# K agamben

Philosophy in Review XXXI (2011), no. 2 80 Giorgio Agamben The Signature of All Things: On Method. Trans. Luca D’Isanto with Kevin Atell. New York: Zone Books 2009. 150 pages US$24.95 (cloth ISBN 978-1890951-98-6)

A paradigm:

1) It is analogical rather than deductive or inductive, and moves from

singularity to singularity, erasing the dualism of the general and the

particular.

2) Because of 1, dichotomous logic is supplanted by an analogical model.

3) By the same gesture, the paradigm belongs to the group and is

suspended from it as a case: exemplarity cannot be separated from

singularity.

4) The group is immanent in rather than presupposed by the paradigms.

5) There is no origin in the paradigm. Rather, every phenomenon is the

origin.

6) The paradigm’s historicity is an intersection of diachrony and

synchrony.

Agamben suggests that Wallace Stevens best encapsulates all these in the

following lines from ‘Description Without Place’:

It is possible that to seem—it is to be

And the sun is something seeming and it is.

The sun is an example. What it seems

It is and in such seeming all things are. (32)

The conceptual shortcut represented in this passage is a rather poignant example of what

someone like Michel Serres would see as the mathematical ‘rapidity’ of poetic language.

### Examples

#### Sovereign

Trump – seems to be the traditional powerhouse when it comes to important policy decisions: mass hunts of undocumented workers is a solution to cartels and building a wall prevents all evil, but when norms turn on him, he is an exception: the extreme form of relation by which something is included solely through its exclusion e.g. “fake news”.

obama nominated garland and they didn't have a hearing even though they should've - no accountability to the liberal agenda either

#### even “the most stringent sanctions” have exceptions for the state

**Cookman, Colin, and Bill French. “The Pakistan Aid Dilemma.” *Center for American Progress*, 16 Dec. 2011,** [www.americanprogress.org/issues/security/reports/2011/12/16/10823/the-pakistan-aid-dilemma/](http://www.americanprogress.org/issues/security/reports/2011/12/16/10823/the-pakistan-aid-dilemma/)**. Cw//az**

The **Trump** administration has unveiled the full extent of its new **sanctions on**[**Iran**](https://www.theguardian.com/world/iran), with targets including 50 banks and their subsidiaries, the national airline, and 200 members of the shipping industry and vessels.

However, the sanctions **fell short of the US’s**[**aim of cutting off**](https://www.theguardian.com/world/2018/nov/04/iran-braces-for-fresh-us-sanctions-including-oil-embargo)**Iranian oil exports entirely.** **Eight** **countries**, including **Tehran’s biggest customers, were** **granted** temporary **waivers**: China, India, Italy, Greece, Japan, South Korea, Taiwan and Turkey.

US officials said that those countries had agreed to reduce oil imports from [Iran](https://www.theguardian.com/world/iran)dramatically. However, it is unclear whether all those countries, most importantly China, which buys about a third of Iran’s crude exports, have made such agreements.

**Iran’s atomic energy organisation was sanctioned**, but **with three exemptions for** what were described as **non-prolif**eration **projects**: at the Bushehr nuclear power plant, which [Russia helped Iran build](https://www.theguardian.com/world/2010/aug/21/iran-nuclear-bushehr-reactor-fuel-load), the site of a former heavy water reactor at Arak, and a former underground uranium enrichment plant at Fordow.

Unveiling the measures on Monday, the US secretary of state, Mike **Pompeo, described them as the most severe** to have [been imposed on Iran](https://www.theguardian.com/world/2018/nov/04/pompeo-trump-us-sanctions-oil-iran-iranian-people) and said they were aimed at forcing Tehran to stop its “destabilising activities” in the Middle East, referring to events in Yemen, Lebanon, Syria and Iraq.

#### Homo sacer

The Babylonian Captivity was a period in Jewish history during which Jews of the ancient kingdown of Judah were captives in Babylonia.

A refugee

a terminal patient

a death row inmate in a space of exile and belonging, trapped between life and death.

cop shooting unarmed black person laws don't protect the victim or the laws don't apply to the cop

voting rights are taken away from ex-felons

#### Alt

squatters

burning their passport

**Perring, Rebecca. “Britain Is POWERLESS to Boot out Illegal Immigrants Because They 'Have No Place to Go'.” *Express.co.uk*, Express.co.uk, 6 Mar. 2016,** [www.express.co.uk/news/uk/650026/Illegal-immigrants-Britain-powerless-deport-burn-passports-migrant-crisis](http://www.express.co.uk/news/uk/650026/Illegal-immigrants-Britain-powerless-deport-burn-passports-migrant-crisis)**. Cw//az**

**By refusing to disclose** their **nationality**, often **getting rid of a passport, the UK is held** to ransom **under laws which bar** the **expulsion of a failed asylum seeker** of unknown origin.

On Friday Home Office minister Richard Harrington came under fire after he admitted the nation could not be forced to deport illegal immigrations.

As he argued against a Private Member’s Bill seeking to toughen criminal sanctions against illegal immigrants, Mr Harrington told the House of Commons: “**Where would they be deported to**, most of them?

Method – fiat

Framework –

Postfiat -

## Nc shell

### Framing

#### Säfström summarizes shapiro 13] The rotj is to endorse paradigmatic education – to generate cohesive explanations of the world without essentialization. The ballot does this via counternarrative demystifing the power of the sovereign

To Make Agamben Intelligible Within Educational Thought Carl Anders Säfström Södertörn University PHILOSOPHY OF EDUCATION P H I L O S O P H Y O F E D U C A T I O N 2013 ⎜ Cris Mayo, editor 2 0 1 3 © 2013 Philosophy of Education Society ⎜ Urbana, Illinois <https://ojs.education.illinois.edu/index.php/pes/article/view/3999/1310> cw//az \*safstrom agrees but has some objections \*\*bracketed for clarity

In my response to Harvey Shapiro’s interesting and thought provoking essay, “‘To Give an Example is a Complex Act’: Educational Intelligibility and Agamben’s paradigm,” I would like to focus on the idea, of which I see his essay as being an example, that we can use theories mainly formulated outside the field of educational theory in order to say something fundamental about education. Shapiro does not only show, with great insight into Giorgio Agamben’s work, that this is possible, but he also shows quite convincingly that by focusing on Agamben’s understanding of “paradigm” he is able to bring out something fundamentally educational [that] from within Agamben’s thinking. And this something has the potentiality of actually transforming the way we understand educational theory today, by hermeneutics on the one hand, and deconstructi[on]ve educational theory on the other, as Shapiro demonstrates. Shapiro argues implicitly as well as explicitly that if we read Agamben’s conception of “the paradigm” within such an educational context we can see how paradigmatic education not only differs from both but also how it brings something more or new to our understanding of education in general and curriculum design and pedagogical conduct in particular. Paradigmatic education and teaching basically differ from those other educational theories, claims Shapiro, in that an example functions as both typical and exceptional, and exposes the intelligibility of the context in which the example is situated, which neither of the other two traditions of thought accomplish. For instance, hermeneutic educational theory tends to interpret “preexisting phenomena or pre-understandings” as sources for the example, thereby running into problems of representation, while deconstructive educational theory, in focusing on the very instability of language, only exposes the minimum of intelligibility of language. Paradigmatic education, rather, exposes how the very “taking place” of language “allows for the otherwise ambiguous to become ‘perfectly intelligible.’” A paradigmatic understanding of education, says Shapiro, functions within curriculum design and pedagogical conduct as an orientation that “potentially engages students and teachers holistically and singularly, rather than simply as beings in need of a limited, presupposed kind of knowledge.” Paradigmatic education then is not only a theoretical discussion delivering a potent critique of reified knowledge, but for Shapiro such education can also inform practice and challenge instrumental understandings of education, which has an overbearing trust in “scripts and excessively deterministic standards.”

### Link

#### Smith 09] ecological crises are coopted as a state of emergency to expand power – the state poisons the water and paints itself as a knight in shining armor when it gives water bottles. that turns case

Smith, M. (2009). Against ecological sovereignty: Agamben, politics and globalisation. Environmental Politics, 18(1), 99–116. doi:10.1080/09644010802624843 cw//az

Alongside this increasingly ‘normal’ situation the state still retains its ‘exceptional’ sovereign power to decide upon a state of emergency. If cybernetic managerialism reflects the apolitical optimism of ecological modernisation (there is no ecological crisis) then the state of emergency as the introduction of a ‘survival footing’ reflects Lovelock’s pessimistic state unilateralism. The ecologically motivated incursions he posits, the giant sun- shade in space, the massive expansion of nuclear power, and so on, are, in this sense, the environmental equivalents of the supposedly ‘humane’ militarism of those ‘technically advanced nations’ which, to paraphrase Lovelock (2006, p. 151 – see above) woke up to their ‘responsibility’ to wage war on global terrorism. If Agamben is right, the ecological result too would be the same, the decisionistic suppression of political liberties in the name of survival. Interestingly, Lovelock (2006, p. 153), against the advice of other Gaians, explicitly uses militaristic metaphors speaking of a war against our ‘Earthly enemy’, and the possible need for ‘rationing’, ‘restrictions’, a ‘call to service’, and ‘our’ suffering ‘for a while a loss of freedom’.

From this perspective, the state’s recognition of ecological crises will certainly not lead it to encourage an ecological politics. Quite the contrary, it will be co-extensive with the imposition of emergency measures and potentially disastrous technological, even militaristic ‘fixes’. Those who suffer most from the situation will, ironically, be those most likely to find themselves reduced to bare-life. The case of [in] Hurricane Katrina in New Orleans provides a recent ecological example of the localised exclusion of ethics and politics as the state focused on population control while the protection of property (capital) took priority. As Agamben argues, it is always indicative of the retention of sovereign power that the state maintains its monopoly on the legal use of violence, justified as a response to exceptional circumstances (even including the ability to decide what does or does not count as violence, as for example, in labelling many forms of environmental activism eco-‘terrorism’).

**Scranton 15] Their fear-driven appeal is carefully crafted propaganda designed to resonate affectively among the populace, which greases the wheels of the homicidal project of capitalism and sacrifices value to the cruel optimism of security—only the alt solves**

**Scranton 15.** Jeremy Scranton, acclaimed journalist, activist and author, PhD in English from Princeton, currently teaching at Notre Dame, New York Times contributor, Iraq War veteran, Learning To Die in the Anthropocene: Reflections on the End of Civilization, City Lights Books, 2015, online cw//az recut

“When it comes to global warming, differing visions of the human future are already hardening into conflict. Coal and oil companies and their government proxies have made their willingness to use military force to defend themselves and advance their interests spectacularly obvious. The labor wars of the 19th and 20th centuries show this clearly. The brutal decades-long war waged by the Nigerian government against its own people, undertaken with the outright support of Shell and Chevron, is another example, well documented in books such as A Year and a Day and Genocide in Nigeria by Ken Saro-Wiwa, who was executed for his activism. You’ve heard the call: We have to do **something**. **We need to** fight. We need to **identify the enemy and go after them**. Some respond, march, and chant. Some look away, deny what’s happening, and search out escape routes into imaginary tomorrows: a life off the grid, space colonies, immortality in paradise, explicit denial, or consumer satiety in a wireless, robot-staffed, 3D-printed techno-utopia. Meanwhile, the rich take shelter in their fortresses, trusting to their air conditioning, private schools, and well-paid guards. Fight. Flight. Flight. Fight. **The** threat of death activates our **deepest animal** drives**.** The aggression and fear that arise in response to perceived threats are some of the most intense emotions we ever experience. For human society to function at all, these instinctive reactions have to be carefully managed **and channeled**. **Outbreaks of panic and hate are dangerous, but lower levels of aggression and fear help keep a population controllable and productive**. Restrained aggression keeps people suspicious of collective action and working hard to overcome their fellows, while constant, generalized anxiety keeps people servile, unwilling to take risks, and yearning for comfort from whatever quarter, whether the dulling sameness of herd thought or the dumb security of consumer goods. **Since at least September 11, 2001, people in the United States have been subject to an unprecedented terror campaign**—not from Al Qaeda, but from the United States government. National domestic policy transformed “security” into **constant** fear, threatening its citizens at every turn: first with alarms of explosions and anthrax, then with prison, austerity-produced structural unemployment, and harassment, and finally with **torture, SWAT tanks, snipers, drones, and total surveillance. Owing to the racial logic of US politics, in which white/black is the definitive semiotic distinction structuring American society, most of the government’s** violence **against its own citizens** is directed against those with darker skin, but **in subtler ways its terror** campaigntargets every **single** person **who flies coach, watches the news, or uses the Internet**. **Fear comes to us every day in our encounters** with increasingly militarized police and our humiliating interactions at metal detectors and ” “body-scan machines. Fear comes to us in the absence of job security, in our want of appeal when confronted by institutionalized inequality, and in our mistrust of corrupt institutions. Fear comes to us in widespread surveillance, in the form of a homeless woman or a hospitalized friend without adequate financial support, and in the constant nagging worry that we’re not working hard enough, not happy enough, never going to “make it.” Fear comes **to us** in weather porn, unpredictable shifts in **formerly stable** climate **dynamics, and massive storms.** More than in any other way, fear comes to us in images and messages, as social media vibrations, products of cultural technologies that we have interpolated into our lives. Going about our daily business, we receive constant messages of apprehension and danger, ubiquitous warnings, insistent needling jabs to the deep lizard brain. Somebody died. Something blew up. Something might blow up. Somebody attacked somebody. **Somebody killed somebody. Guns. Crime. Immigrants. Terrorists. Arabs. Mexicans. White supremacists. Killer cops. Demonic thugs. Rape. ” “Murder. Global warming. Ebola. ISIS. Death. Death. Death.** Sociologist Tom Pyszczynski writes: “People will do almost anything to avoid being afraid. When, despite the best efforts, [fear and anxiety] do break through, people go to incredible lengths to shut them down.”88 Sometimes when these vibrations shake us, we discharge them by passing them on, retweeting the story, reposting the video, hoping that others will validate our reaction, thus assuaging our fear by assuring ourselves that collective attention has been alerted to the threat. Other times we react with aversion, working to dampen the vibrations by searching out positive reinforcements, pleasurable images and videos, something funny, something—anything—to ease the fear. We buy something. We eat food. We pop a pill. We fuck. **In either passing on the vibration or reacting against it, we let the fear short circuit our own autonomous desires, diverting us from our goals and loading ever more emotional static into our daily cognitive processing**. We become increasingly distracted from our ambitions and increasingly susceptible to such distraction. And whether we retransmit or react, we reinforce channels of thought, perception, behavior, and emotion that, over time, come to shape our habits and our personality. **As we train ourselves to resonate fear wand aggression, we reinforce patterns of thought and feeling that shape a society that breeds the same.** Fight-or-flight is compelling because it serves essential evolutionary purposes. It increases alertness and adrenaline flow, and generally works to keep the human animal alive. **As we proceed into the Anthropocene, though, capitalism’s cultural machinery for balancing fear and aggression against desire and pleasure is grinding and sputtering sparks**. What cultural theorist Lauren **Berlant has identified as the “**cruel optimism” of a system sustained by hopes that can never be fulfilled mixes dangerously with an atmosphere of **beleaguered anxiety, increasing** frustration with **working-class and middle-class economic** stagnation**, and a pervasive sadistic voyeurism that grows by what it feeds on**.89 **While America’s fraying social infrastructure holds together, our fear and aggression can be channeled into labor, consumption, and economic competition, with professional sports, hyperviolent television, and occasional protests to let off steam. Once the social fabric begins to tear, though, we risk unleashing not only rioting, rebellion, and civil war, but homicidal politics the likes of which should make our blood run cold**.” “Consider: Once among the most modern, Westernized nations in the Middle East, with a robust, highly educated middle class, Iraq has been blighted for decades by imperialist aggression, criminal gangs, interference in its domestic politics, economic liberalization, and sectarian feuding. Today it is being torn apart between a corrupt petrocracy, a breakaway Kurdish enclave, and a self-declared Islamic fundamentalist caliphate, while a civil war in neighboring Syria spills across its borders. These conflicts have likely been caused in part and exacerbated by the worst drought the Middle East has seen in modern history. Since 2006, Syria has been suffering ” “crippling water shortages that have, in some areas, caused 75 percent crop failure and wiped out 85 percent of livestock, left more than 800,000 Syrians without a livelihood, and sent hundreds of thousands of impoverished young men streaming into Syria’s cities.90 **This drought is part of long-term warming and drying trends that are transforming the Middle East**.91 Not just water but oil, too, is elemental to these conflicts. Iraq sits on the fifth-largest proven oil reserves in the world. Meanwhile, the Islamic State has been able to survive only because it has taken control of most of Syria’s oil and gas production. **We tend to think of climate change and violent religious fundamentalism as isolated phenomena, but as Retired Navy Rear Admiral David Titley argues, “you can draw a very credible climate connection to this disaster we call ISIS right now**.”92 A few hundred miles away, Israeli soldiers spent the summer of 2014 killing Palestinians in Gaza. Israel has also been suffering drought, while Gaza has been in the midst of a critical water crisis exacerbated by Israel’s military ” “aggression. The International Committee for the Red Cross reported that during summer 2014, Israeli bombers targeted Palestinian wells and water infrastructure.93 It’s not water and oil this time, but water and gas: some observers argue that Israel’s “Operation Protective Edge” was intended to establish firmer control over the massive Leviathan natural gas field, discovered off the coast of Gaza in the eastern Mediterranean in 2010.94 Meanwhile, thousands of miles to the north, Russian-backed separatists fought fascist paramilitary forces defending the elected government of Ukraine, which was also suffering drought.95 Russia’s role as an oil and gas exporter in the region and the natural gas pipelines running through Ukraine from Russia to Europe cannot but be key issues in the conflict. Elsewhere, droughts in 2014 sent refugees from Guatemala and Honduras north to the US border, devastated crops in California and Australia, and threatened millions of lives in Eritrea, Somalia, Ethiopia, Sudan, Uganda, Afghanistan, India, Morocco, Pakistan, and parts of China. Across the world, massive protests and riots have swept Bosnia and Herzegovina, Venezuela, Brazil, Turkey, Egypt, and Thailand, while conflicts rage on in Colombia, Libya, the Central African Republic, Sudan, Nigeria, Yemen, and India. And **while the world burns, the United States has been playing chicken with Russia over control of Eastern Europe and the melting Arctic, and with China over control of Southeast Asia and the South China Sea, threatening global war on a scale not seen in seventy years**. **This is our present and future: droughts and hurricanes, refugees and border guards, war for oil, water, gas, and food.** We experience this world of strife today in one of two modes: either it is our environment, and we are in it, or it comes to us as images, social excitation, retransmitted fear. People are fighting and dying in ruined cities all over the planet. Neighbors are killing each other. Old women are bleeding to death in bombed rubble and children are being murdered, probably as you read this sentence. To live in that world is horrific. **Constant danger strains every nerve. The only things that matter are survival, killing the enemy, ” “reputation, and having a safe place to sleep. The experience of being human narrows to a cutting edge**. I remember living in that world many years ago in occupied Baghdad. Today that world seems impossibly distant, yet every day it presses in on me in a never-ending stream of words, images, appeals, and reports. I see videos. I read stories. I see pictures of this or that suffering or injustice and I am moved. To act, perhaps, but more accurately to emote. To react. To feel. To perform. We do not usually ask where these feelings come from or who they serve, but we all know that the cultural technologies transmitting these affective vibrations are not neutral: news outlets shape information to fit their owners’ prejudices, while Facebook, Twitter, and Google shape our perceptions through hidden algorithms. The specialization and demographic targeting of contemporary media tend to narrow the channels of perception to the point that we receive only those images and vibrations which already harmonize with our own prejudices, our own pre-existing desires, thus intensifying our particular emotional reac” “tions along an increasingly limited band, impelling us to discharge our emotions within the same field of ready listeners, for which we are rewarded with “Likes” and “Favorites.” Our consciousness is shaped daily through feedback systems where some post or headline provokes a feeling and we discharge that feeling by provoking it in others. Social media like Facebook crowdsource catharsis, creating self-contained wave pools of aggression and fear, pity and terror, stagnant flows that go nowhere and do nothing. Pictures of children killed by bombs or police, or pictures of the devastation left in the wake of a tropical storm may move me to sadness and horror. Retransmitting such images will pass along that sadness and horror. My act of transmission will mark me as someone who has feelings about these things and who condemns them. I can rationalize my retransmission by saying that I am “raising awareness” or trying to influence public policy: I want my fellow citizens to be as horrified as I am, so they’ll think like I do, or so they’ll vote for a representative who works to prevent such horrors from happening, or maybe so that if ” “enough of us all think the same way and feel the same way, the organs and institutions of power will be forced to hear us and align themselves along our vibrations, the way a honeybee colony will pick a site for a new hive through the dance of its advance guard scouts. These are perfectly reasonable human assumptions, because that is how physical human collectives function. Anyone who has been in a crowd, a basketball team, a nightclub, a choir, or a protest knows how bodies resonate together. But politics is the energetic distribution of bodies in systems, and **we live in a system of carbon-fueled capitalism that we shouldn’t expect to work in physical human ways for several reasons, especially when it comes to responding to the threat of global warming**. **First**, our political and social media technologies are not neutral, but have been developed to serve particular interests, most notably targeted advertising, concentration of wealth, and ideological control, and the vibrations that seem to resonate most strongly along these channels are envy, adulation, outrage, fear, hatred, and mindless pleasure. **Second**, the more we pass on or react to social vibrations, the more we strengthen our habits of channeling and the less we practice autonomous reflection or independent critical thought. With every protest chant, retweet, and Facebook post, we become stronger resonators and weaker thinkers. **Third, however intense our** social vibrations **grow, they** remain locked within machinery that offers no political leverage: **they do not translate into political action, because they do not connect to the flows of power. Finally, while the typical collective human response to threat is to identify an enemy, pick sides, and mobilize to fight,** global warming offers no apprehensible foe. That hasn’t stopped people from trying to find one. The Flood Wall Street protesters say the enemy is American corporations. Tanzania’s Jakaya Kikwete and Nauru’s Baron Waqa say the problem is the United States and Great Britain. Shell Oil and the Environmental Defense Fund seem to think that it’s intractable UN bureaucracy that’s holding us up. Barack Obama has implied that it’s China. Tea Party Republicans prod us to ever more intense levels of manic despair? One way we might begin to answer these questions is by considering the problem of global warming in terms of Peter Sloterdijk’s idea of the philosopher as an interrupter: We live constantly in **collective fields of excitation**; this cannot be changed so long as we are **social beings**. The input of stress inevitably enters me; thoughts are not free, each of us can divine them. They come from the newspaper and wind up returning to the newspaper. My sovereignty, if it exists, can only appear by my letting the integrated impulsion die in me or, should this fail, by my retransmitting it in a totally metamorphosed, verified, filtered, or recoded form. It serves nothing to contest it: I am free only to the extent that I interrupt escalations and **that I am able to** immunize **myself** againstinfections of opinion. Precisely this continues to be the philosopher’s mission in society, if I may express myself in such pathetic terms. His mission is to show that a subject can be an interrupter, not merely a channel that allows thematic epidemics and waves of excitation to flow through it. The classics express this with the term ‘pondering.’ With this concept, ethics and energetics enter into contact: as a bearer of a philosophical function, I have neither the right nor the desire to be either a conductor in a stress-semantic chain or the automaton of an ethical imperative.97 Sloterdijk compares the conception of political function as collective vibration to a philosophical function of interruption. As opposed to disruption, which shocks a system and breaks wholes into pieces, interruption suspends continuous processes. It’s not smashing, but sitting with. Not blockage, but reflection. Sloterdijk sees the role of the philosopher in the human swarm as that of an aberrant anti-drone slow-dancing to its own rhythm, neither attuned to the collective beat nor operating mechanically, dogmatically, deontologically, but ” “continually self-immunizing against the waves of social energy we live in and amongst by perpetually interrupting its own connection to collective life. **So** long as one allows oneself to be “a conductor in a stress**-semantic** chain**,”** one is strengthening **channels of** retransmission regardless of content, **thickening the reflexive connective tissues of mass society, making all of us more susceptible to such viral phenomena as nationalism, scapegoating, panic, and war fever**. **Interrupting the flows of social production is anarchic and counterproductive, like all good philosophy: if it works, it helps us stop and see our world in new ways. If it fails, as it often and even usually does, the interrupter is integrated, driven mad, ignored, or destroyed**. What Sloterdijk helps us see is that responding autonomously to social excitation means not reacting to it, not passing it on, but interrupting **it, then either** letting **the** excitation die **or transforming it completely**. **Responding freely to constant images of fear and violence, responding freely to the perpetual media circuits of pleasure and terror,** responding freely to **the ongoing ” “**alarms of **war,** environmental catastrophe**, and global destruction demands a reorientation of feeling so that every new impulse is held at a distance until it fades or can be changed. While life beats its red rhythms and human swarms dance to the compulsion of strife, the interrupter practices dying**

### !

#### Edkins 2000] affirming entrenches the state of exception as the norm, where people experience bare life as musselmen with no value; creating the worst atrocities imaginable

Jenny (Department of International Politics, University of Wales). “Sovereign Power, Zones of Indistinction, and the Camp”. 2000. Cw//az

**The camp is exemplary as a location of a zone of indistinction.** **Although** in general **the camp is set up** precisely **as** part of **a** state of **emergency** or martial law, **under Nazi rule this** becomes not so much a state of exception in the sense of an external and provi- sional state of danger as a means of **establish**ing **the Nazi state itself.** The camp is **"the space opened up when** the state of **exception begins to become[s] the rule."**17 **In the camp, the distinction between** the rule of **law and chaos disappears: decisions** about life and death are entirely arbitrary, and everything is possible. A zone of indistinction appears between outside and inside, exception and rule, licit and illicit. What happened in the twentieth century in the West, and paradigmatically **since** the advent of the **camp**, was that the space of **the state of exception transgressed** its **bound- aries and** started to **coincide with** the **normal order**. The zone of indistinction expanded from a space of exclusion within the nor- mal order to take over that order entirely. **In the concentration camp, inhabitants are stripped of** every **political status, and** the **arbitrary power of the** camp **attendants confront**s **nothing but what Agamben calls bare life, or homo sacer, a creature** who can be **killed but not sacrificed.**18 This figure, an essential figure in modern politics, is constituted by and constitu- tive of sovereign power. **Homo sacer is produced by the sovereign ban and is subject to two exceptions: he is excluded from human law (killing** him **does not count as homicide) [nor]**and he is excluded from divine law (killing him is not a ritual killing and does not count as **sacrilege**). ~~He~~**[they are]** is set **outside human jurisdiction without** being brought into **the realm of divine law.** This double exclusion of course also counts as a double inclusion: **"homo sacer belongs to God in the form of unsacrificability and is included in the com- munity in the form of being able to be killed."**19 This exposes homo sacer to a new kind of human violence such as is found in the camp and constitutes the political as the double exception: the ex- clusion of both the sacred and the profane.

### Alt

#### Whyte 09] Instead, “prefer not to” -a way of opening up liminal spaces in the law for potentialities of messianistic modalities to follow rather than precede

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Two key things are at stake in this attempt to assure the actuality of potentiality: firstly, if we are always able to be other than we are, this destabilises the attempt to found[ing] state power on the representation of a fixed substantive identity. Secondly, the re-potentialisation of the past, by granting possibility to what is or has been, disrupts the tradition, and its codification in law, that is premised on the erasure and forgetting of manifold un-actualised possibilities. It is here that Agamben positions Bartleby. In the formula ‘I would prefer not to’, he sees a liminal zone suspended between affirmation and negation, being and nonbeing, predicated on the renunciation of any will or reason to choose either option. Thus, Bartleby, he argues, conducts an experiment in what can either be or not be, an experiment in potentiality itself, which requires the overturning of the principle of the irrevocability of the past. If conducting such an experiment makes Bartleby a new Messiah, Agamben argues (in what is the most original, if also the least textually grounded aspect of his reading of Melville’s story) this is because it ‘inaugurates an absolutely novel quastio disputata, that of ‘‘past contingents’’’(Agamben 1999, p. 267). Thus while, for Deleuze, Bartleby is ‘the new Christ’ (Deleuze 1998, p. 90), Agamben’s Bartleby comes ‘not to redeem what was, but to save what was not’, to redeem those broken promises, unrealised potentials and forgotten struggles that are covered over by tradition and law, by renouncing the copying that presupposes and repeatedly affirms their forgetting (Agamben 1999, p. 270). Thus, Bartleby, in Agamben’s reading, responds to what in Time That Remains, he terms the ‘messianic modality’—exigency. In exigency, Agamben locates the demand of the forgotten, but this demand is not simply to be remembered and inserted into a new tradition, nor to be frozen in commemoration, but ‘to remain with us and be possible for us in some manner’ (Agamben 2005, p. 41). The messianic modality, which Agamben finds in Bartleby, is thus one in which potentiality does not precede actuality but follows it, restoring it to contingency and enabling the forgotten to act on the present.

#### Fiat illusory

## Case

#### Downey ‘09] Reliance on fiat and politics are problematic – it refuses to acknowledge the sovereign can always create a state of exception

Anthony Downey Routledge Taylore & Francis Group, Third Text, Vol. 23, Issue 2, March, 2009, 109–125 Third Text ISSN 0952-8822 print/ISSN 1475-5297 online © Third Text (2009) DOI: 10.1080/09528820902840581 Zones of Indistinction Giorgio Agamben’s ‘Bare Life’ and the Politics of Aesthetics <http://www.anthonydowney.com/wp-content/uploads/2015/03/2009-zones-of-indistinction.pdf> cw//az \*bracketed for gendered language.

