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### The Figure of Khalid Sheikh Mohammed

#### Torture is present within our democracy – the enigma that’s not supposed to be but almost always is.

Rejali 2009. Rejali, Darius. Torture and Democracy. Princeton, NJ, USA: Princeton University Press, 2009. p 45-46. Professor of political science at Reed College.

As a matter of historical record, torture has characterized democratic as well as authoritarian states. Greek and Roman city-states, Renaissance republics, and modern democratic states have all practiced torture. Of course, I am not claiming that the democratic record is as bad as that of authoritarian states— it is not. Some democratic states have not tortured at all, and some democracies that have tortured have done so intermittently at particular times and places. Still, there is no getting around the fact that some democratic states have legalized torture, treated it as a quasi-legal investigative procedure, or practiced it routinely on the quiet, despite a formal ban. The question then is, how is this possible? Democracy is a form of government based on amateurism (citizens rule in turn by means of lots or elections in a free choice among competitors) and participation (a significant segment of the society has access to these means). In authoritarian states, by contrast, leaders are self-appointed, or if they were elected, impossible to displace afterward. These leaders typically justify their rule by some claim other than amateurism, most commonly bureaucratic or military expertise, moral and religious authority, or their unique personal qualities such as character or descent. While some authoritarian leaders may allow participation in various national referenda, these electoral processes are highly constrained or the outcomes predetermined. These fairly simple distinctions are sufficient to pose a puzzle. 2 One would not be surprised if authoritarian states used torture; autocratic leaders have an unfortunate habit of being less than benign when it comes to dealing with those who oppose them. But we tend to assume that democracy and torture could¶ not go together. After all, leaders in democratic states are open to public pressure, and the public does not like to be tortured or to be seen condoning it. Democratic governments are “bargains of leniency.” 3 Every group understands that to rule in turn means resisting the temptation to punish, much less torture, one’s opponents. Indeed, in liberal democracies, constitutions protect citizens from torture. So democracies seem unlikely to torture. Yet torture can arise nevertheless, either because of or in spite of public opinion. Governments may keep torture covert. Those who would oppose torture might not hear about it for some time, and even then they might be uncertain. Some citizens may even support torture if they believe that it is necessary for public safety, or that it will affect people unlike them, or because it takes place under special conditions (in colonies or war zones). Under these conditions, even liberal democrats may not give much weight to their heritage, preferring instead to be apathetic or even supportive. Whatever the public may think, it is often the case that powerful processes have already initiated torture long before many people know it is being used in their name. In this chapter, I describe three distinct ways in which this happens in democracies. First torture may arise because security bureaucracies overwhelm those assigned to monitor them. This phenomenon typically begins in colonies or war zones of democratic states, but it may spread backward to the metropole, as I demonstrate in the case of France in the next section. Second, torture may arise because judicial systems place too great an emphasis on confessions. Third, it may arise because neighborhoods want civic order on the streets whatever the cost. Each process generates powerful demands for torture.

**Mohammed’s body is suspended in a grey zone of legal illegality—his body receives violent treatment at the hand of the sovereign even as his inhuman status denies Mohammed the right to signify, to exist, and to request redress under the law—his torture and detention performatively produces his status as a subject unsuited to stand before the law even as his is manipulated, objectified, and punished by the “real” law of the sovereign’s exercise of force**

**Zizek 2007.** Zizek, Slavoj. "Knight of the Living Dead." The New York Times 24 Mar. 2007 [London] , opinion ed. Web. 22 Oct. 2013.

SINCE the release of Khalid Shaikh Mohammed’s dramatic confessions, moral outrage at the extent of his crimes has been mixed with doubts. Can his claims be trusted? What if he confessed to more than he really did, either because of a vain desire to be remembered as the big terrorist mastermind, or because he was ready to confess anything in order to stop the water boarding and other “enhanced interrogation techniques”?¶ If there was one surprising aspect to this situation it has less to do with the confessions themselves than with the fact that for the first time in a great many years, torture was normalized — presented as something acceptable. The ethical consequences of it should worry us all.¶ While the scope of Mr. Mohammed’s crimes is clear and horrifying, it is worth noting that the United States seems incapable of treating him even as it would the hardest criminal — in the civilized Western world, even the most depraved child murderer gets judged and punished. But any legal trial and punishment of Mr. Mohammed is now impossible — no court that operates within the frames of Western legal systems can deal with illegal detentions, confessions obtained by torture and the like. (And this conforms, perversely, to Mr. Mohammed’s desire to be treated as an enemy rather than a criminal.)¶ It is as if not only the terrorists themselves, but also the fight against them, now has to proceed in a gray zone of legality. We thus have de facto “legal” and “illegal” criminals: those who are to be treated with legal procedures (using lawyers and the like), and those who are outside legality, subject to military tribunals or seemingly endless incarceration.¶ Mr. Mohammed has become what the Italian political philosopher Giorgio Agamben calls “homo sacer”: a creature legally dead while biologically still alive. And he’s not the only one living in an in-between world. The American authorities who deal with detainees have become a sort of counterpart to homo sacer: acting as a legal power, they operate in an empty space that is sustained by the law and yet not regulated by the rule of law.¶ Some don’t find this troubling. The realistic counterargument goes: The war on terrorismis dirty, one is put in situations where the lives of thousands may depend on information we can get from our prisoners, and one must take extreme steps. As Alan Dershowitz of Harvard Law School puts it: “I’m not in favor of torture, but if you’re going to have it, it should damn well have court approval.” Well, if this is “honesty,” I think I’ll stick with hypocrisy.¶ Yes, most of us can imagine a singular situation in which we might resort to torture — to save a loved one from immediate, unspeakable harm perhaps. I can. In such a case, however, it is crucial that I do not elevate this desperate choice into a universal principle. In the unavoidable brutal urgency of the moment, I should simply do it. But it cannot become an acceptable standard; I must retain the proper sense of the horror of what I did. And when torture becomes just another in the list of counterterrorism techniques, all sense of horror is lost.¶ When, in the fifth season of the TV show “24,” it became clear that the mastermind behind the terrorist plot was none other than the president himself, many of us were eagerly waiting to see whether Jack Bauer would apply to the “leader of the free world” his standard technique in dealing with terrorists who do not want to divulge a secret that may save thousands. Will he torture the president?¶ Reality has now surpassed TV. What “24” still had the decency to present as Jack Bauer’s disturbing and desperate choice is now rendered business as usual.¶ In a way, those who refuse to advocate torture outright but still accept it as a legitimate topic of debate are more dangerous than those who explicitly endorse it. Morality is never just a matter of individual conscience. It thrives only if it is sustained by what Hegel called “objective spirit,” the set of unwritten rules that form the background of every individual’s activity, telling us what is acceptable and what is unacceptable.¶ For example, a clear sign of progress in Western society is that one does not need to argue against rape: it is “dogmatically” clear to everyone that rape is wrong. If someone were to advocate the legitimacy of rape, he would appear so ridiculous as to disqualify himself from any further consideration. And the same should hold for torture.¶ Are we aware what lies at the end of the road opened up by the normalization of torture? A significant detail of Mr. Mohammed’s confession gives a hint. It was reported that the interrogators submitted to waterboarding and were able to endure it for less than 15 seconds on average before being ready to confess anything and everything. Mr. Mohammed, however, gained their grudging admiration by enduring it for two and a half minutes.¶ Are we aware that the last time such things were part of public discourse was back in the late Middle Ages, when torture was still a public spectacle, an honorable way to test a captured enemy who might gain the admiration of the crowd if he bore the pain with dignity? Do we really want to return to this kind of primitive warrior ethics?¶ This is why, in the end, the greatest victims of torture-as-usual are the rest of us, the informed public. A precious part of our collective identity has been irretrievably lost. We are in the middle of a process of moral corruption: those in power are literally trying to break a part of our ethical backbone, to dampen and undo what is arguably our civilization’s greatest achievement, the growth of our spontaneous moral sensitivity.

#### Mohammed’s body is banned from the public even as it is subjected to the force of the law. The effective force of sovereignty produces its own internal rational through the exercise of force and the withdrawal of the law. This is the structure of the state of exception.

Agamben 1998. Agamben, Giorgio. Homo Sacer. Stanford, CA: Stanford University Press, 1998. Print.

1.7. If the exception is the structure of sovereignty, then sovereignty is not an exclusively political ¶ concept, an exclusively juridical category, a power external to law (Schmitt), or the supreme rule of the ¶ juridical order (Hans Kelsen): it is the originary structure in which law refers to life and includes it in itself ¶ by suspending it. Taking up Jean-Luc Nancy’s suggestion, we shall give the name ban (from the old ¶ Germanic term that designates both exclusion from the community and the command and insignia of the ¶ sovereign) to this potentiality (in the proper sense of the Aristotelian dynamis, which is always also dynamis ¶ mē energein, the potentiality not to pass into actuality) of the law to maintain itself in its own privation, to ¶ apply in no longer applying. The relation of exception is a relation of ban. He who has been banned is not, ¶ in fact, simply set outside the law and made indifferent to it but rather abandoned by it, that is, exposed ¶ and threatened on the threshold in which life and law, outside and inside, become indistinguishable. It is ¶ literally not possible to say whether the one who has been banned is outside or inside the juridical order. ¶ (This is why in Romance languages, to be “banned” originally means both to be “at the mercy of” and “at ¶ one’s own will, freely,” to be “excluded” and also “open to all, free.”) It is in this sense that the paradox of ¶ sovereignty can take the form “There is nothing outside the law.” The originary relation of law to life is not ¶ application but Abandonment. The matchless potentiality of the nomos, its originary “force of law, “is that it ¶ holds life in its ban by abandoning it. This is the structure of the ban that we shall try to understand here, ¶ so that we can eventually call it into question.

