings where Canadian Border Services Agency (CBSA) routinely adduces evidence from regimes that engage in torture without ever questioning the fact that the evidence they’re obtaining comes from such a regime, [and] without expressing any concerns about [its] reliability” (Waldman, quoted in Bronskill 2012).

In addition, in its 2012 report, Amnesty International noted Canada’s failure to meet a number of international human rights standards. Canada “got a failing grade” in relation to racial discrimination and state prevention of torture (quoted in Ward 2012). The transfer of Afghan prisoners by Canadian soldiers to facilities where torture is a common practice remains an unresolved issue. While the use of torture in “Eastern” countries is often politically condemned, the practices of torture that take place inside Canadian prisons and on Canadian soil (as inflicted, for example, on Ashley Smith) are obscured or called something else.

I remain deeply concerned that the criminalization of political dissent and religious association, legalized through the *Criminal Code of Canada*, has become normalized—and that practices such as the use of secret evidence to impose detentions and possible deportations on Muslim men, practices that formed part of the security certificate process, have bled into a range of Canadian laws. For example, under the concept of giving victims of crime more rights within the criminal justice system, the *Victims Bill of Rights Act* (2015) chips away the rights of the accused. This legislation will once again amend the *Canada Evidence Act* (1985), to allow secret witness testimonies. In these pieces of legislation, the accused is prevented from facing his or her accuser. Furthermore, the use of secret evidence and/or the use of secret intelligence (such as racialized labelling practices) as evidence in cases of preventative criminalization (i.e., when no crime has been committed) have altered evidence-based policing practices, criminal trial procedures, and the judicial principle that an accused is innocent until proven guilty.

Of particular concern are the ways in which constitutional rights are chipped away, and the legal possibilities to challenge forms of state violence are diminished. For example, Bill C-51, which is as of June 9, 2015 in the Senate, amends amongst other laws the *Criminal Code of Canada*. The Bill makes significant changes to the definition of terrorism as it adds a new terrorist offence: terrorist propaganda. This Bill will infringe on the right to free speech and the right to protest as it enables defining protestors as terrorists. It further extends policing powers to listening in and monitoring private conversations without a warrant.

Professor Michael Keefer points out that the new Bill C-51 (2015) will further infringe on constitutional rights such as free speech, association and assembly. He articulates the concern that

the bill targets, among others, people who defend treaty rights of First Nations, people who oppose tar sands, fracking, and bitumen-carrying pipelines as threats to health and the environment, and people who urge that international law be peacefully applied to ending Israel's occupation of Palestinian territories. (Keefer 2015)

Under the notion of prevention, this *Act* further empowers agents to obtain warrants and detain suspects based suspicion rather than evidence. The Canadian Civil Liberties Association (CCLA, 2015) critiques this bill as it allows preventative arrests and detentions without charge up to 7 days based on that a peace officer reasonably believes that somebody may commit a terrorist offence, and that he or she is likely to prevent a terrorist activity. The CCLA has pointed out that the Bill “allows many police powers to be exercised without any court authorization” and “creates gaps in the review process by allowing other persons or organizations who may not be subject to any form of review to assist CSIS in exercising its police powers” (2015). These extended powers promote international operations, where the Canadian *Charter* and laws formally do not apply and perpetuate the de-territorialized practices of sovereign racialized

violence through which Canadian renditions were organized. In fact, Clayton Ruby has remarked that this bill's prohibition clauses similarly to U.S. torture memos will indirectly redefine torture and give "CSIS incredibly expansive powers including water boarding, inflicting pain (torture) or causing psychological harm to individuals" (Ruby in Keefer 2015).

In light of the torturous terrorist identity productions experienced by Elmaati, Almalki, Arar and Nureddin, these amendments are particularly worrisome. In fact, they are very distressing as the production and reproduction of terrorist threats continue to be crucial to sustain and to strengthen a legalized authoritarian and racially biased police apparatus and national security regime. In the name of national security and fighting Islamic fundamentalist terrorism, legal amendment by legal amendment, Canada legalizes the previously illegal and therefore outsourced practices such as torture and continues to pursue the path of an authoritarian white settler state.

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