 “The ongoing politicisation of life today demands that a series of deci[des]sions be made about the delimitation of the threshold beyond which life ceases to be politically relevant – where life becomes ‘bare life’. These thresholds, moreover, need to be redrawn from epoch to epoch; so much so that every society modulates the limit of the threshold. The camp was the limit in Nazi Germany at a particular moment in time; however, as Agamben argues, ‘every society – even the most modern – decides who its “sacred [people] men” will be’ (HS 139). Politics, in the context of the camp, concerned itself with that which was apparently unpolitical – ‘bare life’ and its abandonment by the political community – and the implications of this reach beyond the singular abjection of the camps: If this is true, if the essence of the camp consists in the materialization of the state of exception and in the subsequent creation of a space in which bare life and the juridical rule enter into a threshold of indistinction, then we must admit that we find ourselves virtually in the presence of a camp every time such a structure is created, independent of the kinds of crime that are committed there and whatever its denomination and specific topography. (HS 174)”

#### rollback

# 2n

## Extensions

### Framing

Framing impact (1:30) alt link (4:00)

#### o/v explanatory coherence: - all ethical and critical theories try to create systems that cohere with and explain our intuitions

#### the rotj is to endorse paradigmatic education that’s [safstrom summarizes shapriro]. The ballot does this via counternarrative demystifing the power of the sovereign

#### prefer my framing:

#### even if theirs is true, I control uniqueness – pedagogical spaces need to push away from consumerist education and look at relations instead of taxonomies and hierarchies

#### this should be how u evaluate offense and defense in the round – frame the net benefit of their perms based on this

mooting their policymkaing education is good

### impact

#### Extend edkins 2k: placing faith in the state to stay consistent with their promises is historically false and justifies ontological damnation – e.g. the state breaks its promises to international law and deems the refugee a musselman with no value to life, clearing the way for family separation and deportation and people allow this to happen because they develop irrational xenophobia of the Other through the state’s us versus them abject mentality; v2l outweighs under ur framing \_\_\_ now all I have to do is win a risk of a link and the alt

### alt

#### Extend the alt: negate – we have learned the lesson the hard way in the past and refuse to engage in a politics of absolutist hope that only results in serial policy failure. This means there’s absolutely no aff solvency and none of case can be evaluated against the alt given the (link). Instead, engage in whatever-being and bartleby’s “preferring not to” to benefit from whatever morsels the state concedes to us without allowing it to rewrite the potentialities of the past. The state literally can’t arbitrarily discount us as non-human when we flourish in the line between being and nonbeing. –that’s 100% solvency.

**Alt solvency block**

A. Comfort: By standing back and refusing to engage in the genocidal ideology, we force a confrontation with the evil of participating in sovereignty.  This exposition of contradictions forces real change. Their call for action within the system has historically failed and sustained evil, for example the Nazi Doctors excuse that they could minimize harm and the Democrats’ rhetoric of lesser evil, which initiated a slippery slope until Johnson, the architect of Vietnam, was the lesser evil.  Their advocacy’s merely a conscience easing exercise in futility.

B. Politics: The desire for pragmatic action forecloses electoral change because it produces choices in evil, which alienates the majority of the population.  A moral can mobilize the disenfranchised, whose votes their political analysis discounts as meaningless.

C. Try or Die: We have suffered through centuries of pragmatic action.  From the punishment after World War 1 to the assistance after World War 2 to the negotiations before Vietnam and Iraq.  Pragmatic actions have heralded a repetition of disaster.

**A2 perms**

1. Any justification for the perm is proof alt solves case ---we only need to win a residual link because stepping back and exploring the roots of their descriptions produces more effective engagement.
2. The alt coopts all the net benefits without being striated: refugees outside of policymaking still understand the language of power enough to burn their citizenship which prevents them from being deported and we can still have scenario planning in our head without relying on the fake consequences to win the ballot
3. Agamben literally criticizes your understanding of inclusivity which definitionally takes out any perm It is impossible to evaluate the subjective agent caused violence outlined in the 1AC and to criticize the forms of violence that are the root cause of graphic outbursts – the criticism is literally mutually exclusive with the plan

#### Net benefit

1. Aff benefits don’t matter when there’s no value to life so the disad with the link outweighs the nonunique
2. Da is Footnoting - under compromise politics
3. Even if u buy their net benetfits: The alt coopts it without being striated: refugees outside of policymaking still understand the language of power enough to burn their citizenship which prevents them from being deported and we can still have scenario planning in our head without relying on the fake consequences to win the ballot
4. all their advantages are intellectually suspect-both are on framework- that’s the framing section.

**A2 judge can write about it in ballot for pedagogy:** 1. Unverifiable if you will actually read the ballot after 2. My pedagogy is uniquely key within the debate space, you footnote it for larp which always happens

**A2 all other instances**: we literally critique exceptions – nazi camp was supposed to be an exception but it festers like a wound and contaminates other spaces look at us experiments w eugenics, family separation policies, the rohingya

Fiat/method weighing – u don’t get access to case

### link

#### Independently, there’s no articulation of why the all the perms shield, I’ll win the link debate which are independent disads to the perm rn

#### A2 state good

your arguments state good and total rejection bad are incoherent and additional links into the criticism. I do not advocate an endorsement of anarchy over the government, rather my advocacy 1) recognizes that the state is inherently selfserving and that that logic corrupts all actions it takes and 2) the only way to disable those structures is to not let narratives of control dictate our actions. Your arguments are exactly that. You play on the narrative that we should embrace a slightly less oppressive government because we’re better off doing that than embracing a fuure where you don’t know what will happen. Your arguments that the 1NC is not a practical solution is exactly what the system of capitalism says to prevent real change. By inciting fear and playing on uncertainty the system shuts out methods of talking out and calls any solution unwise or not pragmatic. The only way to break the system down is to entertain all possible alternatives. The 1AC shackles us to the state- negating offers an alternative and breaks the shackles of fear that dissuade real revolution.

Ov reform

Minor reforms are insignificant, no matter how much they talk about ---, even if they include some people, that will always create deviancy e.g. the half asian half black, the half asian half black who’s trans, the half asian half black trans who’s disabled, etc. which means they never solve the root of the issue – even if I don’t win materiality battle, I resolve the starting point of bare life which justifies this and I’ll win the war

Trayvon martin examples aren’t even material – there’s no material reason bullets seem to magnetize towards black and brown bodies, there’s no material reason to shoot a person 16 times then justify it by planting a gun retrogressively – all that happens in the ideological psychological stuff

Even if their argument seems progressive right now, I’m sure Copernicus and his ivory tower scholar friends thought that too, but a couple years later it’s just common sense, in the same way Giroux will be in 5 years – proves ruse of solvency as the same bare life and genocidal impacts still reoccur under the status quo/their model e.g. rohingya in burma, Uighur in china, etc. I’m controlling the uniqueness debate

### Rotb o/w theory

#### 1. logic - Theory begs q of what role of judge, i.e. if role of judge is to vote for most abusive debater then obv theory would be meaningless

#### 2. Pedagogy - Pedagogy of K is good and outweighs theory on portability. education > fairness

#### 3. K criticizes theory for constituting static norms - That flips their testing args since we're a gateway issue to determining theory's role in the round and certain people can't access theory args

#### 4. Epistemology - Logic of political or whatever the K criticizes co-opts the debate space - can't determine if an arg is true since we're epistemically skewed

#### 5. Performativity - If we prove your performative practices are bad you should lose irrelevant of theory, e.g. if you said the n-word you obv should lose

A2 Fairness

constitutive: 1. Clearly no impact, 2. proves it begs q of the role of judge since that presumes role of judge is to be fair, 3. education constitutive because reason schools fund debate

### A2 anthropocentricism

#### Consistent w condemning slaughterhouse chicken

#### No link - Bios and zoe are applicable to all life and agamben criticizes the arbitrary drawing of lines

https://core.ac.uk/download/pdf/69941.pdf

Firstly, Agamben notes that, where we would use the term ‘life’, Classical culture distinguished between two forms of existence, zoē and bios. Zoē referred to the form of life shared by humans and animals alike, a form concerned with material sustenance and reproduction. Bios referred instead to the ethical and political form of life that was oriented toward the realisation of the polis and, as such, was peculiar to humans alone (Agamben 1998: 3-5). For Aristotle, however, this was insufficient since the social habits of some animals blurred the distinction. Yet, his effort to explain the origin of human institutions without recourse to the Platonic eidos and all the categorical distinctions predicated thereon was fraught with ambiguities that he was never able fully to resolve. Consequently, Agamben argues, discovering what is peculiar to the ‘anthropophoric animal’, that is, what is distinctive about the animal bearing human characteristics, has entailed an endless comparative dissection of life, focusing most recently on the location of animal life in the very inner being of human life (Agamben 2002: 30). As Richard Dawkins announces that the decoding of the human genome is best understood as the rendering of the Biblical ‘word’ into ‘flesh’, the working of the ‘anthropogenic machine’ set in motion by Aristotle reaches its end: bios and zoē materially become one (Dawkins 2001; see also Palladino 2002: 206-208). Secondly, Agamben also argues that, on Aristotle’s definition of the ‘human’, the law is the sole guarantor of the separation of bios and zoē. Again, because Aristotle rejected the Platonic eidos, the authority of the law then has to rest on the possibility of its suspension and the implicit threat of reversion to animal life.Today, Agamben notes, this brutal, but essential, truth of the law is everywhere obvious, as the internment of refugees emphasises how much contemporary notions of ‘citizenship’ and immunity from the arbitrary power of the ‘sovereign’ do not rest on inalienable ‘human rights’, but on the contingencies of birth, on the contingencies of humanity’s species existence (Agamben 1998: 126-135). Significantly, for Agamben, the comatose in a ‘persistent vegetative state’ provides the most striking exemplification of the fate of ‘bare life’ as the historical process he articulates reaches its conclusion. With the advent of a millennial ‘zone of indistinction’, being alive or dead becomes a matter of the bio-medical and juridico-political determination of the ‘life unworthy of being lived’, the notorious legal concept that paved the way to the Holocaust (Agamben 1998: 136). Not surprisingly, Agamben concludes still more ominously that the ‘camp’ is the future (Agamben 1998: 166-180).

## Off edinas wiki lol

The role of the ballot is to interrogate borders – this is key in educational spaces to recognize and combat systems of oppression
Romo and Chavez 06 Jaime Romo and Claudia Chavez, teacher educator/group facilitator and associate professor of anthropology at Humboldt State University, “Border Pedagogy: A Study of Preservice Teacher Transformation”, <http://www.tandfonline.com/doi/abs/10.1080/00131720608984885>, The Educational Forum, Volume 70, Issue 2, pg. 151-152, published 2006, accessed 9-22-17,

"The data suggested that a process... active engagement in learning, and self-motivation."

Link- They advocate civic republicanism- that promotes ideals such as democracy and citizenship- links directly into the borders K. Their notion of citizenship inherently serves to exclude individuals in the community- that’s oppressive

Link- Expansion of national service in any regard directly emphasizes citizenship and patriotism
Dionne and Drogosz 02 United We Serve?: The Debate over National Service E.J. Dionne and Kayla Meltzer DrogoszSunday, September 1, 2002 <https://www.brookings.edu/articles/united-we-serve-the-debate-over-national-service/> E.J. Dionne, Jr. is a senior fellow at the Brookings Institution, a syndicated columnist for the Washington Post, and university professor in the Foundations of Democracy and Culture at Georgetown University. Kayla M. Drogosz is the senior research analyst for the project on religion and civil society at the Brookings Institution 9/7/17 KAE – highlight by EHSMK
"Surely one of these ends is the engagement ... assistance and democratic aspiration.

Citizenship is intricately connected to whiteness. Citizen discourse functions as a delineation of who is included and excluded, developing a docile population centered around citizenship.
Glenn 04 *bracketed for comprehension
Evelyn Nakano Glenn, professor of gender and women’s studies at UC Berkeley, “Race, Gender, and Unequal Citizenship in the United States”, The Changing Terrain of Race and Ethnicity, edited by Maria Krysan and Amanda Lewis, pg. 187-188, published 2004, accessed 8-31-17, EHSMK
"In this chapter, I... members of the political community."*

The alternative is a demand for a borderless world – this is key to orient our radical politics against the violence of the nation even if we cannot literally bring this world into existence.
Whyte 06
Jessica Whyte, PhD candidate in comparative literature at Monash University, “Erasing the Line, or, the Politics of the Border”, Ephemera, Volume 6, No. 4, pg.466, published in 2006, accessed 9-3-17, EHSMK
"In light of our journey from our home countries ... leisure into a time of perpetual production."

## L

### L-hobbes/sct

**Mark B. Salter (2008): When the exception becomes the rule: borders, sovereignty, and citizenship, Citizenship Studies, 12:4, 365-380 cw//az**

Agamben analyzes the founding social contract [is] as an example of the sovereign power of decision. The decision to enter into a sovereign compact cannot take place within that contract – the state of nature is prior to normal politics. Rather than reason or deliberation, relations in the state of nature are determined by fear and cunning. Agamben claims that the foundation of the polis in Hobbes’ Leviathan reveals this essential political arrangement: in the first social contract, the sovereign does not renounce all rights, rather all other citizens renounce their rights to everything (1995, p. 106). All the citizens agree to give up their rights and allow only the sovereign to retain the natural right to everything – but the sovereign does not promise anything in return about how the contract will be defined or upheld. And yet, to naturalize and make seamless the claim of the sovereign to rule, in order to have a clear contract with a population, that ‘decision’ to define the sovereign must be obscured and hidden from view. If this decision were not seen to be arbitrary and external, prior to the law, every administrative decision becomes an issue of the founding contract.

### L–afropess

wilderson thinks opp is generated psychologically whereas agamben is structured institutionally. if rights worked racism would've ended and the fact that it still exists means we haven't gotten far enough. respond by saying there's more than j ppl are racist. the alt isn't going to work bc ppl are still going to be racist lol.

explain antiblackness as the state of exception. law doesn't apply to the cop bc of social standing

black body is the musol man that is a collection of organs an object its hard to get more minimal than a piece of property.

going for the rotb and explain why it excludes their offense and i'm the only one pushing for a counternarrative. prereq claim

#### **The concept of the non-human homo sacer is necessary to interrogate the foundations of antiblackness and social death**

Basevich 12 (Elvira, Ph.D. in Philosophy at The Graduate Center, CUNY,” Foucauldian Resonances: Agamben On Race, Citizenship, And The Modern State”, Sofia Philosophical Review, VOL 6 No.2, 2012, sphr-bg.org/download/200.html)/AK47

Given the connection between homo sacer, bare life, and race, we can use Agamben’s framework to shed some light on the way discourses around non-white peoples in the United States historically took form. According to Agamben, bare life is not fully human life. In the Aristotelian framework, bare life as zoe is associated with the merely perceptive soul of plants and animals. Politically zoe signifies total lack of civilization, rationality, and morality. In affirming African Americans as bare life, these discourses associated them with the chaos of nature, which is exactly the kind of racial stereotype that has shadowed African Americans for centuries. For example, one could argue that the ascription of bare life by sovereign power promoted racial stereotypes about the hyper-sexualized, animal-like black man and the brawny Amazon black woman. The portrayal of black life as subhuman in turn served to justify blacks’ slavery and their subsequent systematic disenfranchisement from social, economic, and political life. These racial narratives make sense in the context of Agamben’s analysis of homo sacer, for the latter by definition is not fully human. They helped push certain racial groups into the category of the sacred and the category then informed the racial stereotypes surrounding them. Agamben emphasizes that the judgment of the physical body is “immediately political” such that race “is not a biological given” but a contingent historical construction. He also writes that race is not evinced by “measurable characteristics.”35 The new modern emphasis on biological heritage, which as a political category often transcends any “measurable characteristics,” affirms difference (as subhuman degeneracy) at a more fundamental, almost metaphysical, level. Although the biological is “immediately” politicized, what Agamben fails to see is the consequences of that politicization “stick” when it comes to racial differences, especially when biopolitics serves to integrate groups into a racial hierarchy that is linked to the founding of the state.36 The normative racial group that has full citizenship reflects the founding moment of the state when sovereign power “decided” on the racial makeup of its legitimate and illegitimate members. From the point of view of the biopolitical state, there is a sense in which the citizen and the sacred one are two different substances by virtue of their racialization, even though both are equally political constructions of sovereign power. At the inception of the United States, for example, the politicization of black life served to construct and affirm their racial identity in opposition to the “legitimate” citizen and at the same grounded their exclusion from the state as fundamentally different, inferior, and non-human beings. This puts not only blacks, but also other non-white immigrants in a more precarious position with regard to the category of the sacred in the United States.

#### The discourse of racism and exclusion is used as a tool by sovereign power to exclude certain bodies in order to create a racially homogenous citizenry – only an interrogation of sovereign power can stop the weaponization of racial discourse

Basevich 12 (Elvira, Ph.D. in Philosophy at The Graduate Center, CUNY,” Foucauldian Resonances: Agamben On Race, Citizenship, And The Modern State”, Sofia Philosophical Review, VOL 6 No.2, 2012, sphr-bg.org/download/200.html)/AK47

Once the sovereign model of power collapsed, warlike social and political relations emerged. The unity between the people and the state disintegrated. The people stopped identifying themselves with sovereign right and enlisted history as a weapon for contesting it, seeking political recognition based on their own unique social, historical, and political differences. Foucault writes that these struggles invoked the concept of race and ethnicity as a means for undermining state power, but these invocations were discontinuous and decentralized. “The discourse of race struggle…when it first appeared and began to function in the seventeenth century was essentially an instrument used in a struggle waged by decentered camps.”10 People began to speak from outside sovereign power – “from the side that is in darkness, from within the shadows”11 – and offered their own politico-historical formulation of their identities, which amounted to a type of discourse that sought to affirm their race or ethnicity. In being discontinuous and decentralized, these discourses on race were not seeking hegemony and did not desire to take over sovereign power as the new governing body. According to Foucault, with the emergence of modernity, the relationship between the discourse of race and the state takes on a perverse form. The modern state harnesses the discourse of race, which was once used to contest it, in order to bolster its legitimacy and power. “Race becomes the discourse of a centered, centralized, and centralizing power.”12 This new form of governmental rationality demonstrates the “polyvalent mobility” of race discourses.13 Discourses do not have an essential meaning. A discourse that was at one historical moment progressive and challenged state power in another historical moment could be recuperated by the state and used to extend its legitimacy and power. The state began to employ a master narrative of race, arguing that the flourishing of the social whole required that the body politic maintain a single, clearly defined racial identity. Part of the functioning of the state was to disenfranchise or altogether eliminate the social elements that undermined the state’s racial homogeneity. Although Foucault focuses on continental Europe in the mid20th century, his analysis of the connection between the modern state and racism is not limited to Fascist states. He argues that the normative foundation of the modern liberal state also makes substantive assumptions about the race of the “legitimate” citizenry that constitutes its body politic, for both the Fascist state and the liberal state share a biopolitical model of governmentality that distinguishes legitimate from illegitimate members on the basis of race. Maintaining a homogenous racial identity requires tremendous state intervention into the day-to-day lives of the citizenry at the biopolitical level. The state and doctors collude to monitor the birth and mortality rates, mental illnesses, and genetic heritage of the citizenry. Various statistics are kept and disciplines, government committees, and institutional practices are invented that oversee the biological makeup of the citizenry. These kind of governmental practices “create” an ideal population that at the same time identifies themselves as the state’s legitimate subjects and right bearers. The historical moment when the modern state begins to use the hegemonic discourse of race is also the point at which biological racism takes shape and the kind of state racism that characterizes the Nazi state emerges. Although not all modern states endorse such an explicit and extreme form of racism, Foucault thinks that the normative foundation of the state, including liberal constitutional democracies, at least tacitly embrace racist (and racializing) forms of political power as a way of “normalizing” society. Foucault describes this development: [Race] become[s] the discourse of a battle that has to be waged…by a race that is portrayed as the one true race, the race that holds power and is entitled to define the norm, and against those who deviate from the norm, against those who pose a threat to the biological heritage. At this point, we have all those biological-racist discourses of degeneracy, but also all those institutions within the social body which make the discourse of race struggle function as a principle of exclusion and segregation and, ultimately, as a way of normalizing society.14 Charged with the defense of the “biological heritage” of the state, modern governmental rationality seeks to define and safeguard the “true race.” The disciplinary practices of institutions ensure that citizens conform to and ultimately identify with racial norms. “Subraces” that fall outside the normalizing master discourse on race are excluded as “illegitimate” members of the biopolitical state. “Foucault’s genealogy of racism is thus situated precisely at the point of the intersection of biopolitics and governmentality.”15 The biopolitical model of power underpins the functioning of a state whose essential objective is to distinguish “them” from “us,” enabling the flourishing of the social whole. Modern racism is characterized by an internal bifurcation of those who are part of the social whole and those who are outside of it. Governmental rationality consequently acquires a new objective in modernity: “To defend ourselves against society.” The state is to defend society against “all the biological threats posed by the other race, subrace, and the counterrace.”16 The latter, in a totalitarian state, which is completely permeated by the biopolitical model of power, must die in order to preserve the unity of the social whole. In a liberal state, they often suffer a social, economic, and political death as the dregs of society.

### L-ilaw

#### International law is closely tied to the state of exception

Humphreys 8 [Stephen Humphreys, Sidney Sussex College, University of Cambridge, European Journal of International Law, Volume 17, Issue 3, 1 June 2006, Pages 677–687,, June 1, 06, <http://www.ejil.org/pdfs/17/3/208.pdf>,] Heublein