**All life is now politicized—the human and non-human are defined implicitly through the exercise of the law in the name of political life and the suspension of the law in the administration of violence against bare life—the objective truths of human permanence that warrant our claims for political decisionmaking treat bodies as natural expressions of capacities in ways that define some lives as capable of signifying and others as capable only of dying meaninglessly—the smooth contours of politics as betray flowing biopolitical power that warps a vision of democratic peace into permanent totalitarianism cloaked in empty promises of freedom and liberty**

**Agamben 1998** [Giorgio: Professor of Philosophy and Aesthetics at the University of Verona *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen. P. 120-123.

1.2 **Karl Lowith was the first to define the fundamental charac­ter of totalitarian states as a ‘‘politicization of life” and, at thesame time, to note the curious contiguity between democracy and totalitarianism:Since**the emancipation of the third estate, **the formation of bourgeois democracy and its transformation into mass industrial democracy, the neutralization of politically relevant differences and postponement of a decision about them has developed to the point of turning into its opposite: a total politicization** [totale Politisierung] **of everything, even of seemingly neutral domains of life. Thus in Marxist Russia there emerged a worker-state that was “more intensively state-oriented than any absolute monarchy”; in fascist Italy, a corporate state normatively regulating not only national work, but also “after-work”***[Dopolavoro*] and all spiritual life: and, In National Socialist Germany, a wholly integrated state, which, by means of racial laws and so forth, politicizes even the life that had until then been private.*(Der okkasionelle Dezionismus, p. 33)***The contiguity between mass democracy and totalitarian states, nevertheless, does not have the form of a sudden transformation**(as Lowith, here following in Schmitt’s footsteps, seems to maintain); **before impetuously coming to light in our century, the river of biopolitics that gave homo sacer** his**[their] life runs its course in a hidden but continuous fashion**. It is almost as if starting from a certain point, **every decisive political event were double-sided: the spaces, the liberties, and the rights won by individuals in their conflicts with central powers always simultaneously prepared a tacit but increasing inscription of individuals’ lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves.** “The ‘right’ to life,” writes Foucault, explaining the importance assumed by sex as a political issue, “to one’s body’, to health, to happiness, to the satisfaction of needs and, beyond all the oppres­sions or ‘alienation,’ the ‘right’ to rediscover what one is and all that one can, this ‘right’—which] the classical juridical system was utterly incapable of comprehending-was the political response to all these new procedures of power” *(La vo/valonte,* p. 191).**The fact is that one and the same affirmation of bare life leads,** in bourgeoisdemocracy, **to a primacy of the private over the public and of individual liberties over collective obligations and yet becomes, in totalitarian states, the decisive political criterion and the exemplary realm of sovereign decisions. And only because biological life and its needs had become the politically decisive fact is it possible to understand the otherwise incomprehensible rapidity with which twentieth-century parliamentary democracies were able to turn into totalitarian states and with which this century’s totalitarian stares were able to be converted, almost without interruption, into parliamentary democracies**. In both cases, **these transformations were produced in a context in which for quite some time politics had already turned into biopolitics,**and in which the only real question to be decided was which form of organization would be best suited to the task of assuring the care, control, and use of bare life. Once their fundamental referent becomes bare life, traditional political distinctions (such as those between Right and left, liberal­ism and totalitarianism, private and public) lose their clarity and intelligibility and enter into a zone of indistinction. The ex-com­munist ruling classes’ unexpected fall into the most extreme racism (as in the Serbian program of “ethnic cleansing”) and the rebirth of new forms of fascism in Europe also have their roots here.

Along with the emergence of biopolitics**, we can observe a displacement and gradual expansion beyond the limits of the decision on bare life, in the state of exception, in which sovereignty consisted. If there is a line in every modern state marking the point at which the decision on life becomes a decision on death, and biopolitics can turn into thanatopolitics, this line no longer appears today as a stable border dividing two clearly distinct zones.**This line is now in motion and gradually moving into areas other than that of political life, areas in which the sovereign is entering into an ever more intimate symbiosis not only with the jurist but also with the doctor, the scientist, the expert, and the priest. In the pages that follow, **we shall try to show that certain events that are fundamental for the political history of modernity (**such as the declaration of rights), **as well as others that seem instead to represent an incom­prehensible intrusion of biologico-scientific principles into the political order**(such as National Socialist eugenics and its eliminationof “life that is unworthy of being lived,” or the contemporary debate on the normative determination of death criteria),**acquire their true sense only if they are brought back to the common biopolitical (or thanatopolitics) context to which they belong. From this perspective, the camp—as the pure, absolute, and im­passable biopolitcal space**(insofar as it is founded solely on the state of exception)—**will appear as the hidden paradigm of the political space of modernity, whose metamorphoses and disguises we will have to learn to recognize.**

#### Mohammed’s body does not signify—his management by the sovereign reproduces the paradigmatic totalitarianism which collapses politics and life itself

Agamben 1998. Agamben, Giorgio. Homo Sacer. Stanford, CA: Stanford University Press, 1998. Print.

The protagonist of this book is bare life, that is, the life of homo sacer (sacred man), who may be killed ¶ and yet not sacrificed, and whose essential function in modern politics we intend to assert. An obscure ¶ figure of archaic Roman law, in which human life is included in the juridical order [ordinamento]1¶ in the form of its exclusion (that is, of its capacity to be killed), has thus offered the key by which not only ¶ the sacred tests of sovereignty but also the very codes of political power will unveil their mysteries. At the ¶ same time, however, this ancient meaning of the term sacer presents us with the enigma of a figure of the ¶ sacred that, before or beyond the religious, constitutes the first paradigm of the political realm of the West. ¶ The Foucauldian thesis will then have to be corrected or, at least, completed, in the sense that what ¶ characterizes modern politics is not so much the inclusion of zoē in the polis – which is, in itself, absolutely ¶ ancient – nor simply the fact that life as such becomes a principal object of the projections and calculations ¶ of State power. Instead the decisive fact is that, together with the process by which the exception everywhere becomes the rule, the realm of bare life – which is originally situated at the margins of the ¶ political order – gradually begins to coincide with the political realm, and exclusion and inclusion, outside ¶ and inside, bios and zoē, right and fact, enter into a zone of irreducible indistinction. At once excluding ¶ bare life from and capturing it within the political order, the state of exception actually constituted, in its ¶ very separateness, the hidden foundation on which the entire political system rested. When its borders¶ begin to be blurred, the bare life that dwelt there frees itself in the city and becomes both subject and¶ object of the conflicts of the political order, the one place for both the organization of State power and¶ solely emancipation from it. Everything happens as if, along with the disciplinary process by which State power ¶ makes man as a living being into its own specific object, another process is set in motion that in large ¶ measure corresponds to the birth of modern democracy, in which man as a living being presents himself ¶ no longer as an object but as the subject of political power. These processes – which in many ways oppose ¶ and (at least apparently) bitterly conflict with each other – nevertheless converge insofar as both concern ¶ the bare life of the citizen, the new biopolitical body of humanity.

### State of Exceptionalism

#### Democracy manifests itself via exceptionalism. Awareness of this aspect is key.

Agamben 1998. Agamben, Giorgio. Homo Sacer. Stanford, CA: Stanford University Press, 1998. Print.