That larger thesis emerges only gradually. To begin, Agamben identifies two main schools of thought on the legality of the state of exception. The first views it as ‘an integral part of positive law because the necessity that grounds it is an autonomous source of law’.1 This approach is today codified in international law through the notion of derogation. When faced with a public emergency that ‘threatens the life of the nation’, international human rights treaties – and many constitutions – permit states to suspend the protection of certain basic rights.2 The existence of derogationlike clauses is generally represented as a ‘concession’ to the ‘inevitability’ of exceptional state measures in times of emergency, and also as a means to somehow control these.3 As such, they have been viewed as ‘one of the greatest achievements of contemporary international law’.4 In practice, the derogation model ‘creates a space between fundamental rights and the rule of law’, wherein states can remain lawful while transgressing individual rights – effectively creating, in the words of Tom Hickman, a ‘double-layered constitutional system’.5 Agamben’s second group6 understands the state of exception to be ‘essentially extrajuridical’, something prior to or other than law. For these writers, a constitutional endorsement of the state of exception is a pragmatic recognition of limited constitutional dominion. Echoing Alexander Hamilton, that ‘[t]he circumstances that endanger the safety of nations are infinite; and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed’,7 proponents argue that it is neither possible nor desirable to control executive action in times of emergency using standard judicial accountability mechanisms.8 A legal space must instead be opened for untrammelled state action, albeit only for the time it 1 G. Agamben, State of Exception (2005), at 23 [hereinafter State of Exception]. Agamben refers to the jurists Santi Romano, Hauriou, Mortati, Hoerni, Ranelletti and Rossiter. Legalizing Lawlessness: On Giorgio Agamben’s State of Exception 679 takes to restore the constitutional order. Attempts to impose legal controls will merely infect ordinary rights protections with extraordinary elasticity. Agamben, however, rejects both approaches – ‘the state of exception is neither internal nor external to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with one another’. At root, he wonders: ‘How can an anomie be inscribed within the juridical order?’9 To lift the ‘veil covering this ambiguous zone’, Agamben offers a juridical genealogy of the state of exception: the repeated and variegated efforts throughout the Western legal tradition to extricate sovereign power entirely from the habitus of law or, in a related move, to legislate for the law’s own suspension. Agamben notes approvingly the medieval conception of the exception, citing Gratian, Thomas Aquinas and Dante, which serves not to ‘render the illicit licit’ but ‘to justify a single, specific case of transgression by means of exception’. An example, taken from Gratian, is the post hoc recognition of a bishop ordained despite a lack of qualifications – in order to avoid rupture within the church. For the common good, the law’s strictures were exceptionally disregarded, a move which ‘prevents the law from referring only to the law and thus prevents the closure of the juridical system’, in the words of Antonin Schütz.10 The modern formulation of the state of exception arrives with a 1789 decree of the French constituent assembly, distinguishing a ‘state of peace’ from a ‘state of siege’ in which ‘all the functions entrusted to the civilian authority for maintaining order and internal policing pass to the military commander, who exercises them under his exclusive responsibility’.11 From there the state of exception is gradually emancipated from its war context and is introduced during peacetime to cope with social disorder and economic crises. The key observations are, first, that ‘the modern state of exception is a creation of the democratic-revolutionary tradition and not the absolutist one’,12 second, that the state of exception immediately assumes a ‘fictitious’ or political character, where a vocabulary of war is maintained metaphorically to justify recourse to extensive government powers. These points are demonstrated repeatedly in Agamben’s brief history of the state of exception in Europe and the United States, from the introduction of states of emergency to deal with financial crises in Germany in 192313 and France in 1925, 1935 and 1937,14 to union strikes and social upheaval in Britain in 1920,15 earthquakes in Italy in 1908,16 and, perhaps most 9 The translator, Kevin Attlee, generally uses ‘juridical order’ for the Italian diritto, whereas legge is translated as ‘law’. See State of Exception, at 27. 10 Schütz, ‘L’immaculée conception de l’interpète et l’émergence du système juridique: A propos de fiction et construction en droit’, Droits (1995) 120, cited in State of Exception, at 26. 11 T. Reinach, De L’état de siège. Étude his 680 EJIL 17 (2006), 677–687 strikingly, by Presidents Lincoln – to provide a basis for the abolition of slavery in 1862 – and Roosevelt, to ensure passage of the New Deal in 1933.17 Roosevelt’s words in this context are illustrative: ‘I shall ask the Congress for the one remaining instrument to meet the crisis – broad Executive power to wage war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.’18 The present ‘permanent state of exception’ too should, Agamben indicates, be understood as a fiction sustained through military metaphor. 1 The Liminal Space of Law Having consolidated the conceptual background, Agamben proposes a theory of the state of exception as ‘the preliminary condition for any definition of the relation that binds and at the same time abandons the living being to the law’. His inquiry concerns the origins and liminal space of law – how law copes when confronted by the irreducibly non-legal: ‘life itself’. The state of exception is the recognition of law’s outside but it simultaneously prompts sovereign attempts to encompass that very outside within the law. Agamben finds this ‘long battle over anomie’ at the heart of Carl Schmitt’s well-known definition of the sovereign as ‘he who decides on the exception’, by means of which Schmitt ties the state of exception to dictatorship: the dictator/sovereign unites the legal and the non-legal by means of an extralegal decision ‘having the force of law’. In this way, according to Schmitt, the juridical order is preserved even when the law itself is suspended. This can take place in two ways. In a ‘commissarial dictatorship’ the law is temporarily suspended in order that it might ultimately be implemented.19 Although unapplied, the law remains in force: the constitution provides a supra-statutory background that renders its suspension lawful. In a second version, ‘sovereign dictatorship’, the state of exception signifies the exercise of ‘constituent power’: in effect, it is a moment where no constitution or law applies other than the sovereign decision itself.20 The archetypal moment is the immediate aftermath of the French revolution – but, in principle, wherever an old order is overthrown and a new one introduced (as for example in Iraq) this moment is accompanied by an effective suspension of law, during which period only the sovereign decides on the existence and content of law. The violence of martial law and sovereign decree is therefore, in Schmitt’s writing, legitimate over and against other manifestations of extrajuridical violence. Agamben rejects Schmitt’s position and moves to displace any theory that ‘seeks to annex the state of exception immediately to the law’ or to ‘inscribe [it] indirectly in a juridical context’ and to salvage it instead as law’s ‘other’: ‘the state of exception is not a “state of law” but a space without law’, a ‘zone of anomie’.21 It is not equivalent to a 17 Ibid., at 21–22. 18 F. D. Roosevelt, The Public Papers and Addresses, vol. 2 (1938), cited in State of Exception, at 22. 19 State of Exception, at 33. 20 Ibid., at 34. 21 Ibid., at 50–51. Downloaded from https://academic.oup.com/ejil/article-abstract/17/3/677/2756274 by guest on 27 June 2018 Legalizing Lawlessness: On Giorgio Agamben’s State of Exception 681 dictatorship, where laws continue to be made and applied (albeit non-democratically), but one in which law is rather entirely emptied of content. In Agamben’s analysis, Schmitt’s ‘paradoxical’ formulation – which attempts to reinsert a legal vacuum into the legal order – is rather designed to privilege sovereign violence at all costs. Agamben challenges Schmitt’s paradigm through the voice of Walter Benjamin, whose 1921 ‘Critique of Violence’ speaks of a ‘pure’ or ‘divine’ violence that is neither subject to nor preserving of law,22 that may appear as a flash of revolutionary transcendence23 and that Agamben reads as a ‘cipher for human activity’.24 Schmitt’s state of exception, on this reading, is a legal edifice constructed to domesticate the very possibility of non-state (or pure) violence. In sum, Benjamin and Schmitt agree on the existence of anomic violence – but they treat it differently, either as the divine violence that ‘neither makes nor preserves law, but deposes it’ or as the last frontier to be annexed by the sovereign by means of the state of exception.25 The legal category of the emergency, then, extends or completes law’s empire. Agamben concludes that the state of exception is therefore ‘a fictio iuris par excellence which claims to maintain the law in its very suspension’, but produces instead a violence that has ‘shed every relation to law’.26 While this assertion remains unsupported by empirical reference or example – indeed, this is a general problem in Agamben’s writing – it nevertheless corresponds obliquely to the emergent phenomena referred to variously as global law, the transnational rule of law, and the fragmentation of international law.27 Agamben extends this argument along two countervailing paths – backwards to establish parallels with 22 Benjamin, ‘Critique of Violence’, in W. Benjamin, Reflections: Essays, Aphorisms, Autobiographical Writings (P. Demetz (ed.), 1986), at 300. Benjamin opposes this ‘divine violence’ to the ‘mythical violence’ of the state: ‘if mythical violence is lawmaking, divine violence is law-destroying.’ Ibid., at 297. 23 Benjamin, ‘Theses on the Philosophy of History’, in W. Benjamin, Illuminations (H. Arendt (ed.), 1969), 254. 24 State of Exception, at 59. 25 This is not merely a question of textual exegesis; recent negotiations on the international legal definition of ‘terrorism’ have long stalled on just this issue – should all violence undertaken to overthrow states be internationally outlawed, foreclosing from international law all violent expression that is already and necessarily unlawful in a given state? Or should revolution remain internationally unregulated, given that any regulation will, in any case, fail to comprehend action which succeeds in ‘deposing’ the law?. The first path locates a parallel (or, possibly, origin) of the contemporary state of exception in the Roman notion of iustitium. 28 This was the suspension of the application of law in the Roman republic, following a declaration of a state of emergency (tumultus) by the Senate, to the actions of magistrates and even citizens; the word alters its meaning with the onset of the Roman Empire,29 ultimately referring to a period of institutionalized chaos following the death of the emperor, pending the inauguration of a successor. The later Roman iustitium, a declaration of anomie, explicitly signals the hiatus between one sovereign legal order and the next. Indeed, the iustitium becomes an effective instrument of the emperor, to be turned on or off at will.30 It is in his discussion of iustitium, a state in which certain laws simply do not apply, that Agamben reclaims the state of exception as a zone not of law but of anomie, not amenable to capture by law.31 The second path of inquiry – dealing with the relation between law and ‘life itself’ – is somewhat more complex and appears almost parenthetically throughout the text.32 Agamben views the relation between law and the court process as isomorphic to the Saussurean linguistic paradigm of the relation between langue and parole. Just as any specific instance of speech (parole) requires the background existence of a selfsufficient universe of language, but reaches beyond that background to touch specific non-linguistic phenomena, so in a court-trial, judges apply to specific cases laws that depend for their effect on the existence of a self-referential legal system. The application of law by judges is, like speech, an enunciative act that applies the general to the particular. But just as speech acts can fail to connect with actual phenomena, circulating instead in the abstract self-referentiality of langue, similarly, law can be applied without explicit recognition of any reality outside its own abstract realm (the ‘closure’ whose avoidance Schütz approves of in Gratian). And just as structural linguists once feared that the physical world risks becoming inaccessible per se, trapped outside a self-referential and abstract ‘prisonhouse of language’,33 so too law can shape and limit the politically possible, rendering a world without sovereign ascendancy unthinkable or unattainable. Fundamentally, Agamben worries that attempts like Schmitt’s, both past and contemporary, to legislate for anomie – that is, to encompass the non-legal within the law – amount to a denial of the existence of an extralegal reality: the existing ‘juridical order’ becomes total. The thesis is stated most clearly in the last paragraph of the book: To show law in its nonrelation to life and life in its nonrelation to law means to open a space between them for human action, which once claimed for itself the name of ‘politics’. Politics has suffered a lasting eclipse because it has been contaminated by law, seeing itself, at best, as Legalizing Lawlessness: On Giorgio Agamben’s State of Exception 683 constituent power (that is, violence that makes law), when it is not reduced to merely the power to negotiate with the law.34 As a final figure of illustration, Agamben follows the Roman relation of auctoritas (first of the Senate in ratifying the will of the people, later of the emperor) to the potestas of the magistrate. Auctoritas, which is ‘the power to suspend or reactivate the law, but is not formally in force as law’ is located in the figure of authority, and is an attribute not of law but of life itself, deriving originally from the people of the republic, later from the person of the emperor.35 It exists in a binary relationship ‘at once of exclusion and supplementation’ to potestas, the magistrate’s power to execute the law.36 Through Augustus’ auctoritas, he ‘legitimates and guarantees the whole of Roman political life’.37 Bringing the parallel forward to contemporary experience, Agamben writes: As long as the two elements [i.e. auctoritas and potestas or life and law] remain correlated yet conceptually, temporally and subjectively distinct . . . their dialectic . . . can nevertheless function in some way. But when they tend to coincide in a single person, when the state of exception, in which they are bound and blurred together, becomes the rule, then the juridicopolitical system transforms itself into a killing machine.38 More than a hint of Benjamin’s political theology of messianic revolution permeates the final pages. 2 Sovereign Checks Fascinating, provocative and erudite, State of Exception is nevertheless frequently as gnomic as it is compelling: at times a little more clarity or probing would be welcome. The assertion of a permanent state of exception since World War I, described as ‘a laboratory for testing and honing the functional mechanisms and apparatuses of the state of exception as a paradigm of government’,39 is short of both empirical substantiation and conceptual clarification. Still, at first sight, the available data would seem to bolster Agamben’s case. Constitutional provisions allowing for states of emergency have effectively globalized in the course of the 20th century – at least 147 countries had something of the sort by 1996.40 Governments have taken regular – in some countries constant – recourse to this mechanism: in 1978 an estimated 30 countries were in some form of state of emergency;41 by 1986 the number was 70.42 However, 34 Ibid., at 88. 35 Ibid., at 79. 36 Ibid. 37 Ibid., at 82. 38 Ibid., at 86. 39 Ibid., at 7. 40 See Camp Keith and Poe, ‘Are Constitutional State of Emergency Clauses Effective? An Empirical Exploration’, 26 Human Rights Quarterly (2004) 1071, at 1080. 41 International Commission of Jurists, States of Emergency: Their Impact on Human Rights (1993), at 413. 42 J. Fitzpatrick, Human Rights in Crisis: The International System for Protecting Rights During States of Emergency (1994), at 3–4. Downloaded from https://academic.oup.com/ejil/article-abstract/17/3/677/2756274 by guest on 27 June 2018 684 EJIL 17 (2006), 677–687 this added detail does little to illuminate Agamben’s main argument concerning the emergence of a new juridical space at global level: developments within individual countries rather reflect than drive this larger pattern, and focusing on them tends to open up areas of easy contestation that are not fundamental to his point. In any case, the increasingly loud official insistence on a new condition of emergency without visible end – a supposed paradigm shift echoing through the din of the ‘war on terror’ – is by far the better indicator of this book’s central thesis. What is uniquely valuable here is the penetrating search for the broad juridical precedents that underpin these fantastic claims of security imperatives and lend them traction. It may be best to view this book as opening a potentially fruitful avenue for legal scholars to explore with more precise tools. A more worrying gap throughout the book is its minimal and inconclusive discussion of the separation of powers.43 Agamben registers historical moments of contestation between executives and legislatures for control over the state of exception. Today many countries require parliamentary ratification, sometimes post hoc, of the executive or presidential prerogative to ‘decide on the exception’.44 He frequently characterizes sovereign expansion in terms of recourse to the decree, and clearly views parliamentary marginalization as an indicator of the same phenomenon. Certainly there is no shortage of examples, both past and present, of parliaments bowing too easily to executive demands couched in terms of emergency. At bottom, however, parliamentary oversight appears in this story as an ambiguous side-issue, not fundamentally decisive. The question raised here – but not answered – is whether the institutional division of government power can prevent or retard the state’s proclivity to expansionary legalism – or whether on the contrary it is rather an irrelevance or even a catalyst – as Hannah Arendt once suggested: ‘the principle of separation of power . . . actually provides a kind of mechanism built into the very heart of government, through which new power is constantly generated’.45 The possible importance of the judiciary – not only in ascertaining the law but also in cordoning off its domain – is not discussed at all. This is the more striking as judicial processes are at the centre of recent debate on the state of emergency. The US Supreme Court and Britain’s Law Lords both ruled in 2004 on cases relating directly to executive emergency measures. The UK case, A. v. Secretary of State for the Home Department, involved judicial review of the government’s derogation from its human rights obligations and subsequent indefinite detention without trial of eight non-nationals.46 The Lords examined both points: whether there was in fact a situation of emergency requiring derogation (there was), and whether the actions Legalizing Lawlessness: On Giorgio Agamben’s State of Exception 685 taken were ‘proportional’47 to the threat (they were not). On the first question, Lord Bingham wrote for the majority: It is perhaps preferable to approach this question as one of demarcation of functions or . . . ‘relative institutional competence’. The more purely political (in a broad or narrow sense) a question is, the more appropriate it will be for political resolution and the less likely it is to be an appropriate matter for judicial decision. . . It is the function of political and not judicial bodies to resolve political questions. The present question seems to me to be very much at the political end of the spectrum.48 Lord Bingham’s position focuses the grammar of Schmitt’s dictum – ‘sovereign is he who decides on the exception’ – and although some commentators wished for a more rigorous burden on the government to ‘advance clear and convincing evidence’ of the need for derogation powers,49 few questioned the basic principle articulated – that of a deferential model of separation of powers.50 Bingham’s conclusion is also in keeping with – and relied upon – the case law of the European Court of Human Rights, which has deferred to national authorities on derogation decisions in all but one instance.51 That 1969 finding concerned a military regime – Greece was, crucially, not a democracy at the time – which had effectively triggered the conditions leading to ‘emergency’.52 In response to the ruling, Greece withdrew from the Council of Europe.53 A. nevertheless matters, not simply because the Lords rejected the particular law under review54 – but rather because in doing so, they drew attention to a critical structural element of derogation regimes tout court. Hickman’s notion of a ‘doublelayered constitutional system’ recalls the ‘dual state’ promulgated in Fascist Italy and Nazi Germany, which ‘placed beside the legal constitution a second structure, often not legally formalized, that could exist alongside the other because of the state of 47 The European Court of Human Rights uses ‘strict requirement’ rather than ‘proportionality’ as the standard test in cases of derogation. See Hickman, supra note 3, at 665. 48 A., at para. 29. 49 Hickman, supra note 3, at 662. 50 See, for example, Tierney, ‘Determining the Exception: What Role for the Parliament and the Courts?’ 68 exception’.55 Just as an extra-constitutional system within a dual state applies only to a specific group – historically, Jews or political enemies – so must a double-layered constitution introduce some criteria for distinguishing between those who are subject to a suspension of rights, and those who are not. When, as in this case, the rights to be suspended include that to liberty subject to trial, some form of ‘profiling’ seems inevitable to take the place of court-proven guilt – likely grounds include race, ethnicity, religion, and nationality. In A., the government explicitly argued that their measures were allowable because they applied only to non-nationals. The Lords rejected this argument as irrational (in that there was no reason to assume only foreigners might be terrorists) and ‘discriminatory’. The latter ruling is the more remarkable as it goes beyond Strasbourg jurisprudence in two respects: first in finding discrimination in connection with derogation – a case previously alleged but never accepted by the European court – second, in ruling against discrimination on grounds of ‘nationality’, which is not explicitly protected by the European Convention on Human Rights (on which the UK Human Rights Act is based).56 In this way, the judgment in A. appears to hold out – however temporarily – against the encroachment of rule by exception, formally deferring to executive decision, while substantively intervening. In a somewhat analogous case in the United States, Rasul v. Bush, the Supreme Court in 2004 upheld the right of non-citizens imprisoned on non-US territory to habeas corpus review.57 The case involved 10 detainees held at Guantánamo Bay – whose very existence is a bold illustration of legally constituted anomic space – on the basis of a congressional law allowing for exceptional measures.58 In effect, the court rejected a technical argument attempting to parse between ‘sovereignty’ (Cuba’s) and ‘jurisdiction’ (of the United States federal courts). The formalization and voiding of the notion of ‘sovereignty’ is particularly suggestive in the context of Agamben’s suggested dichotomy between auctoritas and potestas – where potestas is here coterminous with jurisdiction. Yet successful court contestation on the appropriate parameters of the anomic zone led ultimately to its expansion: legislation, signed into 55 State of Exception, at 48. This conception was first described by E. Fraenkel, Dual State (1941). 56 See ECHR Art. 14. Derogation from Art. 14 is not explicitly prohibited, but the government had not done so, as the Lords pointed out. Ergec argues that Art. 14 is implicitly non-derogable but this has never been tested. As for the ICCPR, which was negotiated following the ECHR, in response to state concerns that discrimination might be necessary during an emergency, Art. 4 on derogation specifies a shorter list of prohibited grounds than Art. 26 prohibiting discrimination. See R. Ergec, Les droits de l’homme à l’épreuve des circonstances exceptionelles: étude sur article 15 de la Convention européenne des droits de l’homme (1987), 278–288. See also UN Human Rights Committee, General Comment No. 29 on States of Emergency (CCPR/C/21/Rev.1/Add.1), Art. 8; Art. 13(c); Art. 13 (e). Legalizing Lawlessness: On Giorgio Agamben’s State of Exception 687 effect on 30 December 2005, simply suspended all judicial habeas corpus review of Guantánamo detainee cases.59 Common to both A. and Rasul is that the cases concerned non-citizens, and involved the contestation of their most basic rights. They invoke Agamben’s figure of homo sacer – bare life – the human being stripped of political and legal attributes, whose very existence is a sign of, and countersign to, the sovereign’s bloating potency.60 In both cases, the courts moved to restore or reassure minimal rights to these individuals – an outcome which suggests at least the relevance of a judicial role to Agamben’s story. Yet both cases can equally be situated in an overall context of burgeoning sovereignty, and in neither case is the judicial intervention truly decisive. On one hand, the confident removal of habeas corpus and judicial review from the Guantánamo detainees illustrates sharply the direct line or ‘symmetry’ between sovereign power and the nakedness of ‘bare life’ – the subject of Homo Sacer (‘the fundamental activity of sovereign power is the production of bare life’).61 At the same time, the proposed and effected solution for the non-national detainees in the A. case – house arrest and electronic tagging – point ominously towards the technologies of ‘biopolitical’ control that Agamben identifies in that book.62 Agamben’s refusal to examine the minutiae of legal and jurisprudential developments may instead enable him to focus squarely on the substrata of juridico-political evolution that conditions the parameters within which court contestation is constrained. At one point in State of Exception, Agamben mourns ‘the complete separation between philosophical and legal cultures [and] the latter’s decline’.63 Together with Homo Sacer, an equally sophisticated analysis of contemporary developments, State of Exception permits a reinvigoration of the relationship between philosophy and law – and the latter’s enrichment. These books, whatever their flaws as comprehensive or evidentiary accounts, constitute a radical and hopefully controversial challenge to the predominant account of modern law’s expansion as a simple and necessary global extension of the rule of law.

---2NC Link

### L–Kant

#### Kant’s universality principle enforced thru the omni will aren’t binding and creates systems of nihilism whereas under bartleby’s parable, the state reevaluates itself and allows for spaces of stolen benefits – prefer it’s comparative

van de Wiel, Raymond. “Potential Resistance: Kant, Bartleby, Agamben .” Http://Raymondvandewiel.org/, Raymond Van De Wiel, June 2007, documents.raymondvandewiel.org/resistance.pdf. cw//az

Giorgio Agamben is very clear on Kant’s complicity with the evils of today. Despite Kant’s concept of a resistance of refusal, which, if not anything else, at the very least invalidates Eichmann’s line of defence that he had ‘lived his whole life according to Kant’s moral precepts, and especially according to a Kantian definition of duty.’25 Despite Kant’s stark contrast on the matter of revolution with, for instance, Sade, who explicitly calls for ‘necessary insurrection’, calling it the permanent state of the republic, this whole idea of permanent revolution that also enthralled fascists and communists.26 ‘In Kant,’ Agamben writes in Homo Sacer, ‘the pure form of law as “being in force without significance” appears for the first time in modernity.’27 This ‘being in force without significance’ is developed in relation to Kafka’s parable ‘Before the Law’ in which a man from the country asks to gain entry to the law and is denied entry ‘at the moment’ by the gatekeeper, although the gate is wide open. The man, being told that it is possible that he is admitted later, waits at the side in front of the gate. ‘There he sits for days and years,’ until, in old age and ‘already dying,’ he asks the gatekeeper why ‘in these many years no one except me has requested entry?’ upon which the gatekeeper responds ‘Here no one else can gain entry, since this entrance was assigned only to you. I’m now going to close it.’28 Gerschom Scholem explains the law that is staged in this parable (and in The Trial which follows this story) as ‘the Nothing of Revelation’: a stage in which revelation does not signify, yet still affirms itself by the fact that it is force. Where the wealth of significance is gone and what appears, reduced, so to speak, to the zero point of its own content, still does not disappear (and Revelation is something that appears), there the Nothing appears.29 Thus the law is in force, but does not signify. And here Agamben draws an almost straight line from Kant’s ‘form of law in force as an empty principle’ to the ‘nihilism in which we are living’: ‘It is truly astounding how Kant, almost two centuries ago and under the heading of a sublime “moral feeling,” was able to describe the very condition that was to become so familiar to the mass societies and the great totalitarian states of our time.’30 In his essay ‘Bartleby, or On Contingency’ he repeats this indictment without naming Kant specifically: For to hold to the Nothing, non-Being, is certainly difficult; but it is the characteristic experience of the ungrateful guest—nihilism—with whom we are all too familiar today. And to hold simply to Being and its necessary positivity is also difficult; but is this not precisely the sense of the complicated Western onto-theo-logical ceremony whose morality is in secret solidarity with the guest it would like to drive away? To be capable, in pure potentiality, to bear the [suspension] beyond Being and Nothing, fully experiencing the impotent possibility that exceeds both—this is the trial that Bartleby announces.31 This passage brings a few things together. First it reiterates that we are living in in a generalized nihilism. Then it subscribes to the complicity-theory, by which that which tries to ward of nihilism is secretly implicated in it. Finally, it offers us a way out of this nihilism by way of the ‘formula’ of Bartleby. In the story of ‘Bartleby, the scrivener’, a man of the law—a self-declared ‘unambitious lawyer,’ doing ‘snug business among rich men’s bonds, and mortgages, and title-deeds’ (p. 4)—one day ‘in answer to my advertisement’ finds a motionless young man upon his office threshold. (p. 11) ‘After a few words touching his qualifications’ (p. 11) he engages him as a law-copyist. This young man, Bartleby, is given a desk in a corner of the lawyers own office, behind a high folding screen—‘thus, in a manner, privacy and society were conjoined.’ (p. 12) At the third day of employment, Bartleby is asked to help the lawyer on a specific task. In response he says ‘I would prefer not to.’ Baffled, but extremely busy, the lawyer, after being given this formula two more times, asks someone else to help him. A few days later, the same thing happens. ‘Why do you refuse?’ the lawyer asks, upon which Bartleby answers, again, ‘I would prefer not to,’ and after some more pressure and after hearing the opinions of all of his co-workers on his conduct, gives the lawyer ‘to understand that […] his decision was irreversible.’ (p. 14-5, my empasis). Again, the lawyer, hurried by business, postpones ‘the consideration of this dilemma,’ (p. 16) to the next day, when he reflects as follows: Nothing so aggravates an earnest person as a passive resistance. If the individual so resisted be of a not inhumane temper, and the resisting one perfectly harmless in his passivity, then, in the better moods of the former, he will endeavor charitably to construe to his imagination what proves impossible to be solved by his judgement. Even so, for the most part, I regarded Bartleby and his ways. Poor fellow! Thought I, he means no mischief; […] his eccentricities are involuntary. He is useful to me. I can get along with him. If I turn him away, the chances are that he will fall in with some less-indulgent employer, and then he will be rudely treated, and perhaps driven forth miserably to starve. Yes. Here I can cheaply purchase a delicious self-approval. (p. 17)

#### Kantian ethics is a form of self repression that chains the “agent” to the state

Tutt, Daniel. “‘Because God Wills It’ Agamben's Genealogy of the Will from Aristotle to Kant.” Daniel Tutt, 26 Dec. 2011, danieltutt.com/2011/11/14/because-god-wills-it-agambens-genealogy-of-the-will-from-aristotle-to-kant/.cw//az

Kant in many ways made the moral law inoperable, yet something that the kingdom of ends is able to relate to via the categorical imperative. Our psychological conceptions of the will following Kant are theologically interiorized. What we find with Kant is the combining of three verbs into his ethics: “you must, can, will” – this, to Agamben represents a loss of the role of potentiality into a mode of the will.

But for Kant the self does not appear on the stage of his own action. Adorno locates Kantian self-freedom as its opposite, as self-enslavement, following a certain bourgeoisie ideology. The antinomy contained within Kant’s notion of freedom is the subject’s dependen[t]ce on institutions to develop freedom. In order to be educated into freedom I already have to be free in a radically noumenal way. The Freudian name for this monstrous freedom is the death drive. As Kant articulates in What is Enlightenment?, human nature needs a master to discipline itself.

Kant moves from a will that is interior to a will that is exterior into the noumenal. The noumenal represents a sort of un-representable, but he creates a sort of duty to orient oneself to a universal law. This is the infamous categorical imperative.

Kant seeks to replace God with a natural law, what he refers to as the moral law. But the subject must correspond his will to a universal set of wills in the Kingdom of Ends. His conception of radical freedom is that which haunts the subject. Since there is a supreme good, but it remains un-representable in the noumenal realm, the soul is possessed by the possession of itself.

So might we see the Kingdom of Ends as a type of limitation of potentiality?

### L–utilitarianism

#### 2 independent framework links –

1. Consequentialism means that we can never engage in messianistic modalities that evaluate the paradox of time and creates serial policy failure
2. Policymakers evaluate w self-serving interests but even if they do what’s best for the people, your calculus is skewed since your interpretation of an actor whos pain/pleasure matter is based on things like representation in a democracy which is primarily how policymakers get the aggregates u cite

#### Focus on objects thru use value destroys ability to view thru relationality

THE POLITICAL ONTOLOGY OF GIORGIO AGAMBEN: BARE LIFE AND THE GOVERNMENTAL MACHINE A dissertation presented by GERMAN EDUARDO PRIMERA VILLAMIZAR In partial fulfillment of the requirements for the degree of PhD. In Political Philosophy Supervised by Mark Devenney Daniel Steuer UNIVERSITY OF BRIGHTON SCHOOL OF HUMANITIES February 2016

In State of Exception (2005) Agamben begins a reformulation of the concept of Use, 159 here with reference to Walter Benjamin’s reading of Kafka. In a crucial passage whose general coordinates contain the basis for his critique and reappropriation of the concept of use – as developed in The Highest Poverty and L’uso dei corpi –, Agamben writes that One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good. What is found after the law is not a more proper and original use value that precedes the law, but a new use that is born only after it. And use, which has been contaminated by law, must also be freed from its own value. This liberation is the task of study, or of play. And this studious play is the passage that allows us to arrive at that justice that one of Benjamin’s posthumous fragments defines as a state of the world in which the world appears as a good that absolutely cannot be appropriated or made juridical. (Agamben, 2005a:64) The notion of use is then freed from its utilitarian connotation. To use is to liberate an object, to suspend its economy, to render it inoperative. What is decisive, however, is that for Agamben use does not only refer to a subject that uses an object, but also to ‘an object that constitutes itself only through the using, the being in relation with another’ (2014b:69). In this sense, the notion of use is closely linked to the subject to the point that through the reformulation of use Agamben seeks to produce a ‘radical transformation of the ontology (an ontology of the middle voice) of the concept of “subject”’ (Agamben, 2014b:69). What does this mean for Agamben’s ontology? This has two fundamental implications. On the ontological level, it means that man cannot be defined in terms of a praxis (energeia) or in terms of a work (ergon) but only as potenza, as argos, as inoperative. On the political level, it implies that this inoperativity imposes the task of suspending all human and divine works, to open them to a new possible use, and hence the ‘corresponding political concept can no longer be that of constituent power but something that could be called destituent power’ (2014b:70)

#### other

Almost hidden in Stanzas, several pages after the bulk of his critique of Marx, in a small section entitled “Marx and use-value,” Agamben throws his own critique into question, suggesting that Marx's position on the question of use is unclear, and was modified over time. “In the Manuscripts of 1844,” he writes, “he still seemed to consider use-value as something unnatural, on a par with exchange value.”67 As evidence, Agamben turns to one of Marx's early reflections on use, which Benjamin, too, loved to cite: “Private property has made us so stupid and one-sided that an object is only ours when we have it—when it exists for us as capital, or when it is directly possessed, eaten, drunk, worn, inhabited, etc.—in short, when it is used by us.”68 What is important about Agamben's critique of Marx, however, is not the account it provides of Marx's supposed utilitarianism, which relies on a distortion of the account of use provided in Capital. Rather, it is significant in that it allows us to grasp the extent to which, since his earliest account of use, Agamben has been concerned to avoid precisely the return to use value Negri sees in his work, and, has instead sought to examine the possibility of a new relation to things that consists neither in a utilitarian conception of use nor in the logic of exchange.

If such a new relation would not be found in a return to use value, then where would we locate it? In line with his rejection of utilitarianism in Stanzas, Agamben's later works locate this possibility within the extension of commodification, in the very destruction of natural use through which, in Debord's words, “exchange value became identified with all possible use.”69 To understand why Agamben sees the possibility of a nonutilitarian relation to things and a noninstrumental politics in the society of the spectacle, we must place his thought in the context of what Debord, playing on Marx's account of “the tendency of the rate of profit to fall,” called the “tendency of use value to fall.”70 Like Rilke, both Debord and Agamben believe that commodification increasingly erases the use values of commodities, culminating in the spectacle, in which “exchange value has completely eclipsed use value and can now achieve the status of absolute and irresponsible sovereignty over life in its entirety.”71 When he returns to the problem of a relation to things beyond use and exchange, thirty years after the Italian publication of Stanzas, he finds its possibility in the very impossibility of use that is consequent to the rule of exchange value. As the use values of commodities are eroded, he suggests, consumer society produces an absolute impossibility of using things, which face us as spectacular objects, looking out at us as if from a museum.72

Among the sources of the unhappiness Agamben locates in consumer society is thus the fact that its inhabitants “consume objects that have incorporated within themselves their own inability to be used.”73 What does it mean to claim that things can no longer be used? In Agamben's formulation, “use” (like meaning, nature, and experience) designates a supposedly originary way of life that is bound to its place by traditional authority or the forces of nature; that which is used is subject to a “genetic inscription within a given sphere,” its use dictated by its sense and its necessary relation to an end.74 The generalized impossibility of use he identifies is a product of the breakdown of any natural relation between object and function and of a shift from functional to fetishistic consumption. At this point, Agamben diverges dramatically from Rilke's nostalgia. If a naturalized use serves to fix things within a particular sphere, to tie them to an end, and thus to enmesh us in instrumental subject-object relations, then it is in the eclipse of use, in the emptying of substance, that he believes we may locate a nonutilitarian relation to the world, and with it a form of politics without ends.

### L-addiction

#### Your framing defines drug users as waiting to be saved and enables the state to survey and totalize bodies

the new bioethics, Vol. 21 No. 2, 2015, 128–141 Lessons in Biopolitics and Agency: Agamben on Addiction, Anke Snoek Department of Philosophy, Macquarie University, Sydney, Australia. Craig L. Fry Victoria University, Melboune, Australia © W. S. Maney & Son Ltd 2015 DOI 10.1179/2050287715Z.00000000066 1 In the rest of the article we use the word substance dependency because it is considered less stigmatizing. Since addiction is still the most use term in philosophical literature on the topic, we choose to use it in the title. cw//az

Substance dependent people are also hardly ever recognized as citizens or normal people. When celebrities die from an overdose, their substance use is often glorified as contributing to their artistic success. For artists and musicians their substance use is often viewed as a sign of their ultimate freedom and authentic lifestyle. Authors like Foddy and Savulescu (2010) defend the lives of substance dependent people as lives of pleasure in a society that is obsessed with health and longevity. Regular people who use drugs are often demonized and criminalized, they are viewed as slaves of their desires, even when they are not even dependent on the substance but are just using recreational. Authors like Dalrymple (2006) emphasize that sub- stance users are a-moral people that do not care about the things that moral people care about: social relationships, loved ones, etc. Substance dependency is both romanticized and demonized, substance users are homini sacri, placed outside the normal realm.

Feldman further states that policies of municipalities respond to the dual axis of profane-sacer axis and free-unfree with another ambiguity: a tension between pro- viding sanctuary for the helpless and disciplining the unruly. The same ambivalence can be found in how the legal system responds to substance dependent people who commit crimes. Do substance users have a chronic brain disease or are they pleasure seeking hedonists? Zieger (2008, p.240) describes the **political** approach to addic- tion [is] as a grey zone, a zone of indistinction, between medical and criminal conceptu- alizations of addiction, between the criminal model and the disease model, which builds heavily from Agamben’s concept of naked life or the politization of biological life. Draus et al. (2010) criticize the definition of addiction as a disease, which jus- tifies radical intervention, and the mingling of moral, behavioral, legal and medical concepts in court. ‘While it may be less stigmatizing and punitive than other approaches, medicalization further cements the distinction between “addicts” and “normal” people, collaborating in the production of the segregated and confining space of addiction’ (p.670). Draus et al. (2010) criticize the way poli- tics define addicts as ‘out of control’, and not recognizing enough the interaction between substance use and social contexts. Although some claim that marginality is caused by addiction, Draus and colleagues defend a symbiosis between the two conditions which is fed and maintained by structural factors (p.674).

Montagne (see Sarang et al. 2010) further elaborates on the relation between the law and substance users. In a reaction to Sarang et al. (2010, p.860) who describe the dehumanized situation of substance users in prisons in Russia, Montagne remarks that this mistreating is a result of the State transforming substance users into homini sacri, persons that are not protected by law, but not free from the legal system either. People view substance users not as human, but as a kind of outlaw form of human life. Montagne also provides neurobiological evidence for the claim that people view substance dependent as non-human. Harris and Fiske (2006) performed brain scans on non-addicted people watching pictures of persons or pictures of objects. When seeing pictures of persons, the medial prefrontal cortex was activated, but this did not happen when they observed objects. The medial prefrontal cortex also did not light up when they saw pictures of heavy mar- ginalized groups like substance dependent or homeless people, suggesting they don’t see them as people, but rather as objects.

Not only the lives of substance dependent persons in prison is a naked life that is no longer viewed as human, Draus et al. (2010) argue that the lives of daily heroin users in Detroit also provides a prime illustration of naked life. The help heroin users from Detroit get from the State is based on maintaining their biological life, not to promote flourishing life, which results in ‘a hell of a life’. As one of the respondents in our qualitative study3 stated:

I’m not living, I feel like I’m on life-support. Sort of existing, you know, I’m waiting for my son, I’m waiting for subsidized housing. If I can get work it’d be probably very menial and part-time, cleaning or something like that, you know. I just want some ... a little bit of civility, a little bit of happiness, bit of ... some love for the rest of the few for years I got left, you know. (R43)

This respondent describes a longing for the good life rather than merely be kept alive.

The war on drugs as a State of Exception

Agamben claims that the foundations of our laws are not based on a social contract, but on the legal structure of the State of Exception. Declaring a State of Exception is

3 The qualitative component of the study ‘Addiction, Moral Identity and Moral Agency: Integrating Theoretical and Empirical Approaches’ followed 69 alcohol- and opioid-dependent people in Sydney and 43 in Melbourne over three years, to explore how they experienced their agency, and how substance use affected their agency.

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an emergency measure that can be used if a government is threatened by armies from another country or large-scale natural disasters. It is a legal means for suspending the rule of law, precisely with the aim of protecting it, a matter of ‘necessity knows no law’. Agamben quotes from the constitution written after the French Revolution (22 Frimaire of the year VIII, art. 92): ‘In the case of armed revolt or disturbance that would threaten the security of the State, the law can, in the places and for the time that it determines, suspend the rule of the constitution’ (Agamben 2005, p.5). In order to proclaim a State of Exception, or a state of legal lawlessness, one must proclaim a war situation.

According to Draus et al. (2010), this is exactly what happens in the war on drugs. Many daily heroin users are in contact with the legal system, for them this is a fluid State of Exception where they constantly slide in and out, and are denied basic democratic political rights (p.667). Draus and colleagues compare their situation to Agamben’s homo sacer: people who are simultaneously inside and outside society, ‘whose segregation, imprisonment, poor health and early death are largely unquestioned by the larger society’ (p.668).

As one of our respondents described the death of his friend:

She OD’d not long ago, about a month or two ago. She was feeling down and no-one loved her and she had enough. She took her own life, went home and had a mixture of pills and heroin and didn’t wake up. It was her way of dealing with it. It’s a sad way to die alone and no-one cares ... No-one cares, they don’t care if you’re alive or dead. (R51)

Many respondents described a same experience of abandonment.
Acevedo (2007) describes how the discourse around cannabis reclassification in the UK was overtaken by a complex dynamic of ‘power and knowledge’ (as analyzed by Foucault). Although there was an initiative to reclassify cannabis, making it a soft drug rather than a hard drug because the effects on health seemed to be milder than with hard drugs, this was prevented by politics. The argument to [was] not reclassify it was motivated by its assumed harmfulness to mental health. However, the political goal behind this was to maintain the State of Exception around cannabis which gave law enforcers more power and legal rights to search the houses of cannabis users whom they suspected to have committed other crimes. The use and possession of cannabis stayed a criminal offence, and the reclassification did not lead to a decriminalization of users, which was the original aim, but reinforced the criminalization.

### **L-borders**

#### Salter ‘08] reaffirmations of divides of sovereignty “The United States” opens up opportunity to take away liminal spacesMark B. Salter (2008): When the exception becomes the rule: borders, sovereignty, and citizenship, Citizenship Studies, 12:4, 365-380 [School of Political Studies, University of Ottawa, Ottawa, Canada ( Received 30 January 2008; final version received 1 May 2008 )] cw//az \*brackets in the original

In the concrete case of Canadian border regulations, a Canadian citizen has a right of entry only ever after that citizenship status is determined by a Canada Border Services Agency (CBSA) Officer. At the actual place of the border, the determination of status precedes the grant of ‘leave to enter’. This administrative, discretionary decision is precisely at the exceptional threshold of law: even within the over-coded manuals of port-of-entry border examinations, **d**iscretion, ‘tact’, ‘common sense’, ‘belief’ and ‘experience’ are set as [is] the standard for the officer’s ‘reasonable’ belief (CIC 2006, 2007). The legal standard for inadmissibility at the Canadian border is weaker than similar civil or criminal standards: ‘“reasonable grounds” means more than mere suspicion but less than the civil test of balance of probabilities. It is a lower threshold than the criminal standard of “beyond a reasonable doubt”. It is a bona fide belief in a serious possibility based on credibly evidence’ (CIC 2006, p. 6). At the border, the ‘serious possibility’ of threat to Canada’s security enjoys a lower threshold of belief than administrative, civil, or criminal tests. Before that status has been accorded, the CBSA officer may ‘arrest and detain without a warrant, a foreign national, other than a protected person . . . if the officer if not satisfied of the identity of the foreign national in the course of any procedure under the Act’ (CIC 2007, pp. 12–13). Until that identity is certified and the claim of citizenship judged satisfactory, every border crosser is at the threshold of law.

The sovereign contract is redrawn each time a citizen requests entry to a state, either his/her own state or another state: ‘the foundation is not an event achieved once and for all but is continually operative in the civil state in the form of the sovereign decision’ (Agamben 2000, p. 109). Recall the passport, which the state also accepts no obligation to issue even to citizens and in particular to citizens which it considers dangerous.3 The issuance of a passport themselves as the marker of citizenship has often also been a discretionary matter. The role of Ruth B. Shipley, Chief of the Passport Office, in the refusal of American passport to individuals consider that she personally a security risk is well known (Higgens and Leps 1998). Passports are issued under sovereign prerogative, but the monopoly of administrative discretion within the passport office is well documented (Kutler 1982, p. 97). The inscription on the passport itself is a statement by a representative of the citizen’s sovereign ‘to request and require in the name of the [insert sovereign] all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford him/her every assistance and protection of which he/she may stand in need’ (Salter 2003, pp. 3 – 5). Entry into a foreign state is representative of the interaction of two sovereigns – not the traveler and any sovereign. In essence, entry into another the jurisdiction of one’s own or another sovereign territory is a reaffirmation that the sovereign is the seat of authority (and not the citizen). This is the raw decision to admit or expel an individual at the border takes place both inside a normal bureaucracy and outside the normal condition of politics. Butler’s argument that the state of exception is normalized through the governmentality of bureaucracy is particularly persuasive for everyday decisions in the issuance of passports and at the border, as well as sites such as Guantanamo Bay (2004).

Part of the design of the modern and neoliberal state in all its apparatus is to hide the functioning of raw power and the internal surveillant gaze of the state – but the border renders this potential more visible. The possibility of refusal and exile at the border makes clear the bordering practices of the state. We must ask the sovereign for admittance and in doing so confess all manner of personal information – including economic, social, and psychological factors for our travel and our return home. Even if we have a previous contract, or can claim that we are subject to no other contract and thus suppliant ourselves, there is no right of entry (only a right to ask). ‘Whether a passport entitles the holder to claim a right of entry under international law is debated’ (Higgins, p. 346) – and there is no external appeal of the sovereign decision. The law is always at its limit at the border, because the decision of entrance to the territory and correspondent membership in the community is the equivalent to force. There is not an absence of regulation or procedures at the border; as Johns argues from another context, ‘the interactions of the [border crosser] and [border guard] are experienced as almost entirely pre-codified by the dictates of legal status’ (2005, p. 627), however the particular outcome is at the threshold of administrative, public, and international law. As Schmitt argues, ‘the essence of the state’s sovereignty [is] not the monopoly to coerce or rule, but the monopoly to decide’ (1985, p. 13). Despite the over-coding of the border in terms of customs, immigration, and entry regulations, the mission of border security itself is the preservation of the threshold between law and anarchy.

#### The border Is the ultimate state of exception that determines to include or exclude those who lack citizenship

Salter 6 (Mark, Mark B. Salter is a full professor of political science at the University of Ottawa in Ottawa, Ontario, Canada. He is currently the Editor-in-chief of Security Dialogue, an academic journal in the field of security studies, “The Global Visa Regime and the Political Technologies of the International Self: Borders,Bodies, Biopolitics,” Vol. 31, No. 2 (Apr.-June 2006), pp. 167-189, <https://www-jstor-org.proxy.lib.umich.edu/stable/pdf/40645180.pdf?refreqid=excelsior%3Aa725198abfd30688d40fd19c11abc264>) Heublein

At the border, one is neither citizen nor foreigner in the face of the agent of customs, which we must take in both its meanings.9 Agamben's discussion of the state of exception has been especially provocative since the US responses to the September 11 terror attacks. His portrayal of sovereign power as total, bare life, and the model of "the camp," have resonated with scholars from many dis- ciplines. Agamben takes the arguments of Carl Schmitt that the essential power of the sovereign is to decide when the law ceases to constrain the sovereign: "sovereign is he who decides on the excep- tion" as he famously puts it in the first line of Political Theology.10 The power to describe a situation as normal or exceptional lies at the root of sovereignty: "A regular situation must be created, and sovereign is he who decides if this situation is actually effective. . . . He has monopoly over the final decision."11 The border repre- sents an exception to "normal" deliberative politics. While Didier Bigo, David Lyon, and William Walters have all suggested ways in which airports and other ports of entry might resemble the "camp," in this article I want to push the argument further and suggest that the border can be understood as a permanent state of exception. The border is a permanent "state of exception" in that one may claim no rights but is still subject to the law.12 The law is always suspended at the border, because the decision of entrance to the territory and correspondent membership in the community is irre- ducible to force. As Schmitt argues, "the essence of the state's sov- ereignty [is] not the monopoly to coerce or rule, but the monop- oly to decide."13 The decision to include/exclude is irreducible to the sovereign. Agamben's account fails to understand the particu- lar state of exception at the state border and the decision to include/exclude; it lacks a capacity for agency. In this respect, Fou- cault's confessionary complex provides the missing component in Agamben's discussion of exceptional politics and explains the dynamics of both decision and agency. I turn to the question of agency below during the discussion of confession. Through the passport, the sovereign who claims one's alle- giance asks for entry and protection on behalf of the possessor; This content downloaded from 141.211.4.224 on Tue, 26 Jun 2018 16:22:12 UTC All use subject to http://about.jstor.org/terms 170 The Global Visa Regime: Borders, Bodies, Biopolitics thus entry to the body politic is mediated through the administra- tive bodies of the sovereigns.14 Entry to a sovereign state in which one does not possess nationality is mediated through the visa process and identity papers (passport, refugee, or stateless travel documents) . While the discussion of individual attachment or alle- giance to the state/sovereign is usually understood as citizenship or nationality, I would argue in the face of material facts on the ground and ethical concerns prompted by the political conse- quences of those facts that we must widen our analytical scope to include a multiplicity of forms of membership in political commu- nities.15 Jean Bodin defines this important boundary of the politi- cal community: "The mutual obligation between subject and sov- ereign, by which, in return for the faith and obedience rendered to him the sovereign must do justice and give counsel, assistance, encouragement, and protection to the subject. He does not owe this to aliens."16 At this stage, it is important to note that the sov- ereign decision of inclusion/expulsion is irreducible and that the space of decision is also a space of exception. The bordering process constituted by the decision to include/exclude is a dia- logue between body and body politic requiring the confession of all manner of bodily, economic, and social information. Borrowing from Alison Mountz, we might speak of the "long tunnel" of in-between spaces that is constituted by international travel. The gangway between the airplane and the agent of customs precisely resembles the "camp."17 The traveler is not simply in be- tween states, but also denationalized. It is useful to return to the anthropologist's categorization of "threshold rites" to understand the process of the border. Accord- ing to Arnold van Gennep, for example, the territorial passage is divided into three specific rites: pre-liminal rites (the rites of sepa- ration from a previous world); liminal or threshold rites (rites of transition) ; and post-liminal rites (rites and ceremonies of incor- poration into the new world).18 The preliminal rites are ones of denationalization, status that is held in abeyance before the sover- eign decision. "Whoever entered the camp moved in a zone of in- distinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer made any sense."19 The liminal rite of exami- nation, obedience, and confession presents a challenge to Agam- ben. The sovereign in his account has no restraints and may simply exert the power of decision. The border-crosser challenges this in several ways: the decision to include/exclude is individual and insti- tutional, and the border-crosser presents him/herself to the sover- eign, and this element of agency is totally neglected by Agamben. This content downloaded from 141.211.4.224 on Tue, 26 Jun 2018 16:22:12 UTC All use subject to http://about.jstor.org/terms Mark B. Salter 171 How does the sovereign condition the possibilities of mobility and structure resistance to the sovereign and make not only possi- ble but necessary putting one's self into this state of exception between states? We know that the ancient Greeks held the hospi- tality ethic as among the highest. From its Latin roots, we see the connections on which Agamben might be tempted to draw upon etymologically between hostia as sacrificial animal, hostis as stranger or enemy, hostilus as hostile or like an enemy, and hostire as to re- quite or retaliate; and hospes as host, guest, friend, foreigner. What characteristics of modern sovereignty condition the presumption toward hostility rather than being a host? How has this possibility of interstate hospitality been so inverted that we now expect inter- rogation rather than welcome? The product of the camp bureau- cracy is the rendering of the bare life of the inhabitants into un- mourned death. Similarly, the product of border bureaucracy is a structure of decisions that make unappealable and unmourned the exclusion from the community. The right of exclusion is absolute and dissolves the difference between force and law. Derrida's discussion of hospitality is illustrative of the exception- ality of the relationship between sovereign and suppliant at the bor- der. The foreign is at once outside of the law, but subject to the law. Hospitality in Derrida's terms is always partial and compromised: The foreigner is first of all foreign to the legal language in which the duty of hospitality is formulated, the right to asylum, its lim- its, norms, policing, etc. He has to ask for hospitality in a lan- guage which by definition is not his own, the one imposed by the master of the house, the host, the king, the lord, the authorities, the nation, the State, the father, etc.20

### **L – cap**

#### Globalization has rendered state centric biopower obsolete – economic modes of oppression intervene in law to justify states of exception and create bare life

Cotula 17 (Lorenzo, Principal Researcher & Team Leader at International Institute for Environment and Development, visiting professor, University of Strathclyde, “The state of exception and the law of the global economy: a conceptual and empirico-legal inquiry”, Transnational Legal Theory, 8:4, 424-454, Online: <https://www.tandfonline.com/doi/pdf/10.1080/20414005.2017.1425811>, 7/13, DTS)

Agamben places political ordering at the centre of his analysis. He does discuss the economic sphere (oikonomia), depicting a space for managerial, technocratic decision making that correlates closely with his notion of the state of exception.35 But this exploration falls short of fully investigating what role, if any, the state of exception plays in global economic ordering. Agamben talks of humanity in indistinct terms and devotes limited attention to questions of labour and capital.36 Other authors have placed greater emphasis on the socio-economic dimensions of the state of exception, and even traced them to what Agamben identifies as the conceptual roots of that notion: while Agamben connects homo sacer to the establishment of political authority, others noted that the Roman sacratio was partly deployed to protect the plebeians from their patrician patrons, thereby rebalancing unequal socio-economic as well as political relations. In more contemporary terms, some critical theorists see features of global capitalism as the main drivers of bare life in modern societies. In this perspective, ‘land grabbing’, labour exploitation or poor living conditions in urban slums or deprived rural areas would represent the faces of bare life in the global economy. Shifting the lens from the political to the economic brings into focus a different set of legal issues. This is not only because human rights derogations linked to armed conflict or military occupation can be associated with disruption of economic activities. Nor is it limited to situations where governments invoke extraordinary circumstances to justify departures from ordinary patterns of economic ordering—for example, to impose regressive law reforms in the name of economic necessity, or to resist business claims for damages caused by measures taken in the context of dramatic economic reversals. Beyond these crisis situations, the everyday operation of crossborder trade and investment flows raises questions about what role, if any, the exception plays in global economic ordering. Exceptional legal regimes for export-oriented activities in low- and middle-income countries—from natural resource extraction to low-cost manufacturing—provide fertile ground to explore these questions. Rather than on crisis narratives, these exceptional regimes are often premised on real or perceived economic imperatives such as attracting foreign investment to promote national development. Interrogating these arrangements would require fine-tuning the necessary conceptual categories. While in political ordering the nation-state remains the key unit of analysis and the state of exception is primarily conceptualised in relation to national systems, the local-to-global reality of contemporary economic relations transcends the confines of national polities—a circumstance that is reflected in applicable legal arrangements. Over the past few decades, extensive developments in the ‘law of the global economy’ have reconfigured normative frameworks anchored to national, international and transnational processes—from international trade, tax and investment treaties, to national regulation in areas such as natural resources, labour and taxation, through to transnational contracts setting tailored terms for individual business ventures. Challenging the conventional boundaries of academic disciplines, these developments involve hybrids of public and private regulation, increasingly sophisticated channels for the diffusion of regulatory models and complex constellations of geographically dispersed sites of regulation at local to global levels. Socio-legal scholarship has enriched public understanding of this interplay of both physical and legal spaces through notions of ‘global legal pluralism’, ‘law and globalisation’, ‘global law’, and transnational law reinterpreted not just as a function of the material existence of crossborder legal relations, but as a methodological prism to interrogate legal institutions in contexts where space is itself socially constructed rather than materially given.49 Overall, these evolutions blur the traditional borderlines between the national and the international: national laws may be based on, or ‘impregnated by’, international norms, global codes of conduct and transnational channels for law diffusion—so that identifying the formal sources of law does not fully capture the political origins, economic assumptions, normative content and social practices associated with these norm

#### Humanitarian attempts at rectifying states of exceptions along the border justify neoliberal intervention into flow of immigration across the border

Dowle 17 (Lewis, University of St Andrews, Postgraduate ESRC, “Spaces of Exception and Refusal? The Borderzone of Mexico/US”, E-International Relations, Online: <https://www.researchgate.net/publication/321310380_Spaces_of_Exception_and_Refusal_The_Borderzone_of_MexicoUS>, 7/4, DTS)

Humanitarianism and Resistance – Polarities and Peculiarities Through the lens of humanitarianism in the Mexico/US borderland, the best and worst of society are at play in a clash of titans. Despite migration being perceived as a threat to the US Homeland Security, it is rather the migrants themselves who are likely in danger fleeing from conflict or poverty (Ibrahim, 2005). The US discourse towards migrants has evolved from simply determining who may be crossing the border illegally, to now creating a culture of suspicion with every undocumented migrant being perceived as a terrorist threat. The migrant therefore becomes guilty until proven otherwise. Non-governmental organizations (NGOs) including Tucson Samaritans and No More Deaths (NMD) were established in the 2002 and 2004 respectively to identify migration paths and aid in the provision of food, drink, blankets and healthcare. These NGOs have come under scrutiny and even arrest as volunteers rushed three migrants to the hospital to receive medical attention. This occurrence was concomitant with the rise in the US Border Patrol assuming the role of humanitarianism, taking the responsibility onto themselves with NGOs becoming “criminalized and regulated to a greater and greater degree”. This seemingly Janus-faced allure of US border patrol serves only to further enforce territorial sovereignty. Since then, those in need of medical help are taken to hospital by these petty sovereigns, only to be handcuffed as they receive treatment before being deported. Where there are spaces of exception, resistance always follows. Foucault’s analysis of power was rooted in the notion of where power prevails, resistance ensues. The ‘Prevention through Deterrence’ policy, a state of perennial exception as the Camp, offers the opportunity for resistance Those the state deems to be bare life contain the power to resist authority and oppression; though infrequent, Doty explains how each survivor performs resistance against the US state. Doty continues in regards to ‘intrinsic resistance’, how biopower is enacted through the Border Patrol’s Search and Rescue division which rescues undocumented migrants from a death which they have led them to. In many respects, the US state controls the individuals in their lives and deaths, resonating with Foucault’s ‘to make live and let die’. The ‘Land of the Free’ ergo becomes the antithesis to freedom, creating in the borderzone the nullification of rights for undocumented migrants. With such humanitarianism being averted by the political eye, Agamben attests to the division of the rights of the man/woman from those of a citizen. The very persecution many migrants flee becomes a sobering reality within the Mexico/US borderzone. State actions serve as ‘minimalist biopolitics’ in conserving life, rather preventing death, only to more efficiently remove the individual. Furthermore, the NGOs that remain are not only less empowered, but increasingly under the influence of neoliberalism, becoming “like full-blooded capitalists”. With the inextricable link between humanitarianism and capitalism, NGOs can never be seen as apolitical (though this is contested), with each carrying a politics and polity they serve. This relation to capitalism will now be expounded upon. Security/Economy Nexus To Western societies, life is valued in economic terms, with capitalist individuals being deemed the blueprint that all should aspire to. The migration within the borderzone is intimately tied to capital, with Massey et al. highlighting how the financial crisis in 2008-2009 resulted in one million fewer undocumented migrants attempting to cross the border. This finding confirms the work of Nevins (2007) who discovered the inextricable link between the Central American coffee trade and the actions of the US economy. Capitalism can be seen to underpin and drive this cross-border migration. Naomi Klein provides a further darkening assertion, maintaining that the technologies realized in the borderzone of Mexico/US are the direct consequence and action of Israel’s resonant security industry fueled by its conflict with Palestine. The Israeli firm Elbit, responsible in part for the Israel/Palestine border, has been contracted alongside Boeing to complete the ‘virtual border’ along Mexico/US border. Hence capitalism has implications not only within the borderzone of Mexico/US, but also with repercussions across the globe. Colás and Pozo would highlight here the commodification of territory, where the borderzone (both the Mexico/US border and Israel/Palestine border) serve as grounds for capital accumulation and expansion. The social infrastructure of Smart Borders permits the flow of goods to keep capitalism’s ruthless heart beating, with a borderzone open to capital and closed to persons. It is here that Coleman’s Security/Economy nexus collides, with the social elite utilizing the borderzone not only to protect the economy within, but further still, they even use the borderzone as a ground for valorization, turning the USA’s perceived threat of terrorism into financial gain.

#### Capital has exceeded the limit of the sovereign and has depoliticized modes of governmentality that reproduce the neoliberal regimes

Hickman 16 (S.C., Resistance Blogger, Poet, Short Story Writer, and Philosopher, "End of Sovereignty: Bare Life and the Coming Civil-War?", Southern Nights, 2-19-2016, Online: https://socialecologies.wordpress.com/2016/02/19/end-of-sovereignty-bare-life-and-the-coming-civil-war/, 7-13-2018, DTS)

The point here is that the West has produced through its very practices of sovereignty that which is now in our age performing the task of destruction of that very Sovereignty. Through our very inclusive exclusions of bare life we have broken the boundaries between “violence and law, the threshold on which violence passes over into law and law passes over into violence,” upon which the whole metaphysical edifice was built thereby providing in our time the demolition of the Sovereignty of Nations. In some ways the whole fabric of thought, metaphysics, language, law, rhetoric, etc., that have held together the socio-cultural forms of Western Civilization are unraveling all around us. We are seeing by way of its own inner logic the self-destruction of Western Civilization at its own hands. For two centuries now from Kant to our time the Enlightenment project was the last ditch effort to shore up the ruins of an already decaying and dying form of political and social life on this planet. That we have in our time opened up the doors to our own destruction at the hands of the remaining civilizations on the planet is only fitting. What will this lead too? All the talk of certain nations in the EU and the Americas of closing down the borders, sealing themselves off in hermetically sealed cities, enclaves, security zones; building bigger fences and exclusions is just the last ditch effort of an already dying and dissolving sovereignty which is leading us into a far stranger period of transition than we at first assumed. It’s as if the globalist agenda of capitalism is withdrawing from the globe into the Human Security Regime where it seeks to exclude rather than include reality, rather it is withdrawing into a information society, a solipsistic network of infospheric financialism as it enforces everywhere in the Third World a slow death and decomposition, a war on the earth’s remaining resources at the expense of the Third World. While the homeworlds are allowed to become Third World nations in themselves the elite 01.% have built their dream Oasis’s, their Dream Cities around the global jet-set nodal points where they can live under the cold eye of surveillance, security, and an ultra-fascistic police system that defends and protects them against the others… us. The old nations can fall into boudarylessness as far as these new plutocrats are concerned. For them this is part of the global socialization program of de-sovereignization. They don’t want the old First World to remain as it is, but rather for those not astute enough to become apart of the .01% the world will become a flatland of economic chaos and poverty over the coming century. Yet, there is no conspiracy behind it, no bad old boys pulling the strings as in far-right conspiracy theory. Rather this is capitalization itself working out its own logic in a global rather than a national setting. Once you gain the global capital vision you gain a different perspective of finance, banking, governance, etc. across the board. Most on the Left still are hindered at the national level of political struggle when the world of Capital has moved on leaving the Nation State to fend for itself and die a bad death. Oh sure the propaganda machines of the mediascape still whistle the tune of old style politics as usual but its over, done, dead. It cannot be revived, and has no use value in the global arena anymore. The EU is the model of the future de-politicized economic regime. Nations have already lost their sovereignty accept as fictions for the popular folk mythologists. Nations are defunct and dying. But Capital will live on without them… In 2007 we began to see Michael Serres notions of parasitism come into play. As Michael Husdon’s expose Killing the Host: How Financial Parasites and Debt Bondage Destroy the Global Economy tells it the systemic disabling of regulations on Wall Street has resulted in the following, says Hudson: “…the wealthiest One Percent have captured nearly all the growth in income since the 2008 crash. Holding the rest of society in debt to themselves, they have used their wealth and creditor claims to gain control of the election process and governments by supporting lawmakers who un-tax them, and judges or court systems that refrain from prosecuting them. Obliterating the logic that led society to regulate and tax rentiers in the first place, think tanks and business schools favor economists who portray rentier takings as a contribution to the economy rather than as a subtrahend from it.” Continuing he comments: “In nature, parasites tend to kill hosts that are dying, using their substance as food for the intruder’s own progeny. The economic analogy takes hold when financial managers use depreciation allowances for stock buybacks or to pay out as dividends instead of replenishing and updating their plant and equipment. Tangible capital investment, research and development and employment are cut back to provide purely financial returns.” This is not neoliberalism, but rather what Franco Berardi and others term the financilization of the economy as dematerialized hyperware. As he remarks in Emancipation of the Sign: Poetry and Finance During the Twentieth Century: “The dephysicalization of money is part of the general process of abstraction, which is the all-encompassing tendency of capitalism. Marx’s theory of value is based on the concept of abstract work: because it is the source and the measure of value, work has to sever its relation to the concrete usefulness of its activity and product. From the point of view of valorization, concrete usefulness does not matter. In a similar vein, Baudrillard speaks of the relation between signification and language. The abstraction process at the core of the capitalist capture (subsumption) of work implies abstraction from the need for the concreteness of products: the referent is erased.” Everything has entered the electronic void. Tangible goods do not matter to this market. The reason why the middle-class market of commodities has vanished, why banks no longer invest in businesses. There is no money there: none. So idiot’s like Donald Trump, Ted Cruz, and Marco Rubio – conservatives (?) have no clue when they tell us they’ll produce jobs, bring companies back to America, close down the world, force tariffs and embargoes etc. It’s like a return to pre-critical thought in conservative clothing… a rationalism leading to fantasy and total collapse. While the Bankers and financiers just laugh and continue to plunder the hyperware in the slipstream… It’s this total disconnect between politics and economics, a bifurcation that is leading to the schizophrenaztion of democracy that Berardi alludes to when he says, “We are tracing here the dynamic of a disaster, the disaster that capitalism is inserting into hypermodern subjectivity, the disaster of acceleration and panic. But simultaneously, we have to look for a rhythm that may open a further landscape, a landscape beyond panic and the precarious affects of loneliness and despair.” Capital is withdrawing from democracy everywhere: it no longer needs politics or democracy. The faster the Left wakes up out of its sleep the better off it will be, for far too long it has beat its head against a fantasy world of neoliberalism (does this term even mean anything anymore?), while real capitalist markets and profits have moved elsewhere. The target has vanished into the network, gone invisible. Only the shell of a mediapropaganda machine is left in the wake to keep the masses eyes off the ball… The Left needs a global framework within which to approach this flattened economic topology and mapping of the EconoSpheric network society emerging from the rubble of the Nation States. Only the nodal points, the City States where Capital still elaborates its compositional and deco-positional pressures will remain. A new temporal regime based on excess and affluence is emerging from the older systems… most Leftist thought still has its eye on the outmoded neoliberal fictions of the 80’s. All gone, all dead. With the rise of bitcoin and blockchain a new financial system is arising based on smart money, tagged information rich economy that will only gain in resonance as the years progress. I think works like Maurizio Lazzarato’s recently translated Signs and Machines: Capitalism and the Production of Subjectivity falls somewhere in this sphere, effectively balancing and joining critiques of contemporary capitalism, complex philosophies of subjection (or the complex social production of individual subjectivities), and everyday existence, touching current western politics, yet preserving a general openness and applicability. (see Patrick Lyons review). There’s also Frédéric Lordon’s Willing Slaves of Capital: Marx and Spinoza on Desire, which as Jason Read in an excellent review tells us: Lordon makes a strong claim that capitalism must be considered a reorganization of desire, a claim that resonates well with neoliberal capital’s own self-presentation as a matter of motivation and desire. However, as his own remarks about the naturalization of capital make clear, it is not just desire that is reorganized by capitalism, but knowledge and the imagination as well. Our inability to imagine alternatives, to envision modes of happiness other than consumer fantasies, or “dream jobs,” as well as our inability to comprehend the current economic order as just that, an economic and political order and not a fact of life, are as much elements of our subjection as desire.

### **L-cartography**

Western cartography is the fault line of the modern modalities of violence – tying the nation to the power of the state leads to violence against the Other.
Shapiro 97
Michael Shapiro, professor of political science at the University of Hawaii, “Violent Cartographies: Mapping Cultures of War”, pg. 30-34, published in 1997, accessed
The complicity of the social sciences, psychology, and psychiatry in the idea that there is a natural and normal cohesive American character type served ultimately to help depoliticize issues of racism, sexism, class repression, and other forms of antagonism with a discourse on deviance and irrationality. The repression of difference at the level of institutional politics was therefore reinforced with a conceptual repression.

Nevertheless, the forces of fragmentation persist, and those that are particularly threatening to representational practices of selfhood and nationhood as coherent and undivided are, among other things, "pe- ripheral sexualities" (hence the recent furor over gays in the military, a conflict at the level of models of individuality) and various social antag- onisms (hence the recent struggle over entitlements). Adding a dimen- sion to Herman Melville's insights about the masks of history, Slavoj Zizek has argued, within a Lacanian frame, that the drive for coherent identity at either individual or collective identity levels is necessarily al- ways blocked. As this drive to overcome incompleteness is played out at the collective level, the imposed story of coherence is a mask that covers a void. The fact of social antagonism is displaced by a myth of undivid- edness. And rather than facing the disjuncture between fact and aspira- tion, the dissatisfaction is turned outward, becoming an "enjoyment" in the form of a disparaging model of enemy-others, dangerous character types, and outlaw nations.

As Zizek notes, it is not an external enemy that prevents one from achieving an identity with oneself; that coherence is always already im- possible. But the nonacceptance of that impossibility produces fantasy in the form of "an imaginary scenario the function of which is to pro- vide support filling out the subject's constitutive void."50 When this kind of fantasy is elaborated at the level of the social, it serves as the counter- part to antagonism. It is an imagination of a unified and coherent soci- ety that supposedly came into being by leaving a disordered condition of struggle behind.

This mythologizing of origin, which constructs the society as a natu- rally bounded and consensual community, is a political story that those seeking legitimacy for a national order seek to perpetuate. But the disor- der continues to haunt the order. The mythic disorder of the state of na- ture, supposedly supplanted by consensual association as society comes into being, continues to haunt the polity. It is displaced outside the fron- tiers and attributed to the Other.51

In short, the anarchic state of nature is attributed to relations between states. This displacement amounts to an active amnesia, a forgetting of the violence that both founds and maintains the domestic order; it amounts to a denial of the disorder within the order. This tendency to deny domestic disorder in general and to overcome more specifically the disorder and antagonisms in post-Vietnam War America—stresses be- tween generations, between the military and civilian order, between the telling of imperialist tales and postcolonial ones—has been reflected in the media representation of post-Gulf War America. The triumphalists after the Gulf War have been attempting to write out of U.S. history the post-Vietnam agonism in which tensions within the order were acknowledged. They seek to banish a politics of intepretation and self- appraisal that was part of both official and popular culture during the post-Vietnam period. This is especially evident in the orchestration of Norman Schwarzkopf's career as a media personality.