If anything characterizes modern democracy as opposed to classical democracy, then, it is that modern

¶ democracy presents itself from the beginning as a vindication and liberation of zoē, and that it is constantly ¶ trying to transform its own bare life into a way of life and to find, so to speak, the bios of zoē. Hence, too, ¶ modern democracy’s specific aporia: it wants to put the freedom and happiness of men into play in the ¶ very place – “bare life” – that marked their subjection. Behind the long, strife-ridden process that leads to ¶ the recognition of rights and formal liberties stands once again the body of the sacred man with his double ¶ sovereign, his life that cannot be sacrificed yet may, nevertheless, be killed. To become conscious of this ¶ aporia is not to belittle the conquests and accomplishments of democracy. It is, rather, to try to ¶ understand once and for all why democracy, at the very moment in which it seemed to have finally ¶ triumphed over its adversaries and reached its greatest height, proved itself incapable of saving zoē, to ¶ whose happiness it had dedicated all its efforts, from unprecedented ruin. Modern democracy’s decadence ¶ and gradual convergence with totalitarian states in post-democratic spectacular societies (which begins to ¶ become evident with Alexis de Tocqueville and finds its final sanction in the analyses of Guy Debord) may ¶ well be rooted in this aporia, which marks the beginning of modern democracy and forces it into ¶ complicity with its most implacable enemy. Today politics knows no value (and, consequently, no ¶ nonvalue) other than life, and until the contradictions that this fact implies are dissolved, Nazism and ¶ fascism – which transformed the decision on bare life into the supreme political principle – will remain ¶ stubbornly with us. According to the testimony of Robert Antelme, in fact, what the camps taught those ¶ who lived there was precisely that “calling into question the quality of man provokes an almost biological ¶ assertion of belonging to the human race” (L’espèce humaine, p. II). ¶ **The idea of an inner solidarity between democracy and totalitarianism** (which here we must, with ¶ every caution, advance) is obviously not (like Leo Strausss thesis concerning the secret convergence of the ¶ final goals of liberalism and communism) a historiographical claim, which would authorize the liquidation ¶ and leveling of the enormous differences that characterize their history and their rivalry. Yet this idea **must** ¶ nevertheless **be strongly maintained on a historico-philosophical level, since it alone will allow us to orient** ¶ **ourselves in relation to the new realities and unforeseen convergences** of the end of the millennium. **This** ¶ **idea alone will make it possible to clear the way for the new politics, which remains** largely **to be invented**. ¶ In contrasting the “beautiful day” (euemeria) of simple life with the “great difficulty” of political bios in ¶ the passage cited above, Aristotle may well have given the most beautiful formulation to the aporia that lies ¶ at the foundation of Western politics. The 24 centuries that have since gone by have brought only ¶ provisional and ineffective solutions. In carrying out the metaphysical task that has led it more and more ¶ to assume the form of a biopolitics, Western politics has not succeeded in constructing the link between ¶ zoē and bios, between voice and language, that would have healed the fracture. Bare life remains included ¶ in politics in the form of the exception, that is, as something that is included solely through an exclusion. ¶ How is it possible to “politicize” the “natural sweetness” of zoē? And first of all, does zoē really need to be ¶ politicized, or is politics not already contained in zoē as its most precious center? The biopolitics of both ¶ modern totalitarianism and the society of mass hedonism and consumerism certainly constitute answers to ¶ these questions. Nevertheless, until a completely new politics – that is, a politics no longer founded on the ¶ exceptio of bare life – is at hand, every theory and every praxis will remain imprisoned and immobile, and ¶ the “beautiful day” of life will be given citizenship only either through blood and death or in the perfect ¶ senselessness to which the society of the spectacle condemns it.

#### Exceptionalism of the American is especially sovereign and is at the root of the global imperial order.

**Hardt and Negri 2004.** Hardt, Michael, and Antonio Negri. *Multitude: War and Democracy in the Age of Empire*. New York: The Penguin Press, 2004. Print. Page 7-9

The "state of exception" is a concept in the German legal tradition that¶ refers to the temporary suspension of the constitution and the rule of law,¶ similar to the concept of state of siege and the notion of emergency powers¶ in the French and English traditions. 10 A long tradition of constitutional thought reasons that in a time of serious crisis and danger, such as wartime, the constitution must be suspended temporarily and extraordinary powers given to a strong executive or even a dictator in order to protect¶ the republic. The founding myth of this line of thinking is the legend¶ of the noble Cincinnatus, the elderly farmer in ancient Rome who, when¶ beseeched by his countrymen, reluctantly accepts the role of dictator to¶ ward off a threat against the republic. After sixteen days, the story goes,¶ the enemy has been routed and the republic saved, and Cincinnatus returns to his plow. The constitutional concept of a "state of exception" is clearly¶ contradictory-the constitution must be suspended in order to be saved but¶ this contradiction is resolved or at least mitigated by understanding that the period of crisis and exception is brief. When crisis is no longer¶ limited and specific but becomes a general omni-crisis, when the state of¶ war and thus the state of exception become indefinite or even permanent,¶ as they do today, then contradiction is fully expressed, and the concept¶ takes on an entirely different character.¶ This legal concept alone does not give us an adequate basis for understanding¶ our new global state of war. We need to link this "state of exception"¶ with another exception, the exceptionalism of the United States, the¶ only remaining superpower. The key to understanding our global war lies¶ in the intersection between these two exceptions.¶ The notion of U.S. exceptionalism has a long history, and its use in¶ contemporary political discourse is deceptively complex. Consider a statement¶ by former secretary of state Madeleine Albright: "If we have to use¶ force, it is because we are America. We are the indispensable nation." 11 Albright's¶ phrase "because we ace America" carries with it all the weight and¶ ambiguity of U.S. exceptionalism. The ambiguity results from the fact¶ that U.S. exceptionalism really has two distinct and incompatible meanings.¶ 12 On the one hand, the United States has from its inception claimed¶ to be an exception from the corruption of the European forms of sovereignty,¶ and in this sense it has served as the beacon of republican virtue in the world. This ethical conception continues to function today, for instance,¶ in the notion that the United States is the global leader promoting¶ democracy, human rights, and the international rule of law. The United¶ Stares is indispensable, Albright might say, because of its exemplary republican¶ virtue. On the other hand, U.S. excepcionalism also means-and¶ this is a relatively new meaning-exception from the law. The United¶ States, for example, increasingly exempts itself from international agreements¶ (on the environment, human rights, criminal courts, and so forth)¶ and claims its military does not have to obey the rules to which others are¶ subject, namely, on such matters as preemptive strikes, weapons control,¶ and illegal detention. In this sense the American "exception" refers to the¶ double standard enjoyed by the most powerful, that is, the notion that the¶ one who commands need not obey. The Unites States is also indispensable¶ in Albright's formulation simply because it is the most powerful.¶ Some might claim that these two meanings of U.S. exceptionalism are¶ compatible and mutually reinforcing: since the United States is animated¶ by republican virtue, its actions will all be good, hence it need not obey international¶ law; the law instead must constrain only the bad nations. Such¶ an equation, however, is at best an ideological confusion and more usually¶ a patent mystification. The idea of republican virtue has from its beginning¶ been aimed against the notion that the ruler, or indeed anyone,¶ stands above the law. Such exception is the basis of tyranny and makes¶ impossible the realization of freedom, equality, and democracy. Therefore¶ the two notions of U.S. exceptionalism directly contradict each other.¶ When **we say that today's global state of exception, the curtailing of legal guarantees and freedoms in a time of crisis, is supported and legitimated by U.S. exceptionatism**, it should be clear that only one of the two¶ meanings of that term applies. It is true that the rhetoric of many leaders¶ and supporters of the United States often relies heavily on the republican¶ virtue that makes America an exception, as if this ethical foundation made¶ it the historical destiny of the United States to lead the world. In fact, the real basis of the state of exception today is the second meaning of U.S. exceptionalism,¶ its exceptional power and its ability to dominate the global¶ order. In a state of emergency, according to this logic, the sovereign must¶ stand above the law and take control. There is nothing ethical or moral¶ about this connection; it is purely a question of might, nor right. This exceptional¶ role of the United States in the global state of exception serves¶ only to eclipse and erode the republican tradition that runs through the¶ nation's history.¶ The intersection between the German legal notion of a state of exception¶ and the exceptionalism of the United States provides a first glimpse¶ of how war has changed in today's world. This is not, we should repeat,¶ simply a matter of being for or against the United States, nor is it even a¶ choice between unilareralist and mulrilateralist methods. We will return to¶ consider the specific role of the United States in our global state of war later, but first we will have to investigate much more deeply the changing¶ relationships among war, politics, and global order.

#### The impact is the invisible genocidal of America’s enemies..

Spanos 2011. Spanos, William V. The Exceptionalist State and the State of Exception: Herman Melville's Billy Budd, Sailor (Rethinking Theory). Baltimore, MD: John Hopkins University Press, 2011. 148-50. Print. Spanos is a Distinguished Professor of English and comparative literature at Binghamton University, Binghamton, New York

In calling his reluctant American readers' attention to the unlikely analogy¶ between late-eighteenth-century (monarchical/parliamentary) British¶ exceptionalism and late-nineteenth-century American (democratic/capitalist)¶ exceptionalism in Billy Budd, the late Melville, in short, intended to¶ disclose not only the United States's affiliative relationship with the Old¶ World, but also the unequivocally absolute relationship, however latent,¶ between its unique version of exceptionalism and the permanent state of exception that abrogates the laws of democracy in favor of the global law¶ of the exception in the name of securing them: the lawless (anomie) law¶ that reduces the polity to the camp and human life to bare life. Hidden¶ within and informing America's alleged, moral , and political superiority¶ over its former Old World master and its messianic errand in the " profane" global wilderness, he implied, was a binary (onto)logic-a " higher" (sacred) cause - the fulfillment of which would render the state of exception the rule. In the end, that is, Melville envisaged the United States's constitutional democracy metamorphosing, even against itself, into a constitutional dictatorship, and the "redeemer nation" the United States prided itself on being into a "crusading" nation: an imperial global policeman,¶ indifferent to international law, policing polities it unilaterally deemed to be " rogue" or "outlaw" states. Under this disciplinary/biopolitical “regime of truth," nor least, .he foresaw the humanity, both domestic and foreign,¶ over which this United States would preside being reduced, like Billy Budd,¶ to disposable life: life, in Agamben's chillingly apt terms, that could be¶ killed with immunity. From there, the concentration camp that Agamben has persuasively idemified "as the hidden paradigm of the political space of modernity" becomes a black "visionary" possibility.