### L-citizenship

Citizenship creates a duality of included/excluded that reduces alterity to bare life.
Zembylas 10
Michalinos Zembylas, associate professor of education at the Open University of Cyprus, “Agamben’s Theory of Biopower and Immigrants/Refugees/Asylum Seekers Discourses of Citizenship and the Implications for Curriculum Theorizing, <http://journal.jctonline.org/index.php/jct/article/viewFile/195/83>, Journal of Curriculum Theorizing, Volume 26, No. 2, pg. 187-188, published 2010

Agamben’s analysis of biopower offers a valuable basis for developing an alternative response to the liberal/humanitarian discourses of citizenship, because Agamben traces and specifies explicitly the problematic in the priority given to national security and citizenship over moral obligation to the Other (Papastergiadis, 2006). Liberal and humanitarian discourses grounded in human rights or principles of justice remain blind to the biopolitical aspects analyzed in Agamben’s work (Ek, 2006). The problem with liberal/humanitarian arguments is that they appropriate the figure of the Other in ways that “elide the substantive differences between ways of being displaced from ‘home” (Ahmed, 2000, p. 5). Differences are concealed by universalizing the condition of displacement and by placing all immigrants/ refugees/asylum seekers into a singular category, as if they all experience the same thing. Agamben’s point—which takes him beyond a familiar critique of rejecting singularities—is to question the very notions of humanity, citizenship and the rule of law within the modern nation state which make possible the generalization of the logic of the camp. In this part of the article, I want to consider how Agamben’s views can ‘trouble’ current understandings of citizenship education (Richardson & Blades, 2006) and expand the set of meanings around citizenship. In their review of contemporary discourses of citizenship, Knight Abowitz and Harnish (2006) urge educators and curriculum theorists to build on the strong array of diverse critical discourses of citizenship (e.g., critical citizenships, transnationalism) because these discourses challenge traditional definitions of bounded membership and push “against traditional boundaries of agency, identity, and membership” (p. 680). Cosmopolitan (Nussbaum, 1997), transnational (Bauböck, 1994) and post-national (Soysal, 1994) views have challenged normative meanings of identity, membership, citizenship practice, and education. Although critical and transnational perspectives are certainly included in scholarly debates, point out Knight Abowitz and Harnish (2006), “the current formal, taught curriculum of citizenship produces a relatively narrow scope and set of meanings for what citizenship is and can be” (p. 657). The question is: How can Agamben’s ideas enrich the current taught curriculum of citizenship? For Agamben, to turn only to liberal/humanitarian (e.g., human rights) discourses in addressing the situation of others (i.e., immigrants/refugees/asylum seekers), without also attempting to think beyond such discourses, is to fail to recognize that “the fates of human rights and the nation-state are bound together such that the decline and crisis of one necessarily implies the end of the other” (1998, p. 134). Agamben seems to be suggesting that it is very important to understand the devastating consequences of bounded membership; critical citizenships can certainly align forces with Agamben’s views on interrogating bounded membership. Faced with increased migration after the Second World War, Europe and the United States in particular, have gradually created an increasingly complex system of civic stratifications and immigration procedures that is dependent on bounded membership and the immigrant/refugee/asylum seeker as a fearsome figure who threatens ‘our’ bounded membership (Tyler, 2006). The results are millions of stateless people inside the territorial states and inhumane citizenship and migration policies and practices (Ek, 2006). As it has already been noted, Agamben’s analysis reveals all the shortcomings of the intersection between fearism and liberal/ humanitarian discourses of citizenship that are still founded in territorial myths—myths that ignore the biopolitical matrix (Minca, 2006). Agamben essentially asks us to see the current juridico-political frame as ideology with material implications; at the center of this ideological frame is the bourgeois nation–state, which bestows individuals with ‘rights’ and progressively incorporates them into a body (the nation). For instance, the expression “I love or hate them because they are like me, or not like me” (Ahmed, 2005, p. 108) indicates the ideological aspects that collective bodies entail. Hence in hating an Other, a subject also loves itself and those that are similar to itself. This attachment structures political life within a community and provides an affective orientation that characterizes the thinking of this community (or nation). As Kristeva (1993) argues, the nation is an effect of how bodies move toward it and create boundaries. The citizens become members of the body–nation, members to be managed, measured in certain ways, and contained (Minca, 2007). Thus the definition of belonging to the nation “becomes the state’s guiding political preoccupation. […] It is within this exclusive inclusion…that the very principle of citizenship and the idea(l) of belonging are born” (p. 88). When the nation–state begins to systematically isolate a bare life—endowed with citizenship ‘rights’ or not—then citizenship becomes definable only in terms of the camp, as Agamben asserts. Critical and transnational discourses on citizenship can use Agamben’s views to raise questions about identity, membership and citizenship—questions that are issues of public debate, yet in curricular texts such questions are marginalized (Knight Abowitz & Harnish, 2006). For example, immigrants/refugees/asylum seekers can be considered as ‘limit concepts’ (e.g., see Agamben, 1994) to radically call into question the fundamental categories of the nation–state, including rights and citizenship. Immigrants/refugees/asylum seekers are powerful figures that invite educators, curriculum theorists, students, and the whole community to confront the politics of what Agamben has described as ‘inclusive exclusion.’ This inclusive exclusion brings to mind Kristeva’s (1982) view of the abject. The abject for Kristeva is an object which is excluded but which still challenges “its master” (1982, p. 2). Although it is excluded, it is simultaneously included in that it continues to disturb borders (between ‘us’ and ‘them’) and norms. Thus the abject “does not stand opposed to the subject, at a distance, definable. The abject is other than the subject but is only just the other side of the border” (Young, 1990, p. 144). What is of interest here is an understanding of abjection as that which disturbs borders and norms such as rights and citizenships. The immigrant/ refugee/ asylum seeker becomes the abject Other, the homo sacer who has been left behind or been excluded from the territorial boundaries that confer the rights of citizenship (Papastergiadis, 2006).

### L-constitution

#### [Christiansen, no date] The aff’s reliance on the constitution as the basis for liberty is incoherent as it ignores the constitutions roots in its own suspension and basis for coercion.

Colin Christensen (Emory and Henry College). “Constitutional Regulation, Exception and Anomie: How states of exception inspire functional and moral anomie within the American constitutional system”. [https://wpsa.research.pdx.edu/papers/docs/Constitutional%20Regulation,%20Exception%20and%20Anomie\_Christensen\_WPSA.docx](https://wpsa.research.pdx.edu/papers/docs/Constitutional%20Regulation%2C%20Exception%20and%20Anomie_Christensen_WPSA.docx) cw//az
Within the American constitutional system, it is axiomatic that a “constitutional right implies the ability to have and effectuate that right.” However, it is also an accepted principle of constitutional interpretation that the ability to enjoy and effectuate any right guaranteed by the Constitution is neither absolute nor immune from limitation. In other words, if civil rights codified within constitutional doctrine are not absolute then the logical contrapositive suggests that these rights are open to certain exceptions. What remains true of both constitutional protections and their exceptions is their supreme character as foundational legal and theoretical principles to which all other laws and regulatory schemes are subservient. While the U.S. Constitution stands as the doctrinal manifestation of constituent organization and power, it also functions to inform the collective American psyche of the most basic functional and moral expectations held tantamount within our system of governance. In so doing, our Constitution can be understood as a codification of the underlying social facts and norms held generally in common within American society. The Constitution understood as such becomes not only a positivist contract created by constituent power, but so too, implicitly establishes certain patterns of political behavior and social interaction that are capable of exerting coercive power over both the government and the individual citizen alike.

### L-children

#### Children’s best interests transferred to those of their parents’ produces a citizenship deficit that renders them as stateless

Martin 11 (Lauren, author and policy analyst, Gender Place and Culture, “The geopolitics of vulnerability: children's legal subjectivity, immigrant family detention and US immigration law and enforcement policy,” 478-498, 7/29/11, <https://www.tandfonline.com/doi/pdf/10.1080/0966369X.2011.583345?needAccess=true>) Heublein

Migrating children present immigration authorities with specific legal challenges that have not been taken into account in geographical research on detention or immigration geopolitics. Children’s transboundary migration is rarely interrogated in geographical analyses of children’s legal subjectivity and political agency. Recent work on children’s political participation has, however, contemplated the methodological difficulties associated with children’s political agency (Bell 2008), and argued for a fuller conceptualization of the ways in which children actively make spaces (Aitken 2001; Bessant 2004; Jans 2004; Katz 2004; Leiter, McDonald, and Jacobson 2006). In immigration law, children’s immigration claims are solely derivative of parents’ claims (Thronson 2007–8), and, for Bhabha (2003, 2009), this displacement of children’s ‘best interests’ produces a ‘citizenship deficit’ through which children are rendered de facto stateless subjects. Yet children’s rights and feminist scholars have cautioned against fetishizing existing legal regimes as sources of children’s empowerment, enfranchisement or political participation. For example, the 1989 Convention on the Rights of the Child (CRC) contains an expansive set of entitlements for children, but the realization of children’s political agency has been limited (Stasiulis 2002; Mayall 2006). Ruddick (2007a, 514) argues, further, that the child-subject defined by ‘best interests’ principles is ‘an impossible subject since, by liberal definition, the child cannot speak for him or herself without adult authorization’. Intriguingly, some citizen children have been vocal spokespersons for their undocumented parents, a form of political theater that dramatizes the parents’ displacement from what is implicitly their proper role as family representatives (Pallares 2009). While child-subjects are always already in a relation of dependence with a series of caregivers (Ruddick 2007a, 2007b), the political agency of children is not materially confined to the child-object of immigration law or the partial subject of domestic family law. As Katz (2004) argues, analyzing children’s paradoxical legal subjectivity reveals geopolitical processes difficult to see at other scales, allowing us to ask: at the margins of the nation-state, where liberal law is suspended for noncitizens, how do we understand the relationship between children and their caregivers when immigration law considers parents aliens not persons? How do we understand the position of the precarious childsubject in the context of an immigration regime that suspends constitutional rights for adults? How do we understand children’s legal subjectivity where their immediate caregivers are not full liberal subjects either? Where caregivers represent children in family and children’s courts, Bunikyte’s plaintiffs were children. Previous legal settlements created contractual relationships between ‘minors in immigration custody’ and immigration officials, while adults’ alien status foreclosed their own federal court Gender, Place and Culture 479 protections. Bunikyte reveals not only how US geopolitical agendas mobilize immigration law to create wide spaces of administrative discretion over noncitizens’ bodies, but that specific constructions of childhood and adulthood undergird immigration law and enforcement policy. In the context of immigration geopolitics, these categorical differences are directly related to the spatialities of immigration enforcement: policing and arrests, detention center conditions and location, deportation decisions and the embodied process of physical removal from the United States.

### L-child soldiers

#### Bodineau ‘14] Framing of hapless children allows the state to pull arms away in the state of exception which kills reintegration and reperpetrates the harms they list. Prefer my evi – it takes into account your aff

Bodineau, Sylvie. « Vulnerability and agency: figures of child soldiers within the narratives of child protection practitioners in the Democratic republic of Congo », Autrepart, vol. 72, no. 4, 2014, pp. 111-128. Cw//az

Many causes have been speculated to lead to the phenomenon, including poverty, social injustice, arm and light weapons trafficking, greed for natural resources and mining, bad governance, impunity. The most important tool developed for prevention has been a system of “naming and shaming” armed groups and forces recruiting and using children, through the Monitoring and reporting mechanism set up by the United nations Security council resolution No 1612. That leaves a very small place for civil-military negotiation and potential collaboration for a smooth demobilisation process for children and adolescents. Regarding demobilisation or release, the trend is a sharp separation between the treatment of children, under 18 years of age, and adults. The emphasis is on the transition as an important step to prepare children to civilian life.

45Reintegration is considered as the biggest challenge and along the years, several models have been highlighted as best practices leading to a “bricolage” of several paradigms at the intersection of different stakes. On the one hand, the medical model leads to separate prevention and response, provide attention to individuals, “treat” any violent behaviour as abnormal, and sensitise beneficiaries and their relatives who are presupposed to be ignorant about the issue. Psychological attention is often a variation of this paradigm, trying to cure inconvenient behaviour through processes of remembrance. On the other hand, the community based model follows a romantic vision assuming that solidarity is a natural trend of communities, its members being ready to “do the job” for free. Finally, the child rights approach assumes that the ideal childhood relies on family and school. The focus is therefore on family reunification and schooling.

46Following the analysis made by Agamben [1998] on the reduction of human beings to their “bare life” when submitted to encampment under “states of exception”, Fassin [2003] has shown the necessity for humanitarian intervention in armed conflict to operate in the same way in order to gain access to victims and save lives. Malkki [1996] has also shown how the biomedical paradigm of intervention was silencing refugees in the process through which they had to pass in order to be recognized. This is the way through which demobilized children’s and adolescent’s violent behaviour is “biologized” and turned into a disease that should be treated. As highlighted by Boyden [1994], “The predominant medical paradigm interprets violent behaviour as abnormal and instructs health and social workers (who also operate largely within the medical framework) to identify and diagnose victims and treat pathological responses.” [p. 257]. By adopting a biomedical approach, interventions tend to separate children from their environment, and somehow, “de-socialize” them. Moreover, the emergency imperative renders people incapable of solving their own problems. In adopting a totally opposite movement, the community-based approach fails to recognize communities’ weaknesses in supporting the reintegration of demobilised children and adolescents that challenge their views on intergenerational order.

Major pitfalls of the programmes in DRC

47At the time of the DDR formal process in DRC between 2004 and 2006, several massive demobilisations have put a high pressure on NGOs adopting short-term programmes only focused on demobilisation and family reunification. The programmes were therefore developed for a very short duration without follow up or any ongoing monitoring system, with one size-fit-all and distributive modes, leaving no room or time for participation of any meaningful kind.

48Discrepancies between the expectations of children, families, and communities and programmes were frequent. There was also a mismatch between representations of children, sometimes considered as Unicef or NGO children, instead of full members of the community, leading to their rejection anymore:

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“Often, it was referred to ESFGAs [children released from armed forces and groups] by telling us ‘these are your children’. When they were asked what that meant, they did not hesitate to say that the Government, together with the international community, made the decision to demobilize children associated with armed forces and groups; that demobilization and reintegration programs were designed without consulting local communities; and therefore, that these children were under our responsibility and should be supported and supervised by the international community and governmental authorities.”

### L-cjs

**The Criminal Justice System is how sovereign power enforces their biopolitical narrative. The end result of biopower’s underlying logic is bare life and genocide.**

**Brennan 14**

Philip Khaled Brennan (researcher on human rights and biopower from the UK). “PREVENT: An Exercise in Biopower—Section One.” The Cat House. April 6th, 2014. http://cathouse.hivetimes.org.uk/2014/04/06/prevent-an-exercise-in-biopower-section-one/

The Medico-Judicial Power of Normalization With the birth of psychiatric power in the late 19th century, a new addition to the tools of power was added: medico-judicial power, or the power of normalization. A convict is no longer judged purely upon what he or she has done, but also on why the crime happened, any psychological reasons behind the crime, the level of delinquency or deviancy inherent in the convict, and the level of future threat this convict poses to society as a whole. This puts the convict in perverse danger even before they are convicted, as it is now medical power which determines what the judicial outcome should be: the convicts medical history, psychological evaluation, mental state at the time of the offence, and possible future outcomes for the convict upon release are all factored into the judgement aside from the actual fact of the offence: “First, there is the requirement that every individual who comes before the assize courts has to have been examined by a psychiatric expert. As a result, the individual never appears in court with just his crime. He arrives with the psychiatric expert’s report and comes before the court burdened with both his crime and this report. There is a question whether this measure, which is universal and obligatory for the assize courts, should also become the general rule in the criminal courts, where it is only applied in some cases, but not yet universally. The second sign of the implementation of a medico-judicial power is the existence of special courts for children in which the information given to the judge, who both investigates and judges, is essentially psychological, social, and medical. This information consequently bears much more on the context of the individual’s existence, life, and discipline than on the act for which he has been brought before the children’s court. The child is brought before a court of perversity and danger rather than before a criminal court. Equally, within the prison administration, medico-psychological services are established that are required to report upon the individual’s development while serving his sentence, that is to say, on the level of perversity and the level of danger he still represents at a given moment during his sentence, it being understood that if he has reached a sufficiently low level of danger and perversity he could be freed, at least conditionally.”2 The aim of this utilisation of medical power within the judicial process is not to cure the patient-convict, but to make them safe, to neutralise them as a future threat, to “normalize” them, and as we shall discover shortly, **the power of normalization becomes part of the justification for the murderous function of the State**. Scientific Racism and Biopower Biopower also effects sovereign power in a rather unique way, one which really ought to be remarked upon at this point. The ultimate manifestation of sovereign power was the Sovereign Ban: the power to determine who should be allowed to live, and who should be made to die. Biopower reversed this in a rather interesting way. It now determines who should be made to live and who should be allowed to die. The key determining factor in this decision is **Darwinian racism**: “This is not, then, a military, warlike, or political relationship, but a biological relationship. And the reason this mechanism can come into play is that the enemies who have to be done away with are not adversaries in the political sense of the term; they are threats, either external or internal, to the population and for the population. In the biopower system, in other words, killing or the imperative to kill is acceptable only if it results not in a victory over political adversaries, but in the elimination of the biological threat to and the improvement of the species or race. There is a direct connection between the two, In the normalizing society, race or racism is the precondition that makes killing acceptable. When you have a normalizing society, you have a power which is, at least superficially, in the first instance, or in the first line a biopower, and racism is the indispensable precondition that allows someone to be killed, that allows others to be killed. Once the State functions in the biopower mode, racism alone can justify the murderous function of the State. So you can understand the important – I almost said the vital importance – of racism to the exercise of such a power: it is the precondition for exercising the right to kill. If the power of normalization wished to exercise the old sovereign right to kill, it must become racist. And if, conversely, a power of sovereignty, or in other words, a power that has the right of life and death, wishes to work with the instruments, mechanisms, and technology of normalization, it too must become racist. When I say “killing,” I obviously do not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on.”3 Foucault here goes on to illustrate how this racism is based upon a faulty view of Darwinism, vis-a-vis, the survival of the fittest. Racism has always been present within human societies, but it was during the 19th century that a more scientific form of racism evolved in colonial discourse. **The end result of this ‘new’ scientific racism is that whole groups of people can be made ‘other’**, and the killing of the same can then be justified in Darwinian terms. Giorgio Agamben goes into much detail about the effects of biopolitical racism in his book “Homo Sacer: Sovereign Power and Bare Life,” in which he traces the ontology of biopower from the Sovereign Ban to its logical end conclusion in the Holocaust perpetrated by the Third Reich in 1940s Germany. **The end result of biopower is genocide**, whether the colonial genocide of the 18th to 19th centuries, or the State hygiene genocide of the 20th century (Rwanda being the only exception as it was a throw back to the colonial genocide of former times4).

### L–disease

#### Disease securitization turns subjects into apocalyptic bodies whose lives have meaning only if they achieve health, justifying extermination

Gomel 2K (Elana, Head of Eng Dept @ Tel Aviv, 20th Cent. Lit V 46//shree)

In the secular apocalyptic visions that have proliferated wildly in the last 200 years, the world has been destroyed by nuclear wars, alien invasions, climactic changes, social upheavals, meteor strikes, and technological shutdowns. These baroque scenarios are shaped by the eroticism of disaster. The apocalyptic desire that finds satisfaction in elaboration fictions of the End is double-edged. On the one hand, its ultimate object is some version of the crystalline New Jerusalem, an image of purity so absolute that it denies the organic messiness of life. On the other hand, apocalyptic fictions typically linger on pain and suffering. The end result of apocalyptic purification often seems of less importance than the narrative pleasure derived from the bizarre and opulent tribulations of the bodies being burnt by fire and brimstone, tormented by scorpion stings, trodden like grapes in the winepress. In this interplay between the incorporeal purity of the ends and the violent corporeality of the means the apocalyptic body is born. It is a body whose mortal sickness is a precondition of ultimate health, whose grotesque and excessive sexuality issues in angelic sexlessness, and whose torture underpins a painless—and lifeless—millennium. The apocalyptic body is perverse, points out Tina Pippin, unstable and mutating from maleness to femaleness and back again, purified by the sadomasochistic “bloodletting on the cross,” trembling in abject terror while awaiting an unearthly consummation (122). But most of all it is a suffering body, a text written in the script of stigma, scars, wounds, and sores. Any apocalypse strikes the body politic like a disease, progressing from the first symptoms of a large-scale disaster through the crisis of the tribulation to the recovery of the millennium. But of all the Four Horsemen, the one whose ride begins most intimately, in the private travail of individual flesh, and ends in the devastation of the entire community, is the last one, Pestilence. The contagious body is the most characteristic modality of apocalyptic corporeality. At the same time, I will argue, it contains a counterapocalyptic potential, resisting the dangerous lure of Endism, the ideologically potent combination of “apocalyptic terror”, and “millennial perfection” (Quinby 2). This essay, a brief sketch of the poetics and politics of the contagious body, does not attempt a comprehensive overview of the historical development of the trope of pestilence. Nor does it limit itself to a particular disease, along the lines of Susan Sontag’s classic delineation of the poetics of TB and many subsequent attempts to develop a poetics of AIDS. Rather, my focus is on the general narrativity of contagion and on the way the plague-stricken body is manipulated within the overall plot of apocalyptic millennialism, which is a powerful ideological current in twentieth-century political history, embracing such diverse manifestations as religious fundamentalism, Nazism, and other forms of “radical desperation” (Quinby 4-5). Thus, I consider both real and imaginary disease, focusing on the narrative construction of the contagious body rather than a precise epidemiology of the contagion. All apocalyptic and millenarian ideologies ultimately converge on the utopian transformation of the body (and the body politic) through suffering. But pestilence offers a uniquely ambivalent modality of corporeal apocalypse. On the one hand, it may be approrpriated to the standard plot of apocalyptic purification as a singularly atrocious technique of separating the damned from the saved. Thus, the plague becomes a metaphor for genocide, functioning as such both in Mein Kampf and in Camus’s The Plage. [2] On the other hand, the experience of a pandemic undermines the giddy hopefulness of Endism. Since everybody is a potential victim, the line between the pure and the impure can never be drawn with any precision. Instead of delivering the climactic moment of the Last Judgment, pestilence lingers on, generating a limbo of common suffering in which a tenuous and moribund but all-embracing body politic springs into being. The end is indefinitely postponed and the disease becomes a metaphor for the process of living. The finality of mortality clashes with the duration of morbidity. Pestilence is poised on the cusp between divine punishment and manmade disaster. On the one hand, unlike nuclear war or ecological catastrophe, pandemic has a venerable historical pedigree that leads back from current bestsellers such as Pierre Quellette’s The Third Pandemic (1996) to the medieval horrors of the Black Death and indeed to the Book of Revelation itself. On the other hand, disease is one of the central tropes of biopolitics, shaping much of the twentieth-century discourse of power, domination, and the body. Contemporary plague narratives, including the buregeoning discourse of AIDS, are caught between two contrary textual impulses: acquiescence in a (super) natural judgment and political activism. Their impossible combination produces a clash of two distinct plot modalities. In his contemporary incarnations the Fourth Horseman vacillates between the voluptuous entropy of indiscriminate killing and the genocidal energy directed at specific categories of victims. As Richard Dellamora points out in his gloss on Derrida, apocalypse in general may be used “in order to validate violence done to others” while it may also function as a modality of total resistance to the existing order (3). But my concern here is not so much with the difference between “good” and “bad” apocalypses (is total extinction “better” than selective genocide?) as with the interplay of eschatology and politics in the construction of the apocalyptic body.

### L – education

#### [Lewis 14] understandings of the “potentiality” of education within stratified educational spheres are part and parcel of a system of capitalistic production within the state of exception – the only ethical orientation is towards a sacrifice of impotentiality.

TYSON EDWARD LEWIS [Educational Foundations, Montclair State University] It’s a Profane Life: Giorgio Agamben on the freedom of im-potentiality in education *Educational Philosophy and Theory, 2014* Vol. 46, No. 4, 334–347, <http://dx.doi.org/10.1080/00131857.2013.779208> cw//az \*bracketed for clarity

Within the contemporary learning society, the sacrifice of im-potentiality takes the form of educational abandonment. Drawing on the work of Hannah Arendt and Michel Foucault, Jan Masschelein argues that within a society driven by capitalist pro- duction and consumption, political life has been overcome by the eternal return of laboring life. Masschelein’s thesis thus becomes: ‘The discourse of the learning society is at the same time an effect and an instrument of the victory of animal laborans’ (2001, p. 2). Learning is an organizing principle for optimiz[es]~~ing~~ labor productivity, and in turn the citizen becomes first and foremost a learner within a flexible, knowl- edge economy that demands constant ‘retraining’ or ‘reskilling’ to fulfill high-tech, informationally rich jobs. With the rise of the learning society, everyone is put under heightened risk, and survival becomes the ultimate imperative. Masschelein writes, ‘We can say that in the learning society we live in a situation of permanent threat: threatened in our survival (as species, school, university, scientist, teacher, organiza- tion, enterprise, citizen, nation and so on), threatened with exclusion, with no possi- bility of appeal’ (2001, p. 12). Within the learning society, the learner must be the ‘energetic, working, autonomous individual’ (Masschelein, p. 14) capable of continual adaptation to an unstable economic world where unemployment is always right around the corner. In this sense, Masschelein is very similar to Foucault, who argued that education is a type of ‘social orthopedics’ that has ceased to punish individuals and instead focuses on ‘correcting their potentialities’ (Foucault 2000, p. 57) in order to maximize competencies and efficiencies. Simons and Masschelein (2008) describe how potentialities within the learning society are connected to self-directed, self-man- aging behaviors in a form of ‘governmentality of the self’. As with Foucault’s (2008) description of neoliberalism, Simons and Masschelein describe how life-long learning is part of a ‘withdrawal of the state’ that shifts responsibility for governance to private individuals, thus transforming economic, political or educational problems into indi- vidual problems. For Foucault (2008, p. 229), ‘educational investments’ by the neo- liberal state transform us into entrepreneurial individuals who can organize our own potentials for maximum economic outputs. The battery of tests which the individual undergoes throughout a lifetime help to identity, classify, train and actualize their unrealized potential as students, workers and citizens. Stated simply, the logic of the learning society is a logic of investment into economically profitable potentialities which must be actualized according to the needs of the market. The learner is the stu- dent who must sacrifice his or her im-potentiality in order to graduate on time, get a good paying job and ‘become somebody’. Otherwise, one may be abandoned——and this fundamental exclusion might very well be a threat to one’s very existence (Simons, 2006). In sum, capitalism commands the subject to demonstrate and show signs of competency. Without these demonstrable signs of competency, the subject is abandoned to a future wherein life itself is put at risk. If the logic of learning forces the child to actualize his or her potentiality through his or her entrepreneurial will, then the disavowed impotential is subsequently projected outwards onto the vulnerable other whose fate remains forever a source of humanitar- ian paternalism who becomes the object of deferred anxiety over the contingencies of our own fragile economic who becomes the object of political systems. The dominant logic is not one of investment into the potentialities of entrepreneurial selves, but rather systematic abandonment that attempts to drain life of its educational supplement (Lewis, 2006). Pedro Noguera (2009) argues that social, economic and political forces have resulted in diminishing educational returns for poor African American boys in par- ticular. According to Noguera, African American boys are now more likely than other groups to be (1) suspended or expelled from school, (2) classified as ‘mentally retarded’ and placed in special education classes, and (3) absent from honors courses. In turn, black males tend to internalize low expectations and thus identify with and enact behaviors that reinforce their academic ‘failure’. In short, neoliberal society effectively manages anxieties concerning its own impotence by projecting it onto the internally excluded other: African American boys. High-stakes testing, zero tolerance policies, and teachers and administrators who lack commitment to the multicultural, low- income communities they serve constantly demand that African American boys actual- ize their impotence through policies and procedures that create a self-fulfilling prophesy: the ‘school-to-prison pipeline’ (Lewis & Va ́zquez Solo ́rzano, 2006). In other words, ‘the trouble with Black boys’ (as Noguera argues) is that they are burdened with the responsibility to compensate for the anxieties of the learning society by self-actualizing the system’s own internal impotence. According to the discourse of learning, the stu- dent must be an entrepreneur who is engaged in constant self-management in order to ‘correct their potentialities’ by maximizing outputs. In the case of young black boys, the insidious obverse of this logic reveals itself. Rather than correct their potentialities by maximizing outputs, the governmentality of the self transforms into an impossible mandate: to maximize one’s own failure by internalizing the expectations of abandon- ment. In other words, the paradoxical charge seems to be: ‘master your capacity for incapacity’, thus cleaving potentiality from impotentiality, leading to an educational caste system that reproduces class and race divisions in the USA. Blame for failure can thus be projected onto these boys, all the while misrecognizing that they have been bur- dened with the mandate to fully actualize neoliberalism’s own ‘not yet’. Missing in this picture is the connection between potentiality and impotentiality, not as a separation but as a constitutive co-belonging in defiance of the logic of a sovereign decision that creates dichotomies through the necessity of sacrifice. An appeal to necessity justifies the sovereign decision to sacrifice impotentiality. Throughout history, Agamben (2003/2005, p. 25) finds a recurrent theory where ‘necessity is not a source of law, nor [it] does [not] it properly suspend the law; it merely releases a particular case from the literal application of the norm’. The source of the law lies outside the law in the realm of fact and of necessity, which in turn renders the illegality of the state of exception and its sacrifice justified. The objective conditions necessitate a certain decision that cannot be otherwise than the way it is. What is denied here is the aporia of necessity itself: ‘far from occurring as an objective given, necessity clearly entails a subjective judgment, and that obviously the only circum- stances that are necessary and objective are those that are declared so’ (Agamben, p. 30) by a sovereign. In other words, the claim to necessity masks the arbitrary or contingent nature of a decision which must decide on that which, in itself, is undecid- able. What the logic of necessity conceals is precisely its own foundational paradox which is, in a sense, a pure experience of the co-originary belonging of potentiality and impotentiality beyond any decision and any law. It is this ‘undifferentiated chaos’ of the exceptional which the claim to necessity attempts to bottle up via the decision of the sovereign to take this or that kind of action. The state of necessity informing the logic of the learning society excludes the potentiality that things could be different than they are, that other solutions to educational problems beyond reforming stan- dardization could exist, that the problem with schools could be solved by other means than firing teachers and expelling students. Rather than a state of necessity, education should be reconceptualized as a state of contingency, an exceptional state that could be otherwise than. Against the hubris of educational reform which assumes that educa- tional solutions can be found within the current system of learning imperatives (which themselves are seen as necessary and thus irrefutable), education as a state of contin- gency would be open to a non-sovereign possibility, a possibility beyond abandonment of teachers, students and their communities. This would be a form of education that breaks with the logic of learning which demands the constant translation of potential- ity into actuality in order to compete in a global, capitalist market. Rather, it would be a precarious education which recognizes the fleeting, tenuous and fallible freedom of study which is beyond measure and beyond predefined ends. They continue But in the end, we must give way on even our Genius. Here we might turn to Bart- leby the Scrivener for Agamben’s final analysis of Genius. In his faithful proclamation ‘I would prefer not to’, Bartleby ‘writes nothing but [his] potentiality to not-write’ (Agamben, 1990/1993, p. 37). Bartleby, like the ‘old artist’, ultimately lays down his pen and begins to live ‘a purely human and earthly life’ where we ‘forget about Gen- ius’ (Agamben, 2005/2007b, p. 18). Rather than the fear of abandonment as in the learning society or the rhythms of melancholia and joy as in study, the proper experi- ence of this forgetting of Genius is ‘ease’. According to Agamben, ease is ‘the empty place where each can move freely’ (1990/1993, p. 25). In the ease of the empty place, Bartleby has no specific content to his actions or his gestures. The act of preferring not to is a radical profanation of the imperative to learn and the capitalist drive to master Genius and ‘put it to work’. It is also, as Colby Dickinson (2011) aptly points out, a radical critique of will. Summarizing, Dickinson (2011, p. 43) writes, ‘Rather than “I will not” being the declarative phrase of resistance uttered to his boss, Bart- leby’s “I prefer not to” is an emphatic distancing of himself from the entire machinery of actuality and its formulation of a decisive will, which is to be seen here as little more than a slightly veiled attempt to obtain power’. To live in ease is to live without any vocation, without any desire for mastery, without any desire to reach an end beyond ease itself. To live a life of ease, writes Agamben (2007/2011, p. 251), is a life ‘which contemplates its (own) power to act’ while rendering ‘itself inoperative in all its operations, and lives only (its) livability’. By rendering inoperative the specific work and labor of a life, life itself begins to experience a pure potentiality untethered by predetermined ends. In this final example, we reach a state of ease where even our Genius is laid to rest. To be at ease with one’s impotence as one’s own and thus live a truly profane life. Without an End Perhaps there is nothing more radical than when a student proclaims ‘I would prefer not to learn’. Such a statement should not be read as mere apathy or laziness, but rather as a political rejection of the very logic of learning within capitalism. To prefer not to learn is equally a struggle to study——to remain faithful to the remnant of our profane stupidity that always interrupts our knowledge, our certainty, our willful reso- lution, the perceived necessity of our decisions, and the fulfillment of our potentials. Only then are we touched by Genius. It is in such moments that education exemplifies study, and children——those angelic little tinkerers——experience the possibility for new possibilities.

### L-environment destruct

#### Smith 09] ecological crises are coopted as a state of emergency to expand power – that turns case

Smith, M. (2009). Against ecological sovereignty: Agamben, politics and globalisation. Environmental Politics, 18(1), 99–116. doi:10.1080/09644010802624843 cw//az

Alongside this increasingly ‘normal’ situation the state still retains its ‘exceptional’ sovereign power to decide upon a state of emergency. If cybernetic managerialism reflects the apolitical optimism of ecological modernisation (there is no ecological crisis) then the state of emergency as the introduction of a ‘survival footing’ reflects Lovelock’s pessimistic state unilateralism. The ecologically motivated incursions he posits, the giant sun- shade in space, the massive expansion of nuclear power, and so on, are, in this sense, the environmental equivalents of the supposedly ‘humane’ militarism of those ‘technically advanced nations’ which, to paraphrase Lovelock (2006, p. 151 – see above) woke up to their ‘responsibility’ to wage war on global terrorism. If Agamben is right, the ecological result too would be the same, the decisionistic suppression of political liberties in the name of survival. Interestingly, Lovelock (2006, p. 153), against the advice of other Gaians, explicitly uses militaristic metaphors speaking of a war against our ‘Earthly enemy’, and the possible need for ‘rationing’, ‘restrictions’, a ‘call to service’, and ‘our’ suffering ‘for a while a loss of freedom’.

From this perspective, the state’s recognition of ecological crises will certainly not lead it to encourage an ecological politics. Quite the contrary, it will be co-extensive with the imposition of emergency measures and potentially disastrous technological, even militaristic ‘fixes’. Those who suffer most from the situation will, ironically, be those most likely to find themselves reduced to bare-life. The case of Hurricane Katrina in New Orleans provides a recent ecological example of the localised exclusion of ethics and politics as the state focused on population control while the protection of property (capital) took

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priority. As Agamben argues, it is always indicative of the retention of sovereign power that the state maintains its monopoly on the legal use of violence, justified as a response to exceptional circumstances (even including the ability to decide what does or does not count as violence, as for example, in labelling many forms of environmental activism eco-‘terrorism’).

### L-Fiat

See nc shell

Although Agamben’s work covers topics as diverse as aesthetics and anthropogenesis, the two subjects he has been most associated with to date are sovereign power and homo sacer. Sovereignty is not to be necessarily equated here solely with historical ideals of monarchical power (although that is where the model for modern versions of sovereignpower originates); rather, the sovereign is he who decides when the rule of law is suspended. The declaration of a ‘state of exception’, which has counterparts in the declaration of a ‘state of emergency’, the rule of martial law or the pronouncement of état de siège, heralds the instantiation of sovereign power. Emanating from an unusual and apparently contradictory starting point, the sovereign legal prerogative is the effective prorogation of the law itself and a ‘state of exception’ is not the rule of law as such nor is it a fact; nor is it bound to a law or to a fact. Rather, the exception is the confusion of the two – and he who decides upon that exception (that confusion of law and fact) is the sovereign. There is, similarly, a degree of elision and apparent paradox to be had in the figure of homo sacer: in Roman antiquity, the revocation of a citizen’s rights by sovereign decree produced the threshold figure of homo sacer, the sacred man who can be killed by anyone (he has no rights) but not sacrificed because the act of sacrifice is only representable within the legal context of the city – the very city from which homo sacer has been banished. He is an outlawed citizen, the exception to the law, and yet he is still subject to the penalty of death and therefore still included, in the very act of exclusion, within the law.2 In being the interstitial exception he effectively blurs the lines between outlaw and citizen. Two further distinctions can be made here, both of which concern the confusion to be had in a ‘state of exception’ between law/exception and citizen/outlaw. First, in the moment that the state suspends the law we see a sovereign form of power re-emerge – that is, a unilateral, unaccountable, arbitrary and extra-legal form of power. When the ‘state of exception’ begins to become the rule, rather than the suspension of rule, we witness a blurring of the two and the appearance of homo sacer, the one-time citizen rendered outlaw who has no recourse to law other than that of the sovereign’s power over his life and death. It should also be noted that Agamben’s term homo sacer, the sacred man, is deployed not so much to indicate the religious experience implicit in the term sacer as it is to highlight the other more subdued meaning of the term ‘sacred’: that which is ‘set apart’. In this structure of exceptionalism the ‘sacred’ does not reveal a religious element as such, rather, it further defines the moment of being set apart and thereafter takes on the hue of accursedness and abandonment. What Agamben effectively isolates in this apparently archaic figure is the moment when a state, through the suspension of law and the promulgation of a ‘state of exception’, turns on its own citizens and, through intimidation, banishment and the penalty of death, produces an accursed figure: the one-time citizen reduced to the ‘bare life’ of homo sacer. Arguing that such ‘states of exception’ have reached their maximum worldwide deployment in our time Agamben observes that: … the normative aspect of law can thus be obliterated and contradicted with impunity with a governmental violence that – while ignoring international law externally and producing a permanent state of exception internally – nevertheless still claims to be applying the law.3 In the past, it was usually the advent of war that heralded ‘states of exception’ or martial law; in the absence of actual war we created a ‘cold’ one to justify states of emergency; whereas today we have confected a ‘war on terror’ that would appear to have an unlimited remit. Under the latter conditions, the spectre of terrorism has increasingly promulgated ‘states of exception’ whereby the sovereign state can usher in laws to curtail, contain and monitor its own citizens. In the eyes of a sovereign power that has effectively usurped the legislative branch of the state, it is a move that renders us all potentially homines sacri. It would not be difficult at this point in my discussion to cast around for examples of this and note, for instance, the current state of affairs in the United States and the UK.

### L-illegal drugs

#### Draus 10] descriptions of illegality in juxtaposition with drugs recreates societal problems of surveillance and violence. Fluidity is necessary to combat this structure

Draus10, Paul J et al. “A hell of a life: addiction and marginality in post-industrial Detroit” Social & cultural geography vol. 11,7 (2010): 663-680. Cw//az

As Agamben (2005) has noted, the rhetoric of war is crucial to the establishment of a state of exception from constitutional protections or guaranteed rights of citizenship. In the USA, this is evident in the so-called ‘War on Drugs,’ initiated by President Nixon in 1969 and waged for more than thirty years without success (Davenport-Hines 2001). The ban on illicit drugs simultaneously produces the lucrative illicit drug market and its many associated criminal organizations, as well as the complex system of institutionalized treatments and punishments that compose the drug enforcement industry today (Buxton 2006, 2008; McCoy 2004; Schneider 1998; Waterston 1993). While drug dealers may exercise power within this murky realm, drug users are more often subjected to the power of others, both in the ‘legitimate’ economy and in the underground drug economy (Bergmann 2008; Dunlap 1995; Tourigny 2001). For those under state surveillance—on probation, parole, or under supervision of a drug court or treatment program—disciplinary power is an unavoidable reality. However, the state of exception linked to drug use and drug market participation is fluid and permeable—people slide in and out of spaces where they are, or could be, subjected to state power or control. The prison–industrial complex is, in a sense, the visible, institutional reflection of the shadow institution of illegal drug markets.

### L-plea bargain

#### Abandoning plea bargaining is part of the sovereigns project to sustain the state of exclusion – letting the populace defer the law in a perceived state of emergency only further justifies its role as a flexible tool for sovereign control to control life and engage in endless violence. They feel like they’re doing some justice but only prop up the system – this kills social change.

**Humphreys 06:**

Stephen Humphreys (Associate Progessor of International Law @ London School of Economics, Former Research Director at the International Council on Human Rights Policy in Geneva) “*Legalizing Lawlessness:* *On Giorgio Agamben’s* State of Exception” The European Journal of International Law Vol. 17 no. 3. 2006.

**Agamben rejects Schmitt’s position** and moves to displace any theory that ‘seeks to annex the state of exception immediately to the law’ or to ‘inscribe [it] indirectly in a juridical context’ and to salvage it instead as law’s ‘other’: **‘the state of exception is not a “state of law” but a space without law’**, a ‘zone of anomie’. It is not equivalent to a dictatorship, where laws continue to be made and applied (albeit non-democratically), but **one in which law is rather entirely emptied of content.** In Agamben’s analysis, Schmitt’s ‘paradoxical’ formulation – which **attempts to reinsert a legal vacuum into the legal order – is** rather **designed to privilege sovereign violence** at all costs. Agamben challenges Schmitt’s paradigm through the voice of Walter Benjamin, whose 1921 ‘Critique of Violence’ speaks of a ‘pure’ or ‘divine’ violence that is neither subject to nor preserving of law, that may appear as a flash of revolutionary transcendence and that Agamben reads as a ‘cipher for human activity’. Schmitt’s state of exception, on this reading, is a legal edifice constructed to domesticate the very possibility of non-state (or pure) violence. In sum, Benjamin and Schmitt agree on the existence of anomic violence – but they treat it differently, either as the divine violence that ‘neither makes nor preserves law, but deposes it’ or as the last frontier to be annexed by the sovereign by means of the state of exception. The legal category of the emergency, then, extends or completes law’s empire. Agamben concludes that the state of exception is therefore ‘a fictio iuris par excellence which claims to maintain the law in its very suspension’, but produces instead a violence that has ‘shed every relation to law’. While this assertion remains unsupported by empirical reference or example – indeed, this is a general problem in Agamben’s writing – it nevertheless corresponds obliquely to the emergent phenomena referred to variously as global law, the transnational rule of law, and the fragmentation of international law. Agamben extends this argument along two countervailing paths – backwards to establish parallels with Roman imperialism, and forwards towards a theory of the relation between law and anomie. The first path locates a parallel (or, possibly, origin) of the contemporary state of exception in the Roman notion of iustitium. This was the suspension of the application of law in the Roman republic, following a declaration of a state of emergency (tumultus) by the Senate, to the actions of magistrates and even citizens; the word alters its meaning with the onset of the Roman Empire, ultimately referring to a period of institutionalized chaos following the death of the emperor, pending the inauguration of a successor. The later Roman iustitium, a declaration of anomie, explicitly signals the hiatus between one sovereign legal order and the next. Indeed, the iustitium becomes an effective instrument of the emperor, to be turned on or off at will. It is in his discussion of iustitium, a state in which certain laws simply do not apply, that Agamben reclaims the state of exception as a zone not of law but of anomie, not amenable to capture by law.

### L-public health care

#### Ho 9/28] public health care establishes bare life by detaching our circumstances from our lives

Sep 28, 2018 Christina Ho GIORGIO AGAMBEN AND THE TASK OF HEALTH LAW IN A BIOPOLITICAL AGE Health Law JOTWELL THE JOURNAL OF THINGS WE LIKE (LOTS)

By extension, we should, as I have written elsewhere, attend to risks and probabilities of harm that we have been told to simply accept out of acquiescence to the smooth economism of cost-benefit analysis shorn of attention to lives and health. One category of Homo Sacer in our world is thus the “statistical person.” As Heinzerling says, “she is no one’s sister, or daughter, or mother,” and her absorption of social costs is written off in quality-adjusted life years.

We should recognize the separation of bare life from the type of life that qualifies us for political participation, derived from the exhausted paradigm of substance and attribute. This separation lets Facebook and pollsters reduce us to our demographic attributes, and “disqualify” voters from political participation. This same broken subject-attribute schism is evident in the fracture of Medicaid eligibility into a dizzying array of categories while leaving us the paperwork burden of piecing ourselves back together.

### L-qualified privilege

#### A qualified privilege

Casey Murray and Kirsten B. Mitchell 6, 8-23-2006, Would a shield law matter?, The News Media &amp; The Law, Page 4., https://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-summer-2006/would-shield-law-matter, cw//az

Because the proposed federal shield law grants only a qualified privilege and includes national security and eyewitness exceptions, questions remain about how it would help journalists in specific cases. Journalists wanting to honor pledges of confidentiality to their sources or who wish to keep their notebooks out of court face a patchwork of reporter's privilege law in the nation's 94 federal courts. A U.S. Senate bill would change that by creating a qualified shield law for confidential sources and information in all federal courts, regardless of circuit. "The Free Flow of Information Act of 2006" (S. 2831) is sponsored by Sens. Richard Lugar (R-Ind.), Arlen Specter (R-Penn.), Christopher Dodd (D-Conn.) and Charles Schumer (D-N.Y.). A House bill with greater protections for journalists sponsored by Rep. Mike Pence (R-Ind.) has not yet had a hearing in the House Judiciary Committee. (To see copies of both bills, go to the Reporters Committee's Shields and Subpoenas Web site at www.rcfp.org/shields\_and\_subpoenas.html, click on "Update on federal shield law efforts" and follow the links.) The bill is needed, say many media lawyers and journalists. "Any attempt to legislate the scope of our First Amendment rights is unsettling business," said David Bodney of Steptoe & Johnson in Phoenix. "It places in sharp relief the conditionality of those rights and invites further tampering. Still, in light of recent court decisions constricting the reporter's privilege, the 'Free Flow of Information Act' is a necessary codification of some very important protections. It represents a substantial improvement over the status quo in most federal courts, though it falls short of the absolute guarantees contained in a number of state shield laws." To see what effect the shield law might have, The Reporters Committee for Freedom of the Press asked five media attorneys to look at some well-known privilege cases dating back to the three cases that comprised Branzburg v. Hayes and consider what effect -- if any -- Congress' proposed shield bill would have had on them. "While a federal shield law would be a significant boon to the functioning of a free press, there are some cases that might not have turned out differently even if such a law were to have been in effect," said Samuel Fifer of Sonnenschein Nath & Rosenthal in Chicago. "This is particularly true with respect to those cases where the underpinning for the request was an assertion that the information requested served a national security interest directly; as well, any case where the reporters' actions might have figured in the crimes being charged. Nevertheless, the law would fill a significant gap left between the condition where there is no protection at all, on one hand, and the strict interpretation of Branzburg, on the other, limiting only grand jury activity calculated to harass reporters." Fifer and the other four lawyers usually reached the same conclusion, albeit for different reasons. Some of the lawyers do not have much hope that the shield law -- even if it passes -- would make enough of a difference.

### L – refugee / immigration

#### In the determination of a path for legal immigration into the United States, the affirmative reifies the position of the non-immigrant student visa, used as a tool by the state while being denied access to the rights and protections offered to “official” immigrants

Kretsedemas, ‘12

(Philip, “A Different Kind of Immigration, a New Kind of Statelessness”, The Immigration Crucible, it’s a book, pp. 21, ZW)

This kind of statelessness does not always take the form of a stigma- tizing marginality. A Foucauldian understanding of positive power is perhaps the most appropriate way of describing this situation (wherein power is not simply used to punish and restrict but to entice and facili- tate).9 Unlike unauthorized migrants, **nonimmigrants are** not treated as an undesirable Other who “shouldn’t be here.” Instead they are **treated** more **like a useful Other who belongs to a** massive, depersonalized mi- grant **flow** that can be **expanded** or restricted **in response to** any variety of **contingencies**. It is not unusual for nonimmigrants to be **treated as de- sirable assets by one branch** of the immigration system **and** as potential **security threats by another.** The authority of the state is reflected not only in the way it regulates the nonimmigrant flow but also in the very definition of the term “nonim- migrant.” Through the strategic application of this term, it has become possible for the federal government to dramatically expand migrant flows in ways that do not register in the official tally of the immigrant popula- tion. **It** also becomes possible to **create** a class of **noncitizens who are**, in actuality, long-term **residents but** who are classified in such a way that they are **unable to access the same** legal rights and **protections** **extended to** **l**egal **p**ermanent **r**esidents (that is, the “official” immigrants). It is also rather telling that **there are no stat**istic**s** **that provide a definite count of the** number of individual **nonimmigrants** who enter the United States each year. The statistics that are included in all the figures and ta- bles for this chapter are based on nonimmigrants who entered the United States after filing I-94 forms. Estimates of the nonimmigrant flow quin- tuple when accounting for all temporary arrivals—which includes people who cross the U.S.-Mexico and U.S.-Canada border without filing I-94 forms.10 These are all soft estimates, however, because the unit of enu- meration for the nonimmigrant flow is not the individual migrant but the fractal, arrival event. Statistical descriptions of the nonimmigrant flow can include multiple entries by the same individual over the course of the year. The likelihood of an individual making a large number of multiple entries is much more likely for land-border entrants. This is why all of figures and tables in this chapter use I-94 estimates, because most of these arrival events involve individuals who entered the United States through the lengthier and more expensive process of international airline travel.11 Hence, I-94 es- timates of the nonimmigrant flow provide a closer approximation of the person-based enumeration standards that are used to assess the growth of the immigrant population. But, in a very real sense, **the migrant is not regarded** as **a person until** he becomes a **l**egal **p**ermanent **r**esident. Until such time, the migrant is enumerated within a flow of tourists, business visitors, and temporary workers (among others) who are valuable for a va- riety of economic and diplomatic reasons but are **not** as **intrinsically valu- able** to the state as the formally defined citizen-subject.

#### The Affirmatives expansion of visa applicants expands the sovereigns biopolitical control over populations

Salter 06 (Mark B, School of Poli Sci @ U of Ottawa, Apr.-June 2006, The Global Visa Regime and the Political Technologies of the International Self: Borders, Bodies, Biopolitics; Alternatives, Vol. 31, No. 2, p. 174-177, VB)

The visa is a necessary supplement to the passport system, which constitute one quarter of the global mobility regime: frontier for- malities, passports, visas, and les sans-papiers (the stateless and the refugee). James Hollifield and Rey Koslowski have offered grim prognoses on the health of the global mobility regime, when mea- sured by the traditional standards of regime theory.30 However, if we use James N. Rosenau's progressive model of instantiation of global governance (ideas, behaviors, and institutions),31 the global mobility regime seems to be more robust. I have argued elsewhere that there exists a broad consensus on the fundamental tenets of the global mobility regime, despite the lack of specific legal treaties.32 There is a normative consensus in the Universal Decla- ration of Human Rights: Every individual has a right to a national- ity, to leave their country, and to return to their country.33 There is also a broad behavioral consensus in relation to the documentary regime.34 There are also functional institutions, such as the Inter- national Civil Aviation Organization and International Air Trans- portation Agency, that set global standards for travel. Fundamental to this regime is the lack of a significant right of entry, and the con- comitant function of a state not only to regulate its population not only entry into it. Barry Hindess has argued that the rights of citi- zenship, with its attendant right of entry, can be viewed as a way of managing international population.35 Nevzat Soguk's discussion of the refugee regime as a management of that "surplus" inter- national population not encompassed by the nation-state norm is also central to this perspective.36 At its root, then, the international global mobility regime endows the citizen with a right to exit their "home," a right to return "home," and a right to become a refugee, at which point other sovereigns have an obligation to permit admission. The visa and passport systems are tickets that allow temporary and permanent membership in the community. In this structure, the fundamental right of the sovereign is to be able to exclude and define the limits of its population with little reference to other states or sovereigns. Mobility is structured in terms of entry, which is made obligatory by citizenship or refugee status, or entirely the discretionary by noncitizenship. I want to unpack this discretionary moment that is vital to the delimitation of the population of the state. From the French visé, meaning having been seen, the visa re- fers to "(1) the authorisation given by a consul to enter or to pass through a country, and (2) the stamp placed on the passport when the holder entered or left a foreign country."37 In modern usage, refers to the prescreening of travelers and represents a prima facie case for admission.38 The visa in no way guarantees actual admis- sion, which remains the prerogative of the sovereign and its agents at the border. The visa regime allows for a delocalization of the border function so that states may engage in sorting behavior away from the physical limit of the state.39 In some instances, visas may be applied for and received at the actual border of a state, but in such cases it is viewed mostly as a revenue generator rather than security function. Paralleling my earlier work in Rights of Passage, in which examined the governmental problems to which a passport was an administrative solution, it is important to detail the way in which the contemporary visa system has been built in response to (appar- ent and real) failures. As the British Passport Office states, "The British passport and visa system as it now is, has been built up as the result of practical experience gained during and since the war and is applied in a practical spirit, in the light of conditions which exist in the world today."40 This method of international political sociology, whereby the practices and beliefs of actors are taken into account in the consideration of public and international policies, pays close attention to the importance of experience. I agree with Koslowski that mobility is a better description of the field of social relations than the more restrictive migration which is why I talk about a global mobility regime and try to under- stand the system of tourist, business, and settler trajectories.41 Simon Dalby has suggested ways in which mobility has become a luxury of the rich and developed populations, while fixity has become an encumbrance of the poor.42 Bauman discusses a politics of exclusion, which draws substantial interest toward the notion of rejection: "The mark of excluded in an era of time/space com- pression is enforced immobility."43 Generally, states issue settle- ment and temporary visas, which are distinguished by the length of stay and degree of integration into the host community (often in terms of labor/ taxes). Thus settlers are allowed to work and must contribute to the tax system; visitors are not allowed to work and need not contribute to the tax system. Hollifield suggests the delocalization of border functions acts as a solution to the problem of liberal rights.44 To preclude asylum seekers from claiming rights inherent in the liberal community, decisions are made outside of the state where no such appeal can be claimed. We may see this dynamic in European discourse wherein refugees and economic migrants have been recast as asy- lum seekers and the attempts to locate camps at the margins of the European community.45 The United States, on the other hand, uses "expedited removal," a process by which a traveler with false travel documents is refused entry and barred entry for five years. Expedited removal is not subject to judicial or administrative appeal.46 The "voluntary departure" program at the US/Mexico border illustrates the power of the bureaucracy to condition mar- ginalized migrants to give up their rights: "Arrested aliens are per- mitted (indeed, encouraged) to waive their rights to a deportation hearing and return to Mexico without lengthy detention, expen- sive bonding, and trial."47 In each of these cases, rights of appli- cants are suspended at the border of the community as an excep- tional case of normal law. Preliminary empirical work suggests that there are a number of common requirements for visas: a fee for processing (a remote tax); return tickets (good faith illustration that the applicant's stay is temporary); statement of qualifications (to distinguish the degree of skilled labor); funds for stay; a health certificate (declarations that one is not an epidemiological risk: AIDS/HIV; yellow fever; tuberculosis; etc.); and affirmation of acceptable behavior (decla- rations that one is not a criminal/felon). Thus, the mobile subject is configured by the receiving state in terms of health, wealth, labor/leisure, and risk. The guarantee of the passport is its isomor- phic representation of a particular body to a set of governmental records. The visa application, which always tests and depends on the validity of the passport, attempts to render the position of the appli- cant in terms of state, educational, health, and police institutions. As Don Flynn has suggested, the product of the visa bureaucracy is rejection, and efficiency is determined by rates of rejection against some imagined norm of regularly occurring fraud.48 In 1920, we see responsibility for vetting travelers shift from sending states to receiving states at the Conference on Passports, Customs Formalities and Through Tickets, which represented the first modern institutionalization of the global mobility regime. In the first proceedings, preliminary visas (issued before arrival at the border) were free of charge, and only to be issued if the validity of the passport was in doubt; entry and exit visas were eliminated for nationals; and visas were to be issued with the same period of valid- ity as the passport itself.49 The League Technical Committee rec- ommends that, like passports, "except in special or exceptional cases, entrance visas should be abolished by all countries, either generally or under condition of reciprocity, each country retaining its full freedom of action in respect to the enforcement of its legis- lation with regard to police measures for foreigners, the regulation of the labour supply, etc."50 Public health threats are also men- tioned as a key concern for states at this meeting, and states agree to a standard inoculation document. Despite the lack of a formal visa (or passport) conference, treaty, or institution, these norms of necessity, reciprocity, and cooperation typify the modern visa sys- tem. Eric Neumayer outlines some of the nascent patterns in the global visa regime in the first empirical analysis of visa require- ments. Travelers from OECD countries possess far fewer restric- tions on their travel than non-OECD travelers, though there is a general trend toward reciprocity in the system: "The average OEC citizen faces visa restrictions in travel to approximately 93 foreign countries, the average non-OECD citizen needs a visa to travel to approximately 156 countries."51 As in the interwar period, the management of international populations is conditioned presently by nationality/statelessness, labor/leisure, health/disease, and normalcy/ risk. The loose struc- ture of the global visa regime represents an important aspect of this international control of bodies or control of international bodies.