### Advocacy Statement

#### We ask that you affirm the decidable in face of undecidability—the debate space is structured as a space between potentiality and impotentiality, twixt and tween sovereign and divine violence—the judge’s role in the debate is to act as a member of a civilian jury who restricts the sovereign power to detain by exercising their judgment of action to declare Khalid Sheikh Mohammed innocent.

#### Everyday expressions of constituent power like the affirmative are the best strategy for acting against the constituted power of sovereignty.

Frank 2K Jason A. Frank "The Abyss of Democracy": Antonio Negri's Democratic Theory¶ [Theory & Event](http://muse.jhu.edu/journals/theory_and_event) [Volume 4, Issue 1, 2000](http://muse.jhu.edu/journals/theory_and_event/toc/tae4.1.html) | 10.1353/tae.2000.0007

At the center of both works stands Negri's distinction between constituent power and constituted power, between potenza andpotere. Through this distinction Negri elaborates an intransigent division at the heart of modern politics. On the one hand, constituent power evokes the ungrounded and intrinsically disruptive strength of institutionally unmediated collective action; it is a form of power actualized through boundless and creative praxis, through the politics of revolutionary councils, Rate, and Soviets. Constituent power, moreover, only exists in the event of its enactment: it "is grounded on nothing more than its own beginning and takes place through nothing more than its own expression." (p.16) Constituted power, on the other hand, marks the end of constituent power's expression, its capture and institutionalization into various political and social forms, most obviously the form of the modern state itself. The static field of constituted power is maintained only through countless acts of violence and domination, acts which work to transform political action into political behavior, living labor into dead labor, and to eliminate altogether the innovative unpredictability of democratic materialism at least until constituent power roars forth again.¶ ¶ Negri's historical narrative in Insurgencies--and it is a narrative despite his non- teleological emphasis on "the radical continuity of the discontinuous" (p.321)--emerges in the dynamic and ongoing confrontations between these two forms of power. Through these confrontations the particular historicity of the modern is generated, and it in turn transforms its own constitutive elements. Each of the book's central chapters marks another step in this transformation with regard to constituent power. From Machiavelli's elaboration of the difference between constituent and constituted time, through Sieyès articulation of the world making capacities of labor during the French Revolution, and up to Lenin's attempt to unify democratic spontaneity and instrumental rationality, Negri elaborates constituent power's changing ontological basis.¶ ¶ The readings that Negri provides of key political theorists along the way are always intriguing, if also idiosyncratic. He takes Machiavelli well beyond his recent republican interpreters to read The Discourses as "an explicit declaration of the absoluteness of democracy as government" (p. 68); Harrington's Commonwealth of Oceana is "democratic and revolutionary rather than constitutional and traditionalist" (p.129); and Negri's defense of Lenin's institutionalism in the face of Trotsky's and Luxemburg's spontaneist critique is not only counterintuitive, but seems to work against the grain of his own analysis. Occasionally the forced contrarianism of these readings detracts from what best distinguishes Negri's contribution to contemporary democratic theory, which is his emphasis throughout on the materiality of political action. Unlike Claude Lefort's well-known account of the "adventure" of modern democracy, for example, Negri's history of constituent power is not primarily concerned with modern democracy's symbolic dimensions. Rather than reexploring how the "empty space" of modern power is constituted through the "dissolution of the markers of certainty," Negri turns his readers attention to the diverse and antagonistic appearance of democratic publics in actual places; he emphasizes the materialist politics of "the multitude" over the mystified abstractions of "the people."[[2]](http://muse.jhu.edu/journals/theory_and_event/v004/4.1r_frank.html%22%20%5Cl%20%22fn2)¶ ¶ An innovative consequence of this emphasis is Negri's separation of the history of modern democracy and constituent power from the history of popular sovereignty and political representation. The representational reduction of the multitude into "the people" or "the nation" is both "denaturalizing" and "disempowering," on Negri's account (p.13); it "is nothing but the negation of the reality of constituent power, its congealment in a static system." (p.4) Of course, Negri is not the first to oppose actual, or living democracy to systems of political representation--the Rousseauian tradition of direct democracy is established on just this opposition--but where Rousseau and his followers turn to sovereign articulations of a "general will" (however configured), Negri rejects this univocal focus on political participation within sovereign systems as yet another device of political normalization. Negri's critique of representation is, then, perhaps first and foremost a critique of sovereignty. Distinguishing between sovereignty and constituent power, Negri writes, that sovereignty¶ is a summit, whereas constituent power is a basis. It is an accomplished finality, whereas constituent power is unfinalized; it implies a limited time and space, whereas constituent power implies a multidirectional plurality of times and spaces; it is a rigidified formal constitution, whereas constituent power is absolute process. Everything, in sum, sets constituent power and sovereignty in opposition, even the absolute character that both categories lay claim to: the absoluteness of sovereignty is a totalitarian concept, whereas that of constituent power is the absoluteness of democratic government. (p.13)¶ ¶ Liberal democratic theorists engaged in detailing the institutional, legal, and moral limitations on political power will no doubt be wary of both forms of political "absoluteness" (along with Negri's rejection of natural right theory and the "holy doctrine" that democracy be equated with the rule of law), but the "absoluteness" of constituent power can only be understood within the broader context of Negri's political ontology, which has openness to difference and innovation at its very heart.

#### The interruption of the law that is the affirmative’s action of divine violence is a form of constituent power; such interruptions of sovereignty are the only way out.

Frank 2K Jason A. Frank "The Abyss of Democracy": Antonio Negri's Democratic Theory¶ [Theory & Event](http://muse.jhu.edu/journals/theory_and_event) [Volume 4, Issue 1, 2000](http://muse.jhu.edu/journals/theory_and_event/toc/tae4.1.html) | 10.1353/tae.2000.0007

When Negri emphasizes these moments of thoroughgoing democratization of the social and the political his democratic theory comes close (as he himself has noted elsewhere) to Walter Benjamin's writing on "divine violence."[[7]](http://muse.jhu.edu/journals/theory_and_event/v004/4.1r_frank.html%22%20%5Cl%20%22fn7) Unlike "mythical violence," which for Benjamin is the daily violence of legislation and the administrative violence that serves it, "divine violence" exists in the interruption or suspension of these forms of rule, in the non-instrumental exercise of popular power for its own sake. In similar terms, Negri's constituent power seems to be actualized only through its interruption and suspension of existing power configurations. "The paradigm of constituent power," he writes, "is that of a force that bursts apart, breaks, interrupts, unhinges any preexisting equilibrium and any possible continuity." (p.11) This image of a paradigm, and of a paradigm shift, indicates that constituent power and democracy exists only in the episodic--in Sheldon Wolin's recent words "fugitive"[[8]](http://muse.jhu.edu/journals/theory_and_event/v004/4.1r_frank.html%22%20%5Cl%20%22fn8)-- suspensions of institutionalized realities, in the revolutionary moments between the breakdown and reconsolidation of constituted power. This is arguably the governing image of constituent power in Negri's book, and it resonates clearly with some of the motivating slogans of the contemporary autonomist left: "rebellion is our only leader, our one true cause and the reason for everything we do."[[9]](http://muse.jhu.edu/journals/theory_and_event/v004/4.1r_frank.html%22%20%5Cl%20%22fn9)Near the conclusion of Insurgencies, however, Negri shifts his emphasis away from crisis and interruption and writes that constituent power should not be seen as an "extraordinary apparition or clandestine essence caught in the net of constituted power," but as "the ontological strength of a multitude of cooperating singularities." (p.333; his emphasis)¶ ¶ It should be said that by making an ontology of constituent power and eschewing recent theoretical attempts to be "postmetaphysical," Negri does not seek to provide another ground or foundation for democratic politics. His political ontology involves "our immersion in being," our ongoing participation "in being's continual construction."[[10]](http://muse.jhu.edu/journals/theory_and_event/v004/4.1r_frank.html%22%20%5Cl%20%22fn10) Through this ontologization of constituent power--his version of the democracy of everyday life--Negri risks making constituent power too all-pervasive to provide even tactical orientation for political action. If Negri's dominant emphasis on radical discontinuity and interruption seemed to serve only a politics of systematic suspension and crisis, his concluding emphasis on constituent power's everyday constructions and reconstructions of our political and social worlds absorbs all forms of human activity within it: the abyss of democracy threatens to become a black hole. While Negri's ontology corrects attempts like those of Arendt to provide clear conceptual divisions between the different spheres of human activity, this flattening of theoretical distinctions into a plane of immanence potentially weakens our ability to make distinctions that provide some basis, however provisional, for political judgment.¶ ¶ This said, it is a virtue of Negri's work that it avoids contemporary democratic theory's overriding concern with establishing the proper boundaries--theoretical and institutional--for the exercise of political freedom and democratic power. Ongoing attempts to perfect the channels of democratic proceduralism or to secure the best institutional expression of democratic ideals overlook the unpredictable and open-ended elements of democratic action that Negri's work emphasizes. The theoretical models produced by many democratic theorists assume a political regularity correspondent to the very state-mediated politics that make up their principle, if not only, area of concern. Negri does not want to abandon such concerns altogether, asking, for example, whether there can exist "the construction of a constitutional model capable of keeping the formative capacity of constituent power in motion." (p.25) This is certainly a suggestive path for further inquiry, but with the proviso that institutions and democratic ideals, however formulated, cannot serve as the guarantor of political freedom and cannot substitute for the "creative originality" of democratic action. As Michel Foucault wrote: "it can never be inherent in the structure of things to guarantee the exercise of freedom. The guarantee of freedom is freedom."[[11]](http://muse.jhu.edu/journals/theory_and_event/v004/4.1r_frank.html%22%20%5Cl%20%22fn11)Negri would agree. Ultimately, Insurgencies illuminates not only the limitations of our overly institutional understandings of democratic politics, but also the radically democratic limits of democratic theory.