Visa eligibility necessitates biopolitics—they force subjects to participate in self-policing

Slater ‘6 (Mark B, School of Poli Sci @ U of Ottawa, The Global Visa Regime and the Political Technologies of the International Self: Borders, Bodies, Biopolitics; Alternatives 31 P 180-3//shree, gendered language under erasure)

This part of the mechanism for the creation of the modern subject who knows himself in relation to the confessionary state is a function of “unconditional obedience, uninterrupted examination, and exhaustive confession” and “appears as an indispensable component of the government of ~~men~~ by each other.”61 Though not traced by Foucault himself, the confessionary complex (obedience, examination, confession) provides a crucial link between the “political economy of the body”62 and the biopolitical governmentality of international management of populations. It is not simply that the international population is managed, but that we come to manage ourselves through the confessionary complex. Foucault describes the importance of “the way by which, through some political technology of individuals, we have been led to recognize ourselves as a society, as a part of a social entity, as a part of nation or of a state.”63 Balibar relates the governmental function of the border as the limit of community to the process of identity-formation: “The normality of the national citizen-subject . . . is also internalized by individuals, as it becomes a condition, an essential reference of their collective, communal sense, and hence of their identity. . . . As a consequence, borders cease to be purely external realities.”64 The confessionary complex is a structure framed by law and instantiated in various practices at the border (and in the faces of agents of the state). This is doubly true in the case of terrorism, which is not viscerally visible. The exceptional application of law in this instance is also revealing of the weakness of Agamben in explaining the moment of decision. In *US vs. Montoya de Hernandez,* the Supreme Court held that for offense for which there will be “no external signs…inspectors will rarely possess probably cause to arrest or search, yet governmental interests in stopping smuggling at the border are high indeed.”65 As with general searches at the border, the standard of probable cause is held in abeyance at the body/border. Terror is similar to alimentary canal smuggling (swallowing balloons of cocaine in this instance), in that the signs of the bad intent are secondary: nervousness, discomfort, anxiety. This confessionary complex is also written on the body in terms of embodied anxiety and the signs of untruth: “a . . . mechanism of shame that makes one blush at expressing any bad thought.”66 Thus, reasonable suspicion must be visible not only in the body but in the mind of a border guard. The examination at the border is a corporeal documentary affair. As Gillian Fuller suggests, “States don’t deal with strange peculiarities of networked and virtualised individuals, they prefer to keep the subject within the more knowable constraints of identity.”67 Thus, at the border the document is compared to the body which is compared to the story. If the isomorphism between this body-dossier-narrative tests the guard’s credibility, exclusion looms. This lighter “reasonable suspicion” standard is applied to other travelers at the airport. In *US v. Sokolaw,* the court argued that adherence to a law enforcement profile, which does not meet the standard of probable cause, may meet the standard of reasonable suspicion. The case revolved around a drug smuggler detained due to a number of suspicious activities that met a particular profile. The court upheld that meeting an established profile would lead to reasonable suspicion and thus grant law enforcement the authority to stop the traveler.68 Consequently the test of reasonable suspicion, tied with the exceptional state of the border, leads to the rule by decision. However the moment of decision must be disaggregated. What are these profiles? How are they managed? How are decisions made? Since Agamben neglects this moment of decision, focusing as he does on the capacity for decision, we must turn to anthropologists or sociologists of the border. This leads to consideration of the agents of discretion. Timothy Mitchell, Heyman, and Mountz have discussed the ways that governmental bureaucracies enact specific roles within an administrative structure, so that we may not infer practice from policy documents alone.69 Gilboy charts how immigration inspectors informally share experiences that lead to the supplementing of official risk profiles with national stereotypes.70 Heyman describes the “thought-work” of immigration officers, consisting of developing conceptual schema through which to apply abstract rules to specific cases.71 In his evaluation of the thought-work of officers on the US/Mexico border, Heyman develops a broad model, with some specific implications for the policing of populations. In addition to a legal superstructure, he points to “covert classifications” used by officers to structure their discretionary decisions.72 The covert classification is made according to perceived “moral worth,” “national origins stereotypes” similar to those elaborated by Gilboy, and “apparent social class.”73 These ethnographies of the bureaucracy suggest there is a slippage between risk profiles and stereotypes. Didier Bigo suggests that within the European context the emergence of a cohort of migration managers has shifted policing “from the control of and hunt for individual criminals . . . to the surveillance of so-called risk groups, defined by using criminology and statistics.”74 The reliance on technology to cope with the rapidly increasing number and variety of risk profiles should be viewed with skepticism: “Notwithstanding the increasing appeal to sophisticated computer-based models within geodemographics, the systems persist in relying on stereotypical images, and on small-scale narratives of dispositions and their intended consequences.”75 The credibility of the entrant’s story becomes crucial to the decision to admit or reject, a decision that is always made on the basis of insufficient evidence and mistrust of the speaker, and complicated by an incomplete documentary trail. It is clear that the right to be presumed innocent or to have a fair trial must be held in abeyance at the border under the twin rubrics of efficiency and security. These social scripts are reached through the auto-confession of the body, through the presumption in training that the examined body will confess even if the soul is reluctant. This auto-confession happens through the interpretation of body, face, teeth, clothes, posture, and language skills as evidence of class, social group, ethnicity, gender, sexuality. It also is assumed to happen through the examination process. Psychologist Paul Ekman trains law enforcement officials and others in his theory of “micro-expressions,” by which interrogators can learn the self-confessing secrets of facial expressions that last one twenty-fifth of a second.76 Training for Canada Customs agents in the past has focused on this kind of visual acuity, described by one agent as training in “one of these things is not like the other.” Other technologies on offer to the security apparatus of the state include heat cameras that detect blush responses around the eyes during deception and motion sensors that detect awkward or abnormal movement. Thus, a corporeal lens makes visible to us the ways in which the body comes to testify, along with our documents, about our intentions, character, utility, moral quality, and social and economic origins. If we do not confess in a way that echoes with the story that the examiner has told him/herself about us, then we are suspect. The confessionary dynamic is illustrated by the ubiquitous “no joking” rule now posted at most airports. In the words of the Canadian Air Transport Security Authority, “you should never joke or make ‘small talk’ about bombs, firearms or other weapons while going through pre-board screening.”77 Small talk and jokes are dangerous because they express untruths. But border examiners rely on the anxiety of the passenger and themselves to affect obedience, examination, and confession. Like doctors, judges, and teachers, we must all tell the truth to agents of the state: not just the truth from a certain point of view, but the whole, entire, self-policing truth. These regulations against joking and small talk train travelers to self-police their speech and behavior to present a low-risk profile toward the authority figure. The ritual of obedience, confession, and examination thus binds the mobile subject to the sovereign, but does not accord him/her rights.

#### \*\*\*Note while prepping: this also makes a human rights link

#### Debating about legal mechanisms for refugee protection reproduces the constitutive categories that make bare life a permanent feature of society—this is a failed project in the era of a general state of exception

Vardoulakis, 18—deputy chair of the Philosophy Research Initiative, Western Sydney University (Dimitris, “Intermezzo 1: Sovereignty and the Refugee,” *Stasis Before the State: Nine Theses on Agonistic Democracy* pg 47-53, dml) [“sans-papiers”=literally “without papers;” also refers to a French activist group of the same name who intentionally reside in France without citizenship and protest French deportation efforts]

To nuance further how justification operates, that is, how sovereignty is exercised, I will now turn to the figure of the refugee. To examine the exercise of sovereignty and how it leads to the ruse of sovereignty, we need to examine a particular instance where violence is justified. There is a significant tradition in political philosophy that regards the refugee—as well as related figures—as disclosing insights into sovereignty. Hannah Arendt is responsible for the first powerful exposition of the refugee’s role in disclosing the workings of sovereign power.1 In the famous ninth chapter of The Origins of Totalitarianism, Arendt points out that stateless people expose a conflation of the notions of the **citizen** and the bearer of **human rights**. Arendt demonstrates that the entire European state organization up to World War II had been premised on this conflation.2 As a result, the stateless affirm the irreconcilability between nationality and human rights. Consequently, the stateless—whom Arendt also refers to as the “nakedness of being human,” the “alien,” and the “new barbarian”—pose a threat to established sovereign power. The reason is that they **expose the inability** of the sovereign state to **provide for the refugee** the “**right to have rights**,” which consists in that one’s actions and opinions matter or that one is included in the polity. More broadly, the realm of rights **cannot be contained** within the borders of the sovereign state.3 Thus Arendt shows that the stateless pose a threat to particular national formations and challenge the limits of sovereign power as such. Differently put, the stateless people, by virtue of their positioning outside national sovereignty, raise the possibility of a space “outside” sovereignty. This makes stateless figures such as the refugee hugely important for interrogating the ruse of sovereignty.

Arendt’s insight entails an intimate connection between the refugee and sovereign power because the refugee poses the question whether there is something outside sovereignty. Let me provide some key examples without offering here any systematic analysis, as I just want to indicate the extent to which this is a persistent issue in political theory: The question whether there is something outside sovereignty is developed by philosophers such as Giorgio Agamben, who translates in Homo Sacer Arendt’s notion of the “nakedness of being” to the figure of bare life. This figure signifies for Agamben the simultaneous inclusion and exclusion from the law, which, he argues, is constitutive of sovereignty. Arendt’s insight also resonates with the work of political theorists such as Wendy Brown, who argues for the importance of walls in conceptualizing contemporary articulations of sovereignty’s power. According to Brown, the erection of walls is a response on the part of sovereignty to the “ungovernmentality” that characterizes economic immigrants, refugees, and so on. Just like Arendt, Brown discerns a profound threat that these figures pose to sovereign power.4 Finally, Jacques Rancière exemplifies a post-­Marxist perspective of the nexus between refugees and power when he stresses that the immigrant is the new proletariat, in the sense that the sans-papiers indicate the “part that has no part” and is shunned by sovereignty in a genuinely violent gesture.5 Many other examples could have been added here, such as Balibar’s thinking about the “democratization of borders” or Habermas’s cosmopolitanism. Nonetheless, the issue is consistently the same, namely, whether there are figures such as the refugee who point to an “outside” of sovereignty—irrespective of the divergent analyses provided by the aforementioned thinkers.

Given the importance of the figure of the refugee for understanding the problematic we are concerned with here, I will show how the three justifications of violence operate to produce the ruse of sovereignty by turning to a concrete political example. Specifically, I analyze the Australian state’s policy on refugees arriving by boat from Indonesia. The policy is encapsulated in Prime Minister John Howard’s statement on October 28, 2001: “We will decide who comes to this country and the circumstances in which they come.”6 Despite diferent governments and tactical shifts, this position has remained essentially the same up to the time of this book’s writing.7 The importance of this policy is highlighted by the fact that it is perceived as both the most extreme and the most “successful” policy of its kind. Thus, the Australian government policy on refugees has been a point of deliberation in both Southern European countries and in the United Kingdom.8

I will show that the position expressed by this statement contains all three modalities of the justification of violence against the refugees. To do so, I will concentrate here only on one, albeit significant, component of the implementation of the refugee policy, the so-­called PNG Solution, which stipulates that asylum seekers arriving in Australia by boat must have their refugee status assessed offshore, in a third country.9 Specifically, according to an agreement between the Australian and the Papua New Guinea governments announced on July 19, 2013, all refugees arriving by boat to Australia will have their claims processed in PNG, and if they are found to be refugees, they are to be settled in PNG as well.10 The public justification for the PNG Solution was three pronged.11 I will sketch here the three approaches to show how each represents one modality of the justification of violence. First, there were the evil “people smugglers.” The PNG Solution was touted as a way to battle that “evil,” which was responsible for numerous deaths at sea. The identification of the evil against whom violence is justified mobilizes the logic of the ancient justification of violence, since the “people smugglers” occupy the equivalent position of the pagan as described by Augustine: They are the obstacle to be removed so as to attain a just end. Second, the modern justification of violence is registered as the safeguarding of the Australian borders that now become effectively impenetrable: Even if refugees cross the Australian border, they will still be sent to a third sovereign state both for the processing of their asylum claim and for settlement. This conforms to the modern justification of violence, according to which the use of means is justified for the preservation of the state by protecting the state’s borders. Third, the biopolitical register is equally prominent. One of the main justifications of the severe policy was to function as a deterrent that saves lives. It is for the preservation of refugees’ lives, who were in danger of drowning on the way to Australia, that the Australian government incarcerates asylum seekers in PNG while refusing settlement in Australia regardless of the outcome of their asylum application. As the biopolitical logic would have it, the protection of life justifies the violence of regulation and control. There is, then, one position, and it is supported by three distinct justifications that correspond to the three distinct forms of instrumentality characterizing sovereign power. Each of these justifications may be weak in itself, and I will show shortly that specific arguments can be employed against each of them. But, critically, these three distinct justifications are interchangeable. In the public debate there is often a rapid movement between the diferent justifications. Three inferences can be drawn. First, the justifications are distinct but also part of the same logic. This is the sovereign logic of rationalized instrumentalism. Because all justifications of violence conform to the same logic, far from being mutually exclusive, the three modalities of justification are in fact mutually supportive. This is what I call the cosupponibility of the justifications of violence.

Second, the effect of the slippage between the diferent justifications as well as their cosupponibility is to present the sovereign position about the justification of violence as self-­evident, inviolable, and reasonable—or, ultimately, absolute. In other words, the absoluteness of sovereignty has nothing to do with the power of sovereignty as it is exercised through its institutions—the police, the army, the judiciary, and so on. Rather, the absoluteness of sovereignty is an expression of the rhetorical and logical mechanisms whereby sovereignty uses the justification of violence to dominate public debate and to persuade the citizens. The exercise of sovereignty is the effect of an interpretative process. Differently put, this entails that the justification of violence is more primary than the legitimate forms assumed by constituted power. Without an effective justification, any government loses its mandate to govern, even though its decisions and political actions, its policies, and its legislative agenda may perfectly conform to the law of the state.

### L-rights

#### [CCLS 2] on case Rights are arbitrarily suspended—courts prove.

. “Critical Perspectives on Rights”. Conference On Critical Legal Studies, NO DATE. RC

As Mark Tushnet puts it, "nothing whatever follows from a court’s adoption of some legal rule (except insofar as the very fact that a court has adopted the rule has some social impact the ideological dimension with which the critique of rights is concerned.) Progressive **legal victories occur**, according to the indeterminacy thesis, **because of the surrounding social circumstances.**" At least as they figure in contemporary American legal discourse, **rights cannot provide answer to real cases because they are cast at high levels of abstraction without clear application** to particular problems and because different rights frequently conflict or present gaps. Often, **judges try to resolve conflicts by attempting to "balance" individual rights against relevant "social interests"** or by assessing the relative weight of two or more conflicting rights. These methods seem more revealing of individual judicial sensibilities and political pressures than specific reach of specific rights. Moreover, central **rights are** themselves **internally incoherent**. The right to freedom of contract, for example, combines freedom with control: people should be free to bind themselves to agreements: the basic idea is private ordering. But **the law’s reliance on courts to enforce contracts reveals the doctrine’s grant of power to the government to decide which agreements to enforce**, and indeed what even counts as an agreement. Even more basically, freedom of contract implies that the freedom of both sides to the contract can be enhanced and protected, and yet no one stands able to know what actually was in the minds of parties on both sides. Resort to notions of objective intent and formalities replace commitment to the freedom of the actual parties.

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As Mark Tushnet puts it, "nothing whatever follows from a court’s adoption of some legal rule (except insofar as the very fact that a court has adopted the rule has some social impact the ideological dimension with which the critique of rights is concerned.) Progressive **legal victories occur**, according to the indeterminacy thesis, **because of the surrounding social circumstances.**" At least as they figure in contemporary American legal discourse, **rights cannot provide answer to real cases because they are cast at high levels of abstraction without clear application** to particular problems and because different rights frequently conflict or present gaps. Often, **judges try to resolve conflicts by attempting to "balance" individual rights against relevant "social interests"** or by assessing the relative weight of two or more conflicting rights. These methods seem more revealing of individual judicial sensibilities and political pressures than specific reach of specific rights. Moreover, central **rights are** themselves **internally incoherent**. The right to freedom of contract, for example, combines freedom with control: people should be free to bind themselves to agreements: the basic idea is private ordering. But **the law’s reliance on courts to enforce contracts reveals the doctrine’s grant of power to the government to decide which agreements to enforce**, and indeed what even counts as an agreement. Even more basically, freedom of contract implies that the freedom of both sides to the contract can be enhanced and protected, and yet no one stands able to know what actually was in the minds of parties on both sides. Resort to notions of objective intent and formalities replace commitment to the freedom of the actual parties.

### L-securitization

#### Moretti ‘3] Securitization breeds war as a permanent condition and banishes us to bare life(Ben, Der Standard, 2/3, [http://www.mail-archive.com/nettime@bbs.thing.net/msg00101.html](http://www.mail-archive.com/nettime%40bbs.thing.net/msg00101.html)) cw//az recutIt is the suspension of such procedures that, according to Giorgio Agamben, characterizes the state of emergency, in which all sovereign power is assumed by the police. It surely is no coincidence that the new interventions are often likened to police operations, quite as if they were a matter of the superpower's official duties. In a paradoxical way, this state of emergency seems to establish itself as a permanent condition in which the difference between "war" and "peace" becomes obsolete because both terms are dissolved in the technological spectacle of "security" - a kind of cold peace that rests on the permanent possibility of war. Consequently, the appeal speaks of "peace" only in conjunction with "security", while arguing in favour of war. Already now many speak of "the war" against Iraq, not of "a possible" war. But "the war" has always already begun, it has its place in peace. As Brecht writes, "Their war kills what their peace has left". The appeal of the "new Europe" shows that the argument for peace as security is an implicit argument for war, and postulates war as an instrument of peace. This becomes possible when in the state of emergency the moral criterion of justice is dissolved in the technological criterion of "precision" (strategists have already pointed at the increased precision of the weapons systems to be used against Iraq), and the democratic criterion of an open debate is substituted by the tactical criterion of speed and trick. In this way, the justification of war is annulled by being placed within the police / military logic of the state of emergency, where and can be deployed smoothly and efficiently, much like an artillery gun or a aircraft carrier. The military notion of unity is placed above the democratic notion of difference. In all this, the present can only be understood as a result of past wars (more precisely: victories), and violence becomes more natural with each further war: more difficult to identify and name, more difficult to distinguish from what happens anyway, more problematic to ward off. With every new war, it becomes more difficult to argue in favour of peace without being viewed as insane or irresponsible. As a result, aside from killing of people and destroying resources, aside from the suffering generated, wars such as the one which is now being prepared turn the intellectual landscape into a desert. Their unnamed casualties include the intellectual foundations which would make it possible to think of politics as something different from security. Perhaps, after "Desert Shield" and "Desert Storm", it would be appropriate to name the coming invasion "Desert Peace". (How could we not think that a system that can no longer function at all except on the basis of emergency would not also be interested in preserving such an emergency at any price?) This is that case also and above all because naked life, which was the hidden foundation of sovereignty, has meanwhile become the dominant form of life everywhere. Life — in its state of exception that has now become the norm — is the naked life that in every context separates the forms of life from their cohering into a form-of-life. The Marxian scission between man and citizen is thus superceded by the division between naked life (ultimate and opaque bearer of sovereignty) and the multifarious forms of life abstractly recodified as social-juridical identities (the voter, the worker, the journalist, the student, but also the HIV-positive, the transvestite, the porno star, the elderly, the parent, the woman) that all rest on naked life. The state of exception is the reduction of humanity to the homo sacer, the life that can be killed but not sacrificed. The person stripped of citizenship, held at undisclosed locations, possibly subject to torture, unable to make any claim whatever to human rights (in as much as those rights are predicated on the power of a nation-state to recognize them) can be killed or disappeared but nothing more. This "recognition" of human rights, the power of the State to see in us a humanity deserving of such rights, is failing under a system where proof of our guilt has become always already visible. Identity papers are no longer visible evidence of rights inasmuch as a piece of clothing, a gesture, an utterance is enough to supercede our citizenship and banish us to naked life.

### L-Shield Laws

#### [Fargo 06] Precedent proves - an absolute right isn’t sufficient to strip the state’s power to create an exception; the aff literally can never happen since states can’t guarantee a right; prefer on specificity

Fargo, A. L. (2006). Analyzing Federal Shield Law Proposals: What Congress Can Learn from the States. Communication Law and Policy, 11(1), 35–82. doi:10.1207/s15326926clp1101\_2 cw//az

An absolute privilege would bring greater consistency to the law but is likely to be politically unpopular. In fact, the Bush administration has already expressed opposition to a shield law, although it is not clear whether that opposition came before or after Senator Lugar and Representative Pence amended their bills.229 Courts in states with shield laws have not been shy about finding “absolute” privileges to be less than absolute when they conflict with constitutional rights such as those protected by the Sixth Amendment,230 so the utility of an absolute privilege is questionable. Even without the Lugar/Pence amendment to allow a reporter to be questioned when a national security issue is at stake, it seems unlikely that any court would allow a reporter to continue resisting a subpoena in the face of a legitimate national security threat.

### L-terror

#### DIKEN AND LAUSTEN ’02 aff’s focus on protecting society through the use of the state justifies endless intervention and creating the state of exception in the name of preserving society.

Diken and Laustsen 02 -- Bülent Diken (Lancaster University) and Carsten Bagge Laustsen (University of Copenhagen). “Zones of Indistinction: Security, Terror, and Bare Life”. Sage Publications, 2002, Vol. 5, no. 3, 290-30. Cw//az

Forms of life and forms of security are interrelated; **security creates society as much as society creates security** (see Dillon & Reid, 2001). **Yet, in contemporary society**, this relationship is overlooked while **it is** firmly **held** that **it is a “moral duty” to** wage **war against terror**, whose definition, however, remains obscenely indistinct (e.g., Bin Laden: created by CIA and wanted by FBI). The threat against civic culture is, therefore, janus faced: Terrorism **and the** (trans)**politics of security** must be thought of together. Both operate in a smooth space, both speak the language of deterrence (“if you do not . . . ”), and both are inherently opposed to the law. **Security can easily turn into a perversion**: terror: “The thought of security bears within it an essential risk. **A state which has security as its sole task and source of legitimacy is a fragile organism; it can always be provoked by terrorism to become itself terroristic”** (Agamben, 2001, p. 45). **When the police and politics merge, and when the difference between terror and state disappears in obscenity, they** start to **justify each other, terrorizing the political itself** by transforming it into a hostage: **the state of emergency.** Significantly in this context, the **discourse of security conceptualizes the “networks of terror” in timeless frames devoid of casual explanations and seeks an “infinite” justice fit for the smooth network space. Postpolitical governance** attempts to control disorder through risk management. In other words, it **does not seek political solutions to political problems, and in the absence of a**n original **political strategy** . . . **the state becomes desocialized.** It no longer works on the basis of political will, but instead on the basis of intimidation, dissuasion, simulation, provocation or spectacular solicitation. This is the transpolitical reality behind all official policies: a cynical bias towards the elimination of the social. (Baudrillard, 1993, p. 79) When blackmail, intended as a preemptive form of action (where is the next war going to take place to prevent war?), becomes the law, “society” implodes into the state, and thus both ordinary and political violence turn into terror. **The camp is symptomatic of the fields of both security and terror.**

The 1AC reproduces terror discursively, which justifies securitizing the state of exception.

Agamben ‘1 (Giorgio, professor at the University of Verona, *On Security and Terror*, 9/20 //shree)

Today we face extreme and most dangerous developments in the thought of security. In the course of a gradual neutralization of politics and the progressive surrender of traditional tasks of the state, security becomes the basic principle of state activity. What used to be one among several definitive measures of public administration until the first half of the twentieth century, now becomes the sole criterium of political legitimation. The thought of security bears within it an essential risk. A state which has security as its sole task and source of legitimacy is a fragile organism; it can always be provoked by terrorism to become itself terroristic. We should not forget that the first major organization of terror after the war, the Organisation de l©ˆArmée Secrète (OAS), was established by a French general, who thought of himself as a patriot, convinced that terrorism was the only answer to the guerrilla phenomenon in Algeria and Indochina. When politics, the way it was understood by theorists of the "science of police" in the eighteenth century, reduces itself to police, the difference between state and terrorism threatens to disappears. In the end security and terrorism may form a single deadly system, in which they justify and legitimate each others’ actions.

### L-Warming

**Their fear-driven appeal is carefully crafted propaganda designed to resonate affectively among the populace, which greases the wheels of the homicidal project of capitalism and sacrifices value to the cruel optimism of security—the alt is sufficient to solve**

**Scranton 15.** Jeremy Scranton, acclaimed journalist, activist and author, PhD in English from Princeton, currently teaching at Notre Dame, New York Times contributor, Iraq War veteran, Learning To Die in the Anthropocene: Reflections on the End of Civilization, City Lights Books, 2015, online cw//az recut

“When it comes to global warming, differing visions of the human future are already hardening into conflict. Coal and oil companies and their government proxies have made their willingness to use military force to defend themselves and advance their interests spectacularly obvious. The labor wars of the 19th and 20th centuries show this clearly. The brutal decades-long war waged by the Nigerian government against its own people, undertaken with the outright support of Shell and Chevron, is another example, well documented in books such as A Year and a Day and Genocide in Nigeria by Ken Saro-Wiwa, who was executed for his activism.

**You’ve heard the call: We have to do something**. **We need to fight**. We need to **identify the enemy and go after them**. Some respond, march, and chant. Some look away, deny what’s happening, and search out escape routes into imaginary tomorrows: a life off the grid, space colonies, immortality in paradise, explicit denial, or consumer satiety in a wireless, robot-staffed, 3D-printed techno-utopia. Meanwhile, the rich take shelter in their fortresses, trusting to their air conditioning, private schools, and well-paid guards. Fight. Flight. Flight. Fight. **The threat of death activates our deepest animal drives.**

The aggression and fear that arise in response to perceived threats are some of the most intense emotions we ever experience. For human society to function at all, these instinctive reactions have to be **carefully managed and channeled**. **Outbreaks of panic and hate are dangerous, but lower levels of aggression and fear help keep a population controllable and productive**. Restrained aggression keeps people suspicious of collective action and working hard to overcome their fellows, while constant, generalized anxiety keeps people servile, unwilling to take risks, and yearning for comfort from whatever quarter, whether the dulling sameness of herd thought or the dumb security of consumer goods.

**Since at least September 11, 2001, people in the United States have been subject to an unprecedented terror campaign**—not from Al Qaeda, but from the United States government. National domestic policy **transformed “security” into constant fear**, threatening its citizens at every turn: first with alarms of explosions and anthrax, then with prison, austerity-produced structural unemployment, and harassment, and finally with **torture, SWAT tanks, snipers, drones, and total surveillance. Owing to the racial logic of US politics, in which white/black is the definitive semiotic distinction structuring American society, most of the government’s violence against its own citizens is directed against those with darker skin, but in subtler ways its terror campaign targets every single person who flies coach, watches the news, or uses the Internet**.

**Fear comes to us every day in our encounters** with increasingly militarized police and our humiliating interactions at metal detectors and ” “body-scan machines. Fear comes to us in the absence of job security, in our want of appeal when confronted by institutionalized inequality, and in our mistrust of corrupt institutions. Fear comes to us in widespread surveillance, in the form of a homeless woman or a hospitalized friend without adequate financial support, and in the constant nagging worry that we’re not working hard enough, not happy enough, never going to “make it.” **Fear comes to us in weather porn, unpredictable shifts in formerly stable climate dynamics, and massive storms.**

More than in any other way, fear comes to us in images and messages, as social media vibrations, products of cultural technologies that we have interpolated into our lives. Going about our daily business, we receive constant messages of apprehension and danger, ubiquitous warnings, insistent needling jabs to the deep lizard brain. Somebody died. Something blew up. Something might blow up. Somebody attacked somebody. **Somebody killed somebody. Guns. Crime. Immigrants. Terrorists. Arabs. Mexicans. White supremacists. Killer cops. Demonic thugs. Rape. ” “Murder. Global warming. Ebola. ISIS. Death. Death. Death.**

Sociologist Tom Pyszczynski writes: “People will do almost anything to avoid being afraid. When, despite the best efforts, [fear and anxiety] do break through, people go to incredible lengths to shut them down.”88 Sometimes when these vibrations shake us, we discharge them by passing them on, retweeting the story, reposting the video, hoping that others will validate our reaction, thus assuaging our fear by assuring ourselves that collective attention has been alerted to the threat. Other times we react with aversion, working to dampen the vibrations by searching out positive reinforcements, pleasurable images and videos, something funny, something—anything—to ease the fear. We buy something. We eat food. We pop a pill. We fuck.

**In either passing on the vibration or reacting against it, we let the fear short circuit our own autonomous desires, diverting us from our goals and loading ever more emotional static into our daily cognitive processing**. We become increasingly distracted from our ambitions and increasingly susceptible to such distraction. And whether we retransmit or react, we reinforce channels of thought, perception, behavior, and emotion that, over time, come to shape our habits and our personality. **As we train ourselves to resonate fear wand aggression, we reinforce patterns of thought and feeling that shape a society that breeds the same.**

Fight-or-flight is compelling because it serves essential evolutionary purposes. It increases alertness and adrenaline flow, and generally works to keep the human animal alive. **As we proceed into the Anthropocene, though, capitalism’s cultural machinery for balancing fear and aggression against desire and pleasure is grinding and sputtering sparks**. What cultural theorist Lauren **Berlant has identified as the “cruel optimism” of a system sustained by hopes that can never be fulfilled mixes dangerously with an atmosphere of beleaguered anxiety, increasing frustration with working-class and middle-class economic stagnation, and a pervasive sadistic voyeurism that grows by what it feeds on**.89 **While America’s fraying social infrastructure holds together, our fear and aggression can be channeled into labor, consumption, and economic competition, with professional sports, hyperviolent television, and occasional protests to let off steam. Once the social fabric begins to tear, though, we risk unleashing not only rioting, rebellion, and civil war, but homicidal politics the likes of which should make our blood run cold**.”

“Consider: Once among the most modern, Westernized nations in the Middle East, with a robust, highly educated middle class, Iraq has been blighted for decades by imperialist aggression, criminal gangs, interference in its domestic politics, economic liberalization, and sectarian feuding. Today it is being torn apart between a corrupt petrocracy, a breakaway Kurdish enclave, and a self-declared Islamic fundamentalist caliphate, while a civil war in neighboring Syria spills across its borders. These conflicts have likely been caused in part and exacerbated by the worst drought the Middle East has seen in modern history. Since 2006, Syria has been suffering ” “crippling water shortages that have, in some areas, caused 75 percent crop failure and wiped out 85 percent of livestock, left more than 800,000 Syrians without a livelihood, and sent hundreds of thousands of impoverished young men streaming into Syria’s cities.90 **This drought is part of long-term warming and drying trends that are transforming the Middle East**.91 Not just water but oil, too, is elemental to these conflicts. Iraq sits on the fifth-largest proven oil reserves in the world. Meanwhile, the Islamic State has been able to survive only because it has taken control of most of Syria’s oil and gas production. **We tend to think of climate change and violent religious fundamentalism as isolated phenomena, but as Retired Navy Rear Admiral David Titley argues, “you can draw a very credible climate connection to this disaster we call ISIS right now**.”92

A few hundred miles away, Israeli soldiers spent the summer of 2014 killing Palestinians in Gaza. Israel has also been suffering drought, while Gaza has been in the midst of a critical water crisis exacerbated by Israel’s military ” “aggression. The International Committee for the Red Cross reported that during summer 2014, Israeli bombers targeted Palestinian wells and water infrastructure.93 It’s not water and oil this time, but water and gas: some observers argue that Israel’s “Operation Protective Edge” was intended to establish firmer control over the massive Leviathan natural gas field, discovered off the coast of Gaza in the eastern Mediterranean in 2010.94

Meanwhile, thousands of miles to the north, Russian-backed separatists fought fascist paramilitary forces defending the elected government of Ukraine, which was also suffering drought.95 Russia’s role as an oil and gas exporter in the region and the natural gas pipelines running through Ukraine from Russia to Europe cannot but be key issues in the conflict. Elsewhere, droughts in 2014 sent refugees from Guatemala and Honduras north to the US border, devastated crops in California and Australia, and threatened millions of lives in Eritrea, Somalia, Ethiopia, Sudan, Uganda, Afghanistan, India, Morocco, Pakistan, and parts of China. Across the world, massive protests and riots have swept Bosnia and Herzegovina, Venezuela, Brazil, Turkey, Egypt, and Thailand, while conflicts rage on in Colombia, Libya, the Central African Republic, Sudan, Nigeria, Yemen, and India. And **while the world burns, the United States has been playing chicken with Russia over control of Eastern Europe and the melting Arctic, and with China over control of Southeast Asia and the South China Sea, threatening global war on a scale not seen in seventy years**. **This is our present and future: droughts and hurricanes, refugees and border guards, war for oil, water, gas, and food.**

We experience this world of strife today in one of two modes: either it is our environment, and we are in it, or it comes to us as images, social excitation, retransmitted fear. People are fighting and dying in ruined cities all over the planet. Neighbors are killing each other. Old women are bleeding to death in bombed rubble and children are being murdered, probably as you read this sentence. To live in that world is horrific. **Constant danger strains every nerve. The only things that matter are survival, killing the enemy, ” “reputation, and having a safe place to sleep. The experience of being human narrows to a cutting edge**.