#### The law is not a dusty and distant archive—the judge performs the law by voting affirmative, generating a social practice that does not conserve the sovereign violence of the state of exception but instead produces a politics distinct from the vampiric public sphere of the status quo

Hariman 1990. Hariman, Robert. *Popular Trials*. Tuscaloosa And London: The Univerrsity of Alabama Press, 1990. 17-18. Print.

In the seventh book of the Laws Plato justifies censorship of the¶ theatrical companies by acknowledging that "we are ourselves authors¶ of a tragedy, and that the finest and best we know how to¶ make. In fact, our whole polity has been constructed as a dramatization¶ of a noble and perfect life; that is what we hold to be in truth¶ the most real of tragedies. Thus you are poets, and we also are poets¶ in the same style, rival artists and rival actors, and that in the finest¶ of all dramas, one which indeed can be produced only by a code of¶ true law-or at least that is our faith. So you must not expect that¶ we shall lightheartedly permit you to pitch your booths in our market¶ square with a troupe of actors whose melodious voices will¶ drown our own."1 Plato tells us that a society reproduces itself¶ through performance before spectators in a public space, where the¶ community comes to be by being brought into the realm of appearance¶ through an act at once aesthetic, ethical, political, and rhetorical.¶ The drama portrays the substance of common life-the values¶ binding the community-for "if your sentiments prove to be the¶ same as ours, or even better, we will grant you a chorus, but if not,¶ I fear, my friends, we never can."2 The drama has as its text the laws, which are themselves the record of prior dramatizations, and¶ which are altered as well through the act of performance. The performance¶ of the laws then becomes a singularly powerful locus of¶ social control, for it is the very means by which the members of the¶ community know who they are.3 This passage gives us the conception of the social whole of which¶ ne popular trial is the representative part, each the opposing pole¶ ,f a synecdoche continually active in the reproduction of society.¶ ['he laws exist outside of performance, yet the performance of the laws is essential for their becoming realized in lawful living. In¶ Aristotle's terminology, the mode is epideictic; according to HansGeorg¶ Gadamer, understanding occurs through application; following¶ Thomas Farrell, the social knowledge essential for public decision¶ making is grounded in the consensus achieved before and by¶ specific audiences, confirmed by recurrent practices, capable of generating¶ future social practices, and inescapably normative in its implications;¶ 4 in our common experience, the laws are as good as we¶ judge them to be when watching or reading about their performance¶ in court. One week it was Baby M, the week before it was high school¶ textbooks, before that it was the Walker trial, von Bulow, Hinckley,¶ Angela Davis, tl1e Catonsville Nine, the Chicago Seven, the Rosenbergs,¶ Sacco-Vanzetti, Dreyfus, Dred Scott, Tom Paine, Thomas¶ Wentworth, Martin Luther, Socrates ....

**The judge performs as the troublemaker who affirms a restriction upon the authority of the law in terms of its capacity to actualize its power over bodies—the negative team, forced into action, unwittingly reproduces the law’s own failure in their attempt to domesticate and control the debate space in defense of sovereignty—you may glimpse in the tautology of the negative’s arguments about framework and the law the intuitive WEAKNESS, not strength, of sovereignty**

**Garrison 2009.** Garrison, Alysia E. "Agamben’s Grammar of the Secret Under the Sign of the Law." Law Critique 20 (2009): 281-97. Print.

"The ‘secret’ of sovereignty then, in the form of inscrutable law, contains its own ‘critic’, working from inside the concept to disable it. Given Agamben’s Hegelian foundations, embedded structurally in Agamben’s architecture of the secret is that which moves against it, its own dialectical reversibility: under the \*krei theme, the ‘secret’ of sovereignty that presents a ‘riddle’ to thought is met by the ‘critic’, but also the ‘hypocrite’ and the ‘scribe’, ﬁgures, that through the derivatives ‘not’, ‘nothing’ and ‘nihilism’ under the \*ne theme, suspend and render inoperative the very inscrutable form of law that also operates within these themes under a metaphysics of sovereignty. Agamben’s positing of ‘secret accomplices’ such as ‘security and terror’ are indices of the secret’s very non-coincidence with itself; the fracture that is in ‘secret complicity’ with the concept and that is the condition of possibility for its own immanent unworking. Within the structures of sovereignty ‘secretly working’ on the production of emergencies, there is another kind of secret working: that of the ‘troublemaker’; the one, Agamben suggests in Homo Sacer, ‘who tries to force sovereign power to translate itself into actuality’ (1998, p. 47). Agamben’s exemplar troublemaker is Bartleby, whom the narrator of Melville’s story ﬁttingly calls ‘the inscrutable scrivener’, an impenetrable ﬁgure who counters the inscrutability of law through the elisions of reference in language; when summoned, for example, Bartleby mildly asks, ‘What is wanted?’ omitting any reference to himself as a ‘subject’ or inhabitant of a socio-juridical identity in the vocation to which he has been called (Melville 2007, pp. 27, 12). Bartleby, who famously prefers ‘not to’, is a ﬁgure of contingency who possesses ‘perfect potentiality’ in ‘the moment in which he does not write’, meeting the imperfect potentiality or Nothing of the law—a quasi-divine hyper-Being—not only by means of its immanent critique, but by critiquing it as a hypocritic (again tied to the \*krei theme): a Nothing from ‘below’.10 In preferring not to perform the duties given to him, through the work of privation or impotentiality (what Agamben calls ‘pure’ potentiality), Bartleby enacts a ‘privative opposition’: a zero-degree presence between occurrence and non-occurrence, by expressing not an absence but a non-presence of language’s content. In so doing he enables the passivity of thought itself, turning thought back to the potentiality to not-think, to enact ‘the thought of thought’ (1993a, p. 37). Agamben points out that Aristotle calls this impotent unworking that gives thought to its own intelligibility ‘agent intellect’. Bartleby, secretly working from what Melville’s narrator repeatedly calls his ‘hermitage’, or private dwelling to force the law to actuality, resembles a secret ‘agent intellect’ in his private, obstinate praxis to hold the law in suspension, through what Deleuze calls a formula of ‘secret agrammaticality’ in language (1999, p. 255). Hermited away behind a folding screen, Bartleby frustrates his employer with a series of ‘mulish vagaries’ in which he retracts successively from the law, coiling ever inward: he ‘prefers not to’ proof or read copy, to let the narrator into his own ofﬁce, to disclose any personal details or information about himself, to go for a walk or leave his space, to write, to copy, or to quit the chamber once the narrator has decided to move; all part of a patient strategy to force the law/yer to terminate him, to translate the empty potentiality of law into actuality. Bartleby’s renunciation of copying interrupts the eternal replications of the law that are grounded on the abandonment of impotentiality; by forcing law’s potentiality to actuality where nothing is left impotential, Bartleby becomes the life over which the ‘decision’ is forced within the \*krei root, taken as a ‘criminal’ to jail where he will die. But for Agamben this is not a tragic narrative: in jamming the law by ceasing to copy it, Bartleby has ‘**disremembered’ the law in preferring not to replicate it**. Through the patient work of privation, Bartleby has forced the law to actuality, taking away what is potential in the law and in so doing, subjecting it to the very logic of abandonment that structures the exception and captures bare life. Following Agamben’s logic in The Idea of Prose, in the limbo space in which Bartleby dwells, it is not God/the ‘law’ who has abandoned and forgotten him, but he who has forgotten God/the law; in a sense he has abandoned God (p. 78). Agamben wants to recuperate Bartleby’s death not as a tragic one, but as one who is ‘saved in being irredeemable’, in a limbo space that carves a dwelling beyond necessity and contingency, a domain of the ‘irreparable’ or profane (1999, p. 271). This limbo nature, Agamben writes, is the ‘secret’ of Bartleby, ‘the ineradicable root of that ‘‘I would prefer not to’’ on which, along with the divine, all human reason shatters’ (1995, p. 78)."

**Praising modest tinkering within the state of exception instantiates the worst violence of governmentality located at the level of rationality instead of politics—voting affirmative politicizes the state of exception by enacting a restricted on permanent American militarism**

**Williams 08** Williams, Daniel R. "After the Gold Rush - Part 2 Hamdi, the Jury Trial, and Our Degraded Public Sphere." Penn State Law Review 113 (11/13/2008): n. pag. Print.

**What is troublesome** with this picture—and what will herein be a¶ continuation of a theme introduced in After the Gold Rush, Part I—**is¶ that the instantiation of the state of exception has become a technique of¶ governance deployed in a globalization environment embroiled in a war¶ of sorts that is unlike other “hot” wars** we have experienced. **It used to¶ be that a “hot” war called upon the total mobilization of a populace, but¶ no more, for this “war” depends on the acquiescence, or the passivity, of¶ we the people**.49 So, **when the judiciary begs off the task of imposing the¶ constitutional vision of limited government upon this particular¶ technique of governance, when it too becomes part of the passivity that¶ surrounds war-on-terror governmentality, it permits by omission what we¶ are witnessing as the bloating of sovereign power**—indeed, the eruption¶ of a new kind of sovereignty.50 One might say, then, **that because “sovereignty emerges within the field of governmentality,”51 Hamdi¶ mocks the very idea of our commitment to limited government under¶ law**, which is the very foundation of our nation, and thus by extension¶ disavows a crucial feature of our Enlightenment heritage. **This¶ disavowal is done in the name of preserving that heritage**, or so we tell¶ ourselves**. There is what many might consider a comforting response to this¶ argument about bloated sovereignty. No suspension of law has taken¶ place, one might counter, and thus no retreat from our commitment to¶ limited government constrained by the rule of law.** In fact**, we can¶ applaud the Hamdi Court for boldly swatting down the Executive’s¶ insistence that war silences law: “a state of war,”** Justice O’Connor¶ writes**, “is not a blank check for the President when it comes to the rights¶ of the Nation’s citizens.”**52 More important, presumably, **the¶ instantiation of the current state of exception, which is the nation’s¶ commitment to prosecute a particular war against a technique deployed¶ by a worldwide network of individuals unaffiliated with any state, is a¶ matter of national will, and of national identity, that is reserved to we the¶ people**. **So long as we take seriously the idea of American democracy,¶ and so long as we believe that our democracy is working when it comes¶ to the exercise of sovereignty in matters of global management**¶ (ubiquitously expressed in our political discourse as “spreading¶ democracy”), **we really cannot regard ourselves as the civil-rights-and civil-¶ liberties-losing victims of an overreaching Sovereign, because the¶ state of exception itself, which is the juridical order brought about by a¶ war on terror that we have democratically endorsed, is a product of our¶ self-willing through the organs of our democracy.**53¶ **I find comfort neither in this response, nor in this entire story of¶ democratic institutions re-calibrating the balance of security and liberty,¶** as if that balancing takes place in a world that is simply handed to us, **and¶ is untouched by our own affirmative quests for domination and control¶ unshackled by international legality.** **This fraudulent neutrality of the¶ material setting in which the security-liberty balance is struck is the notso-¶ deeply hidden backdrop of the Court’s decision in Hamdi.** Situating¶ Hamdi within a story of democracy is dubious not simply because the¶ “sovereign people, in its collective capacity, is everywhere and nowhere,” a mythic symbol, as it were.54 It is not only that all such¶ legitimation theories are rooted in fictions, or that “civil society is a bluff¶ and the social contract a fairy tale.”55 The dubiousness is more¶ empirical. **What seems to be completely ignored** in all the commentary¶ about Hamdi and the other post-9/11 cases relating to the so-called war¶ on terror **is the rather stunning quiescence toward the real possibility that¶ the United States, with its desiccated public sphere, has become “a¶ military empire.”56 It is that quiescence, and the troubling circumstances¶ surrounding it, that makes it so dubious to situate Hamdi in a storyline of¶ democracy in action.**

#### Social imaginaries can be utilized by revolutionary politics in order to break down dominant discursive constructions.

Gaonkar 02 Gaonkar, Dilip Parameshwar¶ Toward New Imaginaries: An Introduction[Public Culture 14.1, Winter 2002 http://muse.jhu.edu/journals/public\_culture/v014/14.1gaonkar02.html](file:///C%3A%5CUsers%5CNate%20Woodford%5CDropbox%5CWPDU%20Debate%20Server%5Caa%20WAR%20POWERS%202013-14%5CAFF%20FILES%5CTerror%20Trials%5C1AC%5CPublic%20Culture%2014.1%2C%20Winter%202002%20http%3A%5Cmuse.jhu.edu%5Cjournals%5Cpublic_culture%5Cv014%5C14.1gaonkar02.html)

Within the traditional ontology of determinacy, the imaginary dimension is seen as derivative, the mere reflection of what is already there, of the real; often it is held in suspicion as a medium of distortion and displacement. For Castoriadis, [End Page 6] on the other hand, the imaginary is the constitutive magma of meaning, the structuring matrix without which chaos would reign. It is only through the mediation of the imaginary that we are able to conceive of the real in the first place and to make the elementary distinctions between form and content, object and image, the original and the copy. According to Castoriadis (1987: 145):¶ This element--which gives a specific orientation to every institutional system, which overdetermines the choice and the connections of symbolic networks, which is the creation of each historical period, its singular manner of living, of seeing and of conducting its own existence, its world, and its relations with this world, this originary structuring component, this central signifying-signified, the source of that which presents itself in every instance as an indisputable and undisputed meaning, the basis for articulating what does matter and what does not, the origin of the surplus of being of the objects of practical, affective, and intellectual investment, whether individual or collective--is nothing other than theimaginary of the society or of the period considered.¶ Thus it is through the collective agency of the social imaginary that a society is created, given coherence and identity, and also subjected to auto-alterations, both mundane and radical, within historical time. Each society is created differently, subsists differently, and transforms itself differently.¶ To be sure, Castoriadis qualifies the ex nihilo rhetoric by acknowledging that a social imaginary has to recognize and contend with different orders of constraints: the external (those imposed by the natural strata, especially biology), the internal (the task of transforming "psychic monads" into socialized individuals), the historical (the reproductive inertia within the instituted society), and the intrinsic (the need for coherence and closure within the symbolic order). But none of those constraints warrants a deterministic reading. What is crucial here is not that human beings always eat, raise children, tinker with the established ways, and tell stories but that they do so in such a variety of ways. Therein lies the hold of the social imaginary. Our response to material needs, however technically impoverished, is always semiotically excessive. We lean on nature but are steered by the social imaginary.¶ Each society derives its unity and identity by representing itself in symbols, myths, legends, and other collectively shared significations. Language is the medium par excellence in which these social imaginary significations become manifest and do their constitutive work. Like all social institutions, language too has what Castoriadis calls its ensemblistic-identitary dimension, the equivalent of the structuralist code. But code cannot capture the open, inventive, and unruly [End Page 7] character of signifying practices. Language is essentially tropic, prone to generate surplus meaning. Creation of new meaning in language, say through metaphorization, can serve as a heuristic model for understanding how social imaginary significations arise and rupture the existing social code to disclose a new horizon of meaning, a new order of things, a new world. [2](http://muse.jhu.edu/journals/public_culture/v014/14.1gaonkar02.html%22%20%5Cl%20%22FOOT2)¶ Castoriadis's account of the social imaginary as the matrix of innovation and change is linked to his central political project of promoting autonomy. According to Castoriadis, one cannot strive for autonomy without striving simultaneously for the autonomy of others. This requires rethinking the concept of human action along Aristotelian lines as praxis. Unlike instrumental action, the dominant and dehumanizing mode under capitalism, praxis unfolds in public space where one freely engages with others in activities that have no predetermined purpose. In praxis, unlikepoiesis (making), the agent is neither detached from nor in control of what he or she is doing. Emotion as well as intellect, character as well as interests, indeed, being itself, are caught up in praxis. Occurring as it does under conditions of plurality and contingency, praxis is fragile and frustrating. Yet the agent is drawn to praxis because only in praxis can one grasp and experience what it is to be autonomous. Castoriadis radicalizes Aristotle's notion of praxis by deemphasizing its connection to phronesis, or practical knowledge, while rearticulating it as a future-oriented emancipatory endeavor that generates novelty and alterity in its wake. Thus, praxis is rendered indistinguishable from a transformative revolutionary politics.¶ Autonomy at the societal level requires a collective capacity to question the institutional order and the social imaginary significations embedded in it. Castoriadis distinguishes between two types of social-historical formations: heteronomous and autonomous. In heteronomous societies--often glossed as "primitive"--the laws, norms, values, myths, and meanings are posited as given once and for all, and their indisputable status is derived from an extra-social or action-transcendent source. In contrast, the autonomous societies habitually call into question their own institutions and representations and the social imaginary that underwrites them. Here the people as collective agents recognize the contingency and constructedness of their world and how that world is made possible through the workings of the social imaginary. Hence, one need not think of the social imaginary as a demiurge that sets itself to work behind the backs of the people. It can be reflexively interrogated and hermeneutically reappropriated. [End Page 8]¶ For Castoriadis, the reflexive turn that shatters the closure of meaning characteristic of heteronomous social imaginaries is made possible through the simultaneous invention and institution of philosophy and democracy. While philosophical reflection interrogates the givenness of the social imaginary's significations, democratic praxis challenges the legitimacy of institutions that embody those significations. Autonomy can be attained through making explicit society's process of self-instituting and self-understanding and becoming willing to take responsibility for it.

**The true threat to law is an oppositional violence that could claim legitimacy, however this revolutionary violence recreates the violent foundations of law—the only truly libratory action is to present oneself before the law and performatively resist the law**

**Derrida, 1990** (Jacques, “Force of Law: The ‘Mystical Foundation of Authority’”, 11 Cardozo L. Rev. Issue 5-6. Pg. 987-995, ellipses omit French Translation)

The telling example would here be that of the right to strike. In class struggle, notes Benjamin, the right to strike is guaranteed to workers who are therefore, besides the state, the only legal subject (*Rechtssubjekt*) to find itself guaranteed a right to violence (*Recht auf Gewalt*) and so to share the monopoly of the state in this respect. Certain people may have thought that since the practice of the strike, this cessation of activity, this *Nicht-Handeln*, is not an action, we cannot here be speaking about violence. That is how the concession of this right by the power of the State (*Staatsgewalt*) is justified when that power cannot do otherwise. Violence would come from the employer and the strike would consist only in an abstention, a non-violent withdrawal by which the worker, suspending his relations with the management and its machines, would simply become alien to them. The man who will become Brecht's friend defines this withdrawal (*Abkehr*) as an "*Entfremdung*" ("estrangement"). He puts the word in quotation marks. But Benjamin clearly does not believe in this argument about the non-violence of the strike. The striking workers set the conditions for the resumption of work, they will not end their strike unless a list, an order of things has changed. And so there is violence against violence. In carrying the right to strike to its limit, the concept or watchword of general strike thus manifests its essence. The state can hardly stand this passage to the limit. It deems it abusive and claims that there was a misunderstanding, a misinterpretation of the original intention, and that (*das Streikrecht `so" nicht gemeint gewesen sei*, "the right to strike was not "so intended," p. 282). It can then condemn the general strike as illegal and, if the strike persists, we have a revolutionary situation. Such a situation is in fact the only one that allows us to conceive the homogeneity of law or right and violence, violence as the exercise of *droit* and *droit* as the exercise of violence. Violence is not exterior to the order of *droit*. It threatens it from within. Violence does not consist essentially in exerting its power or a brutal force to obtain this or that result but in threatening or destroying an order of given right and precisely, in this case, the order of state law that was to accord this right to violence, for example the right to strike. How can we interpret this contradiction? is it only de facto and exterior to law or is it rather immanent in the law of law(au droit du droit)? What the State fears (the State being law in its greatest force) is not so much crime or brigandage, even on the grand scale of the Mafia or heavy drug traffic, as long as they transgress the law with an eye toward particular benefits, however important they may be. The State is afraid of fundamental, founding violence, that is, violence able to justify, to legitimate, (begriinden, "to found," p. 283) or to transform the relations of law (Rechtsverheitnisse, "legal conditions"), and so to present itself as having a right to law. This violence thus belongs in advance to the order of a droit that remains to be transformed or founded, even if it may wound our sense of justice (*Gerechtigkeirsgefuhl*). Only this violence calls for and makes possible a "critique of violence" that determines it to be something other than the natural exercise of force. For a critique of violence-- that is to say an interpretative and meaningful evaluation of it--to be possible, one must first recognize meaning in a violence that is not an accident arriving from outside law. That which threatens law already belongs to it, to the right to law (droit), to the origin of law (droit). The general strike thus furnishes a valuable guiding thread, since it exercises the conceded right to contest the order of existing law and to create a revolutionary situation in which the task will be to found a new droit, if not always, as we shall see in a moment, a new State. All revolutionary situations, all revolutionary discourses, on the left or on the right (and from 1921, in Germany, there were many of these that resembled each other in a troubling way, Benjamin often finding himself between the two) justify the recourse to violence by alleging the founding, in progress or to come, of a new law. As this law to come will in return legitimate, retrospectively, the violence that may offend the sense of justice, its future anterior already justifies it. The foundation of all states occurs in a situation that we can thus call revolutionary. It inaugurates a new law, it always does so in violence. Always, which is to say even when there haven't been those spectacular genocides, expulsions or deportations that so often accompany the foundation of states, great or small, old or new, right near us or far away. In these situations said to found law (droit) or state, the grammatical category of the future anterior all too well resembles a modification of the present to describe the violence in progress. It consists, precisely, in feigning the presence or simple modalization of presence. Those who say "our time," while thinking "our present" in light of a future anterior present do not know very well, by definition, what they are saying. It is precisely in this ignorance that the eventness of the event consists, what we naively call its presence. These moments, supposing we can isolate them, are terrifying moments. Because of the sufferings, the crimes, the tortures that rarely fail to accompany them, no doubt, but just as much because they are in themselves, and in their very violence, uninterpretable or indecipherable. That is what I am calling "mystique." As Benjamin presents it, this violence is certainly legible, indeed intelligible since it is not alien to law, no more than polemos or ens is alien to all the forms and significations of *dike*. But it is in droit what suspends droit. It interrupts the established droit to found another. This moment of suspense, this *epokhe*, this founding or revolutionary moment of law is, in law, an instance of non-law. But it is also the whole history of law. This moment always takes place and never takes place in a presence. It is the moment in which the foundation of law remains suspended in the void or over the abyss, suspended by a pure performative act that would not have to answer to or before anyone. The supposed subject of this pure performative would no longer be before the law, or rather he would-be-before ,a law not yet determined, before the law as before a law not yet existing, a law yet to come, *encore devant et devant venir*. And the being "before the law" that Kafka talks about resembles this situation, both ordinary and terrible, of the man who cannot manage to see or above all to touch, to catch up to the law: because it is transcendent in the very measure that it is he who must found it, as yet to come, in violence. Here we "touch" without touching this extraordinary paradox: **the inaccessible transcendence of the law before which and prior to which "man" stands fast only appears infinitely transcendent and thus theological to the extent that, so near him, it depends only on him, on the performative act by which he** institutes it: the law is transcendent, violent and non-violent, because it depends only on who is before it--and so prior to it-- on who produces it, founds it, authorizes it in an absolute performative whose presence always escapes him. The law is trancendent and theological, and so always to come, always promised, because it is immanent, finite and so already past. Only the yet-to-come (avenir) will produce intelligibility or interpretability of this law. Beyond the letter of Benjamin's text, which I stopped following in the style of commentary a moment ago but which I am interpreting from the point of its avenir, one can say that the order of intelligibility depends in its turn on the established order that it serves to interpret. This readability will then be as little neutral as it is non-violent. A "successful" revolution, the "successful foundation of a State (in somewhat the same sense that one speaks of a "`felicitous' performative speech act") will produce *apres coup* what it was destined in advance to produce, namely, proper interpretative models to read in return, to give sense, necessity and above all legitimacy to the violence that has produced, among others, the interpretative model in question, that is, the discourse of its self-legitimation. Examples of this circle, this other hermeneutic circle, are not lacking, near us or far from us, right here or elsewhere, whether it's a question of what happens from one neighborhood to another, one street to another in a great metropolis or from one country or one camp to another around a world war in the course of which States and nations are founded, destroyed or redesigned. There are cases in which it is not known for generations if the performative of the violent founding of a state is "felicitous" or not. Here we could cite more than one example. This unreadability of violence results from the very readability of a violence that belongs to what others would call the symbolic order of law, if you like, and not to pure physics. We might be tempted to reverse this "logic" like a glove ("logic" in quotation marks, for this "unreadable" is also very much "illogical" in the order of logos, and this is also why I hesitate to call it "symbolic" and precipitately send it into the order of Lacanian discourse), the "logic" of this readable unreadability. In sum, it signifies a juridico-symbolic violence, a performative violence at the very heart of interpretative reading. And the example or index could be carried by metonymy back toward the conceptual generality of the essence.

**The state of exception advances a perverse vision of a Congress and Judiciary whose distinction from the Executive covers over the general complicity in the total authorship of the violence of the law—debating about various calibrations between the branches only reinstitutes the natural status of the state of exception by asserting that tinkering at the margins is more meaningful that the absolute question of sovereignty authority**

**Williams 08** Williams, Daniel R. "After the Gold Rush - Part 2 Hamdi, the Jury Trial, and Our Degraded Public Sphere." Penn State Law Review 113 (11/13/2008): n. pag. Print.

**The suspension of the criminal-justice process, and the expansion of¶ sovereign power through the state of exception, is a price we are called¶ upon to pay in the prosecution of this war**. Actually, if we take¶ democracy seriously, the tenor of my use of the term, Sovereign, as if the¶ Sovereign were some actor in the world separate and apart from the¶ subjects who are beholden to it, should seem jarring. **The People as¶ sovereign entity, rule-giver, and possessor of biopower, acts to protect¶ the security of the people** (the population itself, the actual living¶ individuals who hear politicians speak sanctimoniously of “the People”)¶ **by segmenting a certain slice of the people** (designated as “enemy¶ combatants” or “terrorists,” or “sexual predator,” or whatever category of¶ dangerousness inaugurated by the People) **and decreeing them ineligible¶ for certain rights that are regarded as crucial ingredients in the identity of¶ the People.** **If we take democracy seriously**, **it would** then **be** more¶ **appropriate to say**, without at all blushing, **that this state of exception is a¶ price we have willed upon ourselves**, a price worked out by, so we tell¶ ourselves, **a re-calibration of the security-liberty balance.** **This recalibration¶ is carried out for the benefit of the people within the branches¶ of our government that are,** so we tell ourselves, **an** **organ of the People**,¶ in theory meaning, **responsive to the will of the people. Congress and¶ the Executive struggle over that re-calibration**, and though it may not be¶ elegant governmental activity, **it is what our constitutional founders have¶ bequeathed us.¶ The judiciary** has a role**,** too, in this story of democracy in action. It¶ **engages in a different sort of calibration**. **It** **eschews this overt balancing¶ of security and liberty, being too skittish to second-guess the People’s¶ decision to will upon itself a state of exception emanating from a commitment to prosecute a war**—even if it is a war unlike the wars we ¶ heretofore have fought or have read about in history books. **The ¶ judiciary’s calibration hones in on the mechanics of governance, the ¶ hard-wiring of governmentality** that we have inherited from 1789.41 **The ¶ judiciary calibrates the allocation of power between the democratic ¶ branches of the American state so that those branches may, c**onsistent ¶ with the rule of law, which could just as well be restated as consistent ¶ with our Enlightenment heritage,¶ 42 **re-calibrate the security-liberty ¶ balance. The touchstone of the judiciary’s calibration of this allocation ¶ of power is some appropriate vision of limited government under law.43 ¶ The idea of limited government under law, which is the core feature of ¶ our constitutional republic, owes its meaning, its force, and its very ¶ existence to Enlightenment political philosophy.**44 So, when the Court in ¶ Hamdi struggles over this particular calibration—and the Court ¶ splintered over it45—**the Court is expressing our Enlightenment heritage ¶ and its underlying vision of law as the manifestation of power.** Let us ¶ leave aside the irony that **this expression of our Enlightenment heritage ¶ leads to the suspension of the most vitalizing institutional embodiment of ¶ that heritage—the criminal process rooted in trial by jury46—because the ¶ more important focus for now should be on the myopic nature of the ¶ Court’s vision of limited government**. ¶ Hamdi reminds us that **the constraints imposed on sovereign activity ¶ by our fidelity to the idea of limited government concern the mechanics ¶ of governmentality**.**47 What we pursue as a nation**, rather than simply what our government may pursue in its day-to-day operations to keep the ¶ bureaucracy functioning**, is beyond the constraining idea of limited ¶ government, and thus beyond judicial purview.**48 The idea of limited **¶** government, and thus the judiciary’s own power, doesn’t extend to the **¶** Sovereign’s instantiation of the state of exception**. But the juridical ¶ mechanics of how the state machinery is used to detain individuals as ¶ enemy combatants**, as a defining feature of this state of exception, may ¶ be, to some as yet unclear degree, **within the limited-government ¶ constraint and thus within the reviewing power of the courts.**

**Imagining a verdict of innocence for Mohammed translates his life from “bare” into “political”—the 1AC is an organ of signification that produces the possibility of Mohammed’s inclusion into political space by signaling that his torture was a crime rather than a necessity—when the judge affirms his life is not bare it interrupts the state of exception by repudiating the implicit definition of life that fuels the engine of destruction**

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So, **the state of exception**, as it might be understood in the context ¶ of Hamdi, **consists of the Sovereign’s prerogative, through the passage of ¶ the AUMF, to withhold from a U.S. citizen the legal status of criminal ¶ defendant, without disrupting or calling into question the legal category¶ of “criminal defendant.” Being indicted** is not good news for the ¶ indicted individual**, but it does confer upon him a certain legal status** ¶ within a regime of law built upon the Fourth, Fifth, Sixth, and Eighth ¶ Amendments to the Constitution. **The conferral of a legal status is a ¶highly significant fact, not only for the indicted defendant, but for us, we ¶ the people, who absorb and propagate our identity as a nation.**Yaser ¶ **Hamdi wanted that legal status** conferred upon him, wanted we the ¶ people to grant it to him, **but the Sovereign refused**—**lawfully, the ¶ Supreme Court held**, notwithstanding our nation’s presumed ¶ commitment to limited government under law.39 **The Sovereign’s power¶ to instantiate a state of exception**, then, **is a power of refusal, a refusal to ¶ maintain a citizen’s integration within the existing political apparatus of ¶ the state, of which the criminal-justice system is a vitalizing part, and a ¶ refusal to maintain a citizen’s integration within a community whereby ¶ that citizen’s detention must be authorized by representatives of that ¶ community** (i.e., a jury), **unless that citizen lawfully consents to the ¶ detention** (i.e., pleads guilty). ¶ **Because forcible detention must occur within some regime of law—¶ because all violence must be subsumed within legality—YaserHamdi¶ must be given some other legal status. No person can exist as bare life in ¶ the realm of political spectacle.Bare life must be clothed in some ¶ juridical garb**. What garb does the Sovereign say YaserHamdi must ¶ drape over his bare life? **The Sovereign has the power to** do that, **to drape some juridical garb ¶ over bare life, by saying what legal status shall be conferred upon the ¶ likes of YaserHamdi. The state of exception**, as I use the term in this ¶ article, **marks the conditions in which the Sovereign invokes its ability to ¶ withhold from a detainee the status of criminal defendant and to drape ¶ bare life with a new garb,** a new legal status and category—**that of enemy ¶ combatant**.¶ 40 **The Sovereign can instantiate this state of exception, ¶ framed as a war on terror,** with the associated authority to accomplish ¶ indefinite detention **by withholding one legal status (criminal defendant) ¶ and replacing it with another (enemy combatant), because we the people ¶ consent to it, demand it even, as part of our expectation that the ¶ Sovereign, through the machinery of government, keep us safe.**

#### The judge enacts the performative contradiction of democracy by declaring Mohammed innocent—exercise freedom by demanding a liberty that cancels itself in order to oppose the state of exception that permanently and unreflectively insists on its total reason

Butler and Spivak 2010. Butler and Spivak, 2010. (Judith Butler and Gayatri Spivak, Who Sings the Nation-State? Page 66-69)

I don't think it would be very easy to imagine Arendt singing and I'm not sure I'd want to. She doesn't have that Nietzschean moment. And I'm not sure I'd want Nietzsche singing either. It would probably still have those Wagnerian undertones. But I confess to liking the singing I heard on the street. That seemed good, that seemed like good singing. I think it leaves us with a question about language, performance, and politics. Once we reject the view that claims that no political position can rest on performative contradiction, and allow the performative function as a claim and an act whose effects unfold in time, then we can actually entertain the opposite thesis, namely, that there can be no radical politics of change without performative contradiction. To exercise a freedom and to assert an equality precisely in relation to an authority that would preclude both is to show how freedom and equality can and must move beyond their positive articulations. The contradiction must be relied upon, exposed, and worked on to move toward something new. There seems to be no other way. I think we can understand it as a mobilization of discourse with some degree of freedom without legal legitimation on the basis of which demands for both equality and freedom are made. But this also involves a deformation of dominant language, and reworking of power, since those who sing are without entitlement. But that does not mean their lives are not mired in power. Obviously, the folks who are singing are not singing from a state of Nature. They're singing from the streets in San Francisco and Los Angeles. And this means that they alter not just the language of the nation but its public space as well. It would finally be an offense to regard it in any other way. SPNAK. Finally what? BUTLER. An offense. SPIVAK. Yes, a defense, a fantasy. BUTLER. The call for that exercise of freedom that comes with citizenship is the exercise of that freedom in incipient form: it starts to take what it asks for. We have to understand the public exercise as enacting the freedom it posits, and positing what is not yet there. There's a gap between the exercise and the freedom or the equality that is demanded that is its object, that is its goal. It's not that everything is accomplished through language. No, it is not as if "I can say I'm free and then my performative utterance makes me free." No. But to make the demand on freedom is already to begin its exercise and then to ask for its legitimation is to also announce the gap between its exercise and its realization and to put both into public discourse in a way so that that gap is seen, so that that gap can mobilize.