I remember living in that world many years ago in occupied Baghdad. Today that world seems impossibly distant, yet every day it presses in on me in a never-ending stream of words, images, appeals, and reports. I see videos. I read stories. I see pictures of this or that suffering or injustice and I am moved. To act, perhaps, but more accurately to emote. To react. To feel. To perform. We do not usually ask where these feelings come from or who they serve, but we all know that the cultural technologies transmitting these affective vibrations are not neutral: news outlets shape information to fit their owners’ prejudices, while Facebook, Twitter, and Google shape our perceptions through hidden algorithms. The specialization and demographic targeting of contemporary media tend to narrow the channels of perception to the point that we receive only those images and vibrations which already harmonize with our own prejudices, our own pre-existing desires, thus intensifying our particular emotional reac” “tions along an increasingly limited band, impelling us to discharge our emotions within the same field of ready listeners, for which we are rewarded with “Likes” and “Favorites.” Our consciousness is shaped daily through feedback systems where some post or headline provokes a feeling and we discharge that feeling by provoking it in others. Social media like Facebook crowdsource catharsis, creating self-contained wave pools of aggression and fear, pity and terror, stagnant flows that go nowhere and do nothing.

Pictures of children killed by bombs or police, or pictures of the devastation left in the wake of a tropical storm may move me to sadness and horror. Retransmitting such images will pass along that sadness and horror. My act of transmission will mark me as someone who has feelings about these things and who condemns them. I can rationalize my retransmission by saying that I am “raising awareness” or trying to influence public policy: I want my fellow citizens to be as horrified as I am, so they’ll think like I do, or so they’ll vote for a representative who works to prevent such horrors from happening, or maybe so that if ” “enough of us all think the same way and feel the same way, the organs and institutions of power will be forced to hear us and align themselves along our vibrations, the way a honeybee colony will pick a site for a new hive through the dance of its advance guard scouts.

These are perfectly reasonable human assumptions, because that is how physical human collectives function. Anyone who has been in a crowd, a basketball team, a nightclub, a choir, or a protest knows how bodies resonate together. But politics is the energetic distribution of bodies in systems, and **we live in a system of carbon-fueled capitalism that we shouldn’t expect to work in physical human ways for several reasons, especially when it comes to responding to the threat of global warming**. **First**, our political and social media technologies are not neutral, but have been developed to serve particular interests, most notably targeted advertising, concentration of wealth, and ideological control, and the vibrations that seem to resonate most strongly along these channels are envy, adulation, outrage, fear, hatred, and mindless pleasure. **Second**, the more we pass on or react to social vibrations, the more we strengthen our habits of channeling and the less we practice autonomous reflection or independent critical thought. With every protest chant, retweet, and Facebook post, **we become stronger resonators and weaker thinkers**. **Third, however intense our social vibrations grow, they remain locked within machinery that offers no political leverage**: **they do not translate into political action, because they do not connect to the flows of power. Finally, while the typical collective human response to threat is to identify an enemy, pick sides, and mobilize to fight, global warming offers no apprehensible foe**.

That hasn’t stopped people from trying to find one. The Flood Wall Street protesters say the enemy is American corporations. Tanzania’s Jakaya Kikwete and Nauru’s Baron Waqa say the problem is the United States and Great Britain. Shell Oil and the Environmental Defense Fund seem to think that it’s intractable UN bureaucracy that’s holding us up. Barack Obama has implied that it’s China. Tea Party Republicans prod us to ever more intense levels of manic despair? One way we might begin to answer these questions is by considering the problem of global warming in terms of Peter Sloterdijk’s idea of the philosopher as an interrupter:

We live constantly in **collective fields of excitation**; this cannot be changed so long as we are **social beings**. The input of stress inevitably enters me; thoughts are not free, each of us can divine them. They come from the newspaper and wind up returning to the newspaper. My sovereignty, if it exists, can only appear by my letting the integrated impulsion die in me or, should this fail, by my retransmitting it in a totally metamorphosed, verified, filtered, or recoded form. It serves nothing to contest it: **I am free only to the extent that I interrupt escalations and that I am able to immunize myself against infections of opinion**. Precisely **this continues to be the philosopher’s mission in society**, **if I may express myself in such pathetic terms**. His mission is to show that **a subject can be an interrupter**, not merely a channel that allows thematic epidemics and waves of excitation to flow through it. The classics express this with the term ‘pondering.’ With this concept, ethics and energetics enter into contact: as a bearer of a philosophical function, I have neither the right nor the desire to be either a conductor in a stress-semantic chain or the automaton of an ethical imperative.97

Sloterdijk compares the conception of political function as **collective vibration to a philosophical function of interruption**. As opposed to disruption, which shocks a system and breaks wholes into pieces, **interruption suspends continuous processes. It’s not smashing, but sitting with. Not blockage, but reflection**.

Sloterdijk sees **the role of the philosopher** in the human swarm as that of an aberrant anti-drone slow-dancing to its own rhythm, neither attuned to the collective beat nor operating mechanically, dogmatically, deontologically, but ” “**continually self-immunizing against the waves of social energy we live in and amongst by perpetually interrupting its own connection to collective life**. **So long as one allows oneself to be “a conductor in a stress-semantic chain,” one is strengthening channels of retransmission regardless of content, thickening the reflexive connective tissues of mass society, making all of us more susceptible to such viral phenomena as nationalism, scapegoating, panic, and war fever**. **Interrupting the flows of social production is anarchic and counterproductive, like all good philosophy: if it works, it helps us stop and see our world in new ways. If it fails, as it often and even usually does, the interrupter is integrated, driven mad, ignored, or destroyed**.

What Sloterdijk helps us see is that responding autonomously to social excitation means not reacting to it, not passing it on, but **interrupting it, then either letting the excitation die or transforming it completely**. **Responding freely to constant images of fear and violence, responding freely to the perpetual media circuits of pleasure and terror, responding freely to the ongoing ” “alarms of war, environmental catastrophe, and global destruction demands a reorientation of feeling so that every new impulse is held at a distance until it fades or can be changed. While life beats its red rhythms and human swarms dance to the compulsion of strife, the interrupter practices dying**

### L-US FOIA

#### Even absolute rights aren’t sufficient to strip the state’s power to create an exception; the aff can’t happen bc states don’t guarantee a right. Prefer on specificity

(FOIA), Freedom of Information Act. “FOIA.gov (Freedom of Information Act) Frequently Asked Questions (FAQ).” Freedom of Information Act, FOIA, [www.foia.gov/faq.html](http://www.foia.gov/faq.html). cw//az

**Not all records are required to be released under the FOIA**. **Congress established nine exemptions from disclosure** for certain categories of information to protect against certain harms, such as an invasion of personal privacy, or harm to law enforcement investigations. The FOIA authorizes **agencies** to **withhold infor**mation **when they reasonably foresee** that **disclosure would harm an interest protected by** one of these nine **exemptions**.

The nine exemptions are described below.

Exemption 1: Information that is classified to protect national security.

Exemption 2: Information related solely to the internal personnel rules and practices of an agency.

Exemption 3: Information that is prohibited from disclosure by another federal law.

Exemption 4: Trade secrets or commercial or financial information that is confidential or privileged.

Exemption 5: Privileged communications within or between agencies, including those protected by the:

1. Deliberative Process Privilege (provided the records were created less than 25 years   before the date on which they were requested)
2. Attorney-Work Product Privilege
3. Attorney-Client Privilege
<="" p="" style="box-sizing: inherit;">

Exemption 6: Information that, if disclosed, would invade another individual's personal privacy.

Exemption 7: Information compiled for law enforcement purposes that:

7(A). Could reasonably be expected to interfere with enforcement proceedings

7(B). Would deprive a person of a right to a fair trial or an impartial adjudication

7(C). Could reasonably be expected to constitute an unwarranted invasion of personal privacy

7(D). Could reasonably be expected to disclose the identity of a confidential source

7(E). Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law

7(F). Could reasonably be expected to endanger the life or physical safety of any individual

Exemption 8: Information that concerns the supervision of financial institutions.

Exemption 9: Geological information on wells.

## !

### Generic

#### Ziarek 12] Politics sustains itself through exclusion, there’s no hope for the aff’s reformism. The dangerous modern combination of biopolitics and bare life leads to governmental management which bedrocks in structural violence towards those that don’t fit the sovereign’s narrative of who is a proper citizen.

Ewa Ziarek (Julian Park Professor of Comparative Literature at The State University of New York at Buffalo). “9. Bare Life.” Impasses of the Post-Global: Theory in the Era of Climate Change, vol. 2. 2012. http://quod.lib.umich.edu/o/ohp/10803281.0001.001/1:11/--impasses-of-the-post-global-theory-in-the-era-of-climate?rgn=div1;view=fulltext

Since bare life is included within Western democracies as their hidden inner ground and as such cannot mark their borders, modern politics is about the search for new racialized and gendered targets of exclusion, for the new living dead (130). In our own times, such targets multiply with astonishing speed and infiltrate bodies down to the cellular level: from refugees, illegal immigrants, inmates on death row subject to suicide watch, comatose patients on life support, to organ transplants and fetal stem cells. For Agamben, this inclusion of bare life within the bodies of each citizen becomes catastrophically apparent with the reversal of the democratic state into totalitarian regimes at the beginning of the 20th century. As the disasters of fascism and soviet totalitarianism demonstrate, and as the continuous histories of genocide show, by suspending political forms of life, **totalitarian regimes can reduce whole populations to disposable bare life that could be destroyed with impunity**. This is what according to Agamben constitutes **the unprecedented horror of Nazi concentration camps**: the extreme destitution and degradation of human life to bare life subject to mass extermination: “Insofar as its inhabitants were stripped of every political status and wholly reduced to bare life, the camp was also the most absolute biopolitical space ever to have been realized, in which power confronts nothing but pure life, without any mediation” (171). If Agamben controversially claims that camps are not just the extreme aberration of modernity but its “fundamental biopolitical paradigm” (181), which shows the “thanatopolitical face” of power (142, 150), it is because concentration camps for the first time actualize the danger implicit in Western politics, namely, the total genocide made possible by the reversal of the exception signified by homo sacer into a new thanato-political norm. Such collapse of the distinction between exception and norm, such transformation of the temporal exception into material space, together with the “absolute” and unmediated subjection of life to death, constitutes **the “supreme” political principle of genocide**.

### !Turns Deleuze

#### DOUGLAS 09] biopolitics impose self-regulation on the masses; we become objectified through the panopticon

Douglas, independent scholar, 2009 – (Jeremy, “Disappearing Citizenship: surveillance and the state of exception”, published in Surveillance & Society Vol 6, No 1, p. 34-35 <http://library.queensu.ca/ojs/index.php/surveillance-and-society/article/view/3402/3365>) cw//az

Yet what emerges is, on the one hand, a theory of the top-down management of a population that is controlled through governmental mechanisms such as statistics-guided surveillance and police practices, and, on the other hand, the bottom-up subjectivization of population through the regulation of actions confronted with state power relations; this may also be regarded as biopolitical population control and individualizing discipline, respectively. These two streams of governmentality surface in Foucault’s later writings from time to time, but he never clearly reconciles the art of government and subjectivization. This subjective ‘conduct’ or ‘governing the self’ is a self-disciplining that is made possible through the knowledge of oneself as ‘the other’, as the object of an unseen seer (as is discussed with the panoptic model in Discipline and Punish). This self-conduct, however, is framed in terms of the problematic of government that uses the power relation techniques of governing others to govern themselves (Foucault 2000, 340-342); but again, where do these two points converge and differ? It seems as though we must look to surveillance to answer this question. We know that surveillance is certainly a governmental ‘technique’ for the management and control of the population, but we also see that subjectivization is only possible via surveillance, as just mentioned with the panoptic model. However, panoptic surveillance is an ancient notion, developed at least as far back as EBII, sometime around 3000-2650BC (Yekutieli 2006, 78). The relation between the seer and the subject is no longer that of a physical perspective from a point fixe, nor is it localised in a contained space, as with Bentham’s prison model. Rather, as Paul Virilio would argue, surveillance is making the traditionally confined space of the camp the very centre of the city. However, before examining the juridical-political applications of this notion, we must understand Giorgio Agamben’s conception of biopolitics in terms of “bare life” and “the state of exception”.

### !terror

#### Kotsko 13]

Adam [Adam Kotsko is Assistant Professor of Humanities at Shimer College in Chicago and the translator of Giorgio Agamben’s Sacrament of Language: An Archeology of the Oath, The Highest Poverty: Monastic Rules and Form-of-Life, and Opus Dei: An Archeology of Duty. His other books include Žižekand Theology, The Politics of Redemption: The Social Logic of Salvation, Awkwardness, and Why We Love Sociopaths: A Guide to Late Capitalist Television.], 6-4-2013, How to Read Agamben, Los Angeles Review of Books, https://lareviewofbooks.org/article/how-to-read-agamben/, cw//az recut

Agamben believes that our political system is increasingly breaking down and that extra-legal but legally validated emergency power is no longer the exception, but the rule. Here we might think of the ways in which the supposed “emergency” of the War on Terror, **which** has now dragged on for well over 10 years and shows no sign of ending, is used to legitimate increasingly extreme executive powers (including, most recently, President Obama’s claim that he has the right to assassinate US citizens suspected of terrorism without trial and on US soil). This breakdown in legal procedure is not a moment of weakness, however, but the moment when the law displays its power in its rawest and most deadly form. As Agamben puts it in State of Exception, when “the state of exception […] becomes the rule, then the juridico-political system transforms itself into a killing machine.” Many critics of the War on Terror, including Judith Butler, have used Agamben’s terminology to mount a kind of moral critique of American foreign policy. One might say, for instance, that the US government is wrong to create a kind of exceptional law-free zone in Guantánamo Bay, because that results in turning the detainees into bare life — which is bad. And certainly it is; yet Agamben’s political work is a little too complex to fit easily into this kind of moralizing discourse. For Agamben, the answer to the problem posed by sovereign power cannot be to return to the “normal” conditions of the rule of law, because Western political systems have always contained in their very structure the seeds that would grow into our universalized exception. It can’t be a matter of refraining from reducing people to “bare life,” because that is just what Western legal structures do. The extreme, destructive conjunction of sovereign authority and bare life is not a catastrophe that we could have somehow avoided: for Agamben, it represents the deepest and truest structure of the law.

The rhetoric of terrorism is a political construct used to manage the future through future surveillance and vigilance—this results in extermination

Puar and Rai 4 (Jasbir, Asst Prof of Gender @ Rutgers and Amit, Prof of English @ FSU, Social Text 22:3 cw//az recut)

But perhaps most crucial is the very grammar involved: the obsessive use of the future tense signals both a founding anxiety of (and in) this discourse and the drawing of the subject of counterterrorism to the pleasures of the always as yet unimagined. As if projecting itself into an always already mastered future, where the risk of terrorism is neutralized before actualization, the time of counterterrorism discourse is always in a future that is continuous with a fixed and romanticized national past. Derrida once said, "The future can only be anticipated in the form of an absolute danger. It is that which breaks absolutely with constituted normality and can only be proclaimed, presented, as a sort of monstrosity." Counterterrorism is a technology that dreams of managing and mastering this monstrosity by targeting subjectivities, communities, countries, and, indeed, time itself. Thus, if "the United States will confront the threat of terrorism for the foreseeable future," the counterterrorism imaginary aspires to the total management of this "foreseeable" political risk.38 In that sense its immediate precursor and ally is the technology of insurance. In insurance, the term risk designates neither "an event nor a general kind of event occurring in reality (the unfortunate kind) but a specific mode of treatment of certain events capable of happening to a group of individuals—or, more exactly, to values or capitals possessed or represented by a collectivity of individuals: that is to say, a population. Nothing is a risk in itself; there is no risk in reality. But on the other hand, anything can be a risk; it all depends on how one analyzes the danger, considers the event."39 In the counterterrorism imaginary, risk names a [End Page 92] procedure of assessment, counterintelligence, containment, and projection into the future. Its analysis is predicated on the fixity of implacably opposed political forces whose only resolution resides in the murderous destiny of the United States to manage democracy for the world (it is our "calling," as President Bush says). Moreover, the sliding between structure and network returns here in the form of a sort of insurance value. The sliding between the securely fixed and the terrifyingly unmoored that names the essential dynamic of counterterrorism technologies generates specific kinds of self-legitimating exchange values that have innumerable trajectories and their own surplus: cultural (counterterrorism revalues Western civilization), political (it gives the security state the aura of a need), economic (the economics of fear drives the billions of dollars spent on everything from spy planes to home security systems), and affective (fear itself has been given a new value after 9/11). Risk is at once the technology of the future that calls forth all the arts of prediction that science can conjure in its mission to master the future and the abstract machine that diagrams our present. But these terms—pre-sent, future—are no longer actually operative in community formations of terrorist risk. They interpenetrate at each moment, determining each other in a dance of pure repetition. Thus when Randy Martin states that risk "is a rhetoric of the future that is really about the present; it is a means of price setting on the promise that a future is attainable," one must see that, first, risk (financial or terroristic) is not merely a rhetoric—it is an abstract machine whose shiny surfaces do not reflect or signify something as much as they form assemblages with other machines, like panopticism, biopolitics, or necropolitics; and second, the future is now: the ambivalence of the present has given way to the anxieties of the present-future, this anxiety is itself a temporality, an impossible becoming-totalitarian.40 Terrorist risk engenders a nation or, better, civilizational burden unequally shared between members of a risk community. Members of that community would include the capitalist elite from all countries, but not all could exercise equally the right to articulate a position in a "collectively binding" process of "decision making,"41 which demonstrates the discursive kinship to ecological risk. Terrorist risk is both an acknowledgment of the limits of knowledge and a kind of abstract but very real spur forever driving into the bodies of these men and women, driving them to produce absolute knowledge of the other, to connect bodies to security machines, to detain, harass, and always surveil citizens and immigrants and thereby multiply the borders to be policed (and, of course, as Homi K. Bhabha so brilliantly points out, it is the enunciation of the stereotype that is crucial to this paradox).42 In that sense, the terrorist threat draws its enemies (the civilized subjects [End Page 93] of modern risk communities) to a future that has already excluded it. In the future, when it will come, and it will certainly come, there will be no terrorism; meanwhile, in the present, its seemingly infinite proliferation only means that all we are saying is beside the point: we must exterminate the brutes.43 In any case, what becomes possible through this preliminary diagram of terrorist risk is the return of the early modern practice of a "good risk," which is affirmative and designed to be "embraced for self-betterment."44 Because terrorist risk is both a burden of civilization for the transnational risk community against the axis of evil and a mission for the truth, the good, and humanity, danger is revalued as a civilizational value. That is why the civilized are waging an unending war. With every new body bag and suicide bomber the value of "danger" goes up. Counterterrorism, as Achille Mbembe has so movingly shown, is a war machine that assembles, on the same plane of immanence, strategies and rationalities of discipline, biopolitics, and now, once again, necropolitics. As strategy, rationality, and discourse, what this document outlines is a civilizational project machined to a necropolitics. As we have shown, civilization is the nodal point for multiple axes of power: a normalizing sexuality as well as a white supremacist agenda operate through it; "free and open economies" (it goes without saying today that a very closed capitalist restructuring is implied by this phrase) are enshrined in its charter; future-oriented, market-savvy subjective forms are produced through its normalization practices; an implicitly Christian cosmology gives its adherents a sense of mission; microtechnologies of surveillance and policing—everything from a total awareness database to eye recognition software—operate at speeds up to a hundred times faster than current computer processors.45 This civilizational project also puts in place specific spaces of participation and resistance—artificial negativity, Adorno once called it; the "subaltern public sphere" is another version of it—where civility, reason, and the rule of law govern who has a voice, what enunciations are heard, and the parameters of debate. But all dissent of course is treason in a state of emergency, and so the spaces of resistance alternate as holding cells as well.

## Framing—power

#### [Steele 10]The role of the ballot is to endorse the debater who best exposes the inner workings of power – this is a foremost obligation for educations

Brent Steele (Associate Professor of Political Science at the University of Kansas), Defacing Power: The Aesthetics of Insecurity in Global Politics pg 130-132, dml) [gender/ableist language modified with brackets]

When facing these dire warnings regarding the manner in which academic-intellectuals are seduced by power, what prospects exist for parrhesia? How can academic-intellectuals speak “truth to power”? It should be noted, first, that the academic-intellectual’s primary purpose should not be to re-create a program to replace power or even to develop a “research program that could be employed by students of world politics,” as Robert Keohane (1989: 173) once advised the legions of the International Studies Association. Because academics are denied the “full truth” from the powerful, Foucault states, **we must** avoid a trap **into** which governments would want intellectuals to fall (and often they do)**:** “**Put** **yourself in our place** and tell us what you would do.” This is not a question in which one has to answer. To make a decision on any matter requires a knowledge of the facts **refused us**, an analysis of the situation we aren’t allowed to make. There’s the trap. (2001: 453) 27 This means that any alternative order we might provide, this hypothetical “research program of our own,” will also become imbued with authority and **used for mechanisms of control**, a matter I return to in the concluding chapter of this book. When linked to a theme of counterpower, academic-intellectual parrhesia suggests, instead, that the academic should use his or her pulpit, their position in society, to be a “friend” “who plays the role of a parrhesiastes, of a truth-teller” (2001: 134). 28 When speaking of then-president Lyndon Johnson, Morgenthau gave a bit more dramatic and less amiable take that contained the same sense of urgency. What the President needs, then, is an intellectual ~~father~~-confessor, who dares to remind him[/them] of **the brittleness of power**, of its arrogance and ~~blindness~~ [ignorance], of its **limits** and **pitfalls**; who tells him[/her] how empires rise, decline and fall, how power turns to folly, empires to ashes. He[/she] ought to **listen to that voice** and **tremble**. (1970: 28) The primary purpose of the academic-intellectual is therefore not to just effect a moment of counterpower through parrhesia, let alone stimulate that heroic process whereby power realizes the error of its ways. So those who are skeptical that academics ever really, regarding the social sciences, make “that big of a difference” are **miss**ing **the point**. As we bear witness to what unfolds in front of us and collectively analyze the testimony of that which happened before us, the purpose of the academic is to “**tell the story**” of what actually happens, to document and faithfully capture both history’s events and context. “The intellectuals of America,” Morgenthau wrote, “can do only one thing: live by the standard of truth that is their peculiar responsibility as intellectuals and by which men of power will ultimately be judged as well” (1970: 28). This will take time, 29 but if this happens, if we seek to uncover and practice telling the truth free from the “tact,” “**rules**,” and seduction that constrain its telling, then, as Arendt notes, “humanly speaking, no more is required, and no more can reasonably be asked, for this planet to remain a place fit for human habitation” ([1964] 2006: 233).

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#### The role of scholars should not be to model how to use the law or even how to fix it, but to liberate ourselves from it – reformism only assists sovereign power because it puts faith in the system.

Kotsko 13

Adam Kotsko “How To Read Agamben” LA Review of Books June 4th, 2013

Now may be the time to return to that Kafka story about Alexander the Great’s horse Bucephalus, entitled “The New Attorney.” (The text is available here. I recommend you take a moment to read it — it’s very short, and quite interesting.) In this brief fragment, we learn that Bucephalus has changed careers: he is no longer a warhorse, but a lawyer. What strikes Agamben about this story is that the steed of the greatest sovereign conqueror in the ancient world has taken up the study of the law. For Agamben, this provides an image of what it might look like not to go back to a previous, less destructive form of law, but to get free of law altogether: One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good…. This liberation is the task of study, or of play. And this studious play is the passage that allows us to arrive at that justice that one of Benjamin’s posthumous fragments defines as a state of the world in which the world appears as a good that absolutely cannot be appropriated or made juridical. The law will not be simply done away with, but it is used in a fundamentally different way. In place of enforcement, we have study, and in place of solemn reverence, play. Agamben believes that the new attorney is going the state of emergency one better: his activity not only suspends the letter of the law, but, more importantly, suspends its force, its dominating power. Agamben’s critical work always aims toward these kinds of strange, evocative recommendations. Again and again, we find that the goal of tracking down the paradoxes and contradictions in the law is not to “fix” it or provide cautionary tales of what to avoid, but to push the paradox even further. Agamben often uses the theological term “messianic” to describe his argumentative strategy, because messianic movements throughout history — and here Agamben would include certain forms of Christianity — have often had an antagonistic relationship to the law (primarily, but not solely, the Jewish law, or Torah). Accordingly, he frequently draws on messianic texts from the Jewish, Christian, and Islamic traditions for inspiration in his attempt to find a way out of the destructive paradoxes of Western legal thought.

#### shapiro]

“To Give an Example Is a Complex Act”: Educational Intelligibility and Agamben’s Paradigm Harvey Shapiro [Harvey Shapiro Academic Title Clinical Professor Education: Doctor of Philosophy from Hebrew Un C (1996)] Northeastern University PHILOSOPHY OF EDUCATION P H I L O S O P H Y O F E D U C A T I O N 2013 ⎜ Cris Mayo, editor 2 0 1 3 © 2013 Philosophy of Education Society ⎜ Urbana, Illinois <https://ojs.education.illinois.edu/index.php/pes/article/view/3998/1309> cw//az

I suggest that Benjamin’s notion of moral educational community resonates with Agamben’s concept of paradigm. With his explanation of the medieval monastic concept of regula, Agamben articulates the function of the paradigm in the ethos of a community. The regula “is often … envisaged as a … rule [that] does not indicate a general norm but the living community (koinos bios, cenobio) that results from an example and in which the life of each monk tends at the limit to become paradigmatic — that is, to constitute itself as forma vitae” (WP, 21–22). He thus suggests how this paradigmatic notion is distinct from any kind of rule-based, reason-based, utilitarian, or deontological normativity. Each educational setting constitutes a paradigmatic form-of-life, a particular cultural, political, or moral community. As paradigmatic, the community’s ethos is exposed in its form-of-life, a “life that can never be separated from its form.” Within the community, within its form-of-life, “the single ways, acts and processes of living are never simply facts but always and above all possibilities of life, always and above all power.”34 Paradigmatic thinking, then, suggests an educational community not grounded in a dualist structure of inclusion and exclusion; rather, the community exposes an enduring potentiality for ways of being and communicating together. Consistent with Agamben’s paradigmatic philosophical method, the teacher, educator, student, and school culture are singularities that give ethics its intelligibility. Never reducible to a maxim or rule, moral conduct can only be experienced in a community that expresses a potential form-of-life. There is no closed definition to the moral; it can only be exposed in a paradigmatic relation and thus made intelligible, even as a potential endures for further articulation of its paradigmaticity. CURRICULUM Agamben maintains that “the capacity to recognize and articulate paradigms defines the rank of the inquirer no less than does his or her ability to examine the documents of an archive” (WP, 32). I suggest that this “rank” and “ability” also apply to educators who seek to surpass the habits or demands of adhering to a particular curricular archive of methods, content, hierarchies, and conceptual taxonomies. Rendering something intelligible creates a certain ontology in the learning experience, what Agamben calls “a paradigmatic ontology” (WP, 32). Following his method, a curriculum would be comprised of what Agamben calls paradigms and the “broader problematic context[s] that they both constitute and make intelligible” (WP, 17). Conventionally, a curriculum is founded on the relationship of the particular to the general as its organizational framework. The paradigmatic relation, in contrast, calls on curriculum to include what Agamben calls “hybrids of archetype and phenomenon, first-timeness (primavoltitá) and repetition” (WP, 29).35 Each curricular category, goal, strategy, process, and content area would then be a kind of hybrid — an organizing prototype and a singular phenomenon. Each singular element would be approached as if for the first time as well as repetition. The curriculum, then, would involve both multiplicity and unending affinities. In its dual status of being both typical and singular, each paradigmatic curricular element “stands in relation with countless others, in the way we say of a freely floating luminous point, that it emits its rays in every direction” (WP, 30).36 This open multidirectionality of curricular relationships thus invites, even demands, sustained revisioning, reconceptualizing, and redescribing. Challenging, to be sure, a paradigmatic curricular orientation potentially engages students and teachers holistically and singularly, rather than simply as beings in need of a limited, presupposed kind of knowledge. Paradigmatic education, then, would seek to expose our open lived experience with objects, narratives, ideas, and others. Such an approach to curriculum would thus challenge educational policies that deskill teachers with scripts and excessively deterministic standards. Teachers and learners would expose ever-evolving classes of concepts, skills, and understandings that emerge in their choices and articulations of paradigms. Similarly, the notion of the paradigm would have much to contribute to current deliberations on academic freedom in that the exemplary is not based on its being positioned within a predetermined set, but in opening the potential for new forms of knowledge. It is important to recognize that the paradigm is to be understood as a relation that exposes intelligibility. This relationship is easily misconstrued when only one side of the paradigmatic relation is considered. My interpretation of Agamben thus departs from that of Joris Vlieghe37 whom I suggest underemphasizes the importance of this paradigmatic relation. Vlieghe argues that Agamben would suggest that students “practice” “language as ‘purely and absolutely grammatical.’”38 Through practice, asserts Vlieghe, “letters appear as ‘pure letters’ and language is experienced as emptied of its proper semantic and communicative function.” Repetitive practice of “pure letters” or words with no semantic quality, purportedly, would allow students to experience the pure potentiality of human beings’ linguistic nature.39 The pure grammar of a language would then, purportedly, be a paradigm for the language’s discursive use. For Agamben, however, if language itself is experienced as paradigmatic (a view that he emphasizes from his earliest writing), then language shows its own “taking place”; it exposes the intelligibility of its taking place.40 As a paradigm, language exposes intelligibility in the relation between its semiotic (being a sign or syntagm) and its semantic (contextually meaningful) function. The paradigmatic quality of language is in the relation that exposes language’s very intelligibility and communicability. It is true that language, to be a paradigm, must be deactivated, made inoperative from its normal use as part of a certain larger class of signs or syntagms, but this does not imply suspending any possible use. It calls for exposing potentiality for new and free use in discourse. For Agamben, then, language is not experienced in the repetitive practice of grammatical tables and categories. Rather it is experienced in the exposition of its taking place in a dynamic relation between a sign or syntagm and its free or new use in discourse. Tyson Lewis has recently argued, successfully I believe, that Agamben’s notion of “study” can serve as a helpful response to “critiques of ‘learning discourse.’” Citing Charles Bingham’s and Gert Biesta’s important arguments, he notes that the “discourse of learning” implies an “inequality” between teaching and learning in that learning is presented as responding to a deficit, to incompleteness, to a kind of consumerism that makes up for a lack by commodifying education.41 I suggest that the notion of the paradigm strengthens Lewis’s argument that Agamben’s conception of “study” presents an important alternative to the “learning” model. The paradigmatic relation exposes intelligibility, rather than a body of as yet unlearned content or skills. Paradigmatic education, therefore, creates potential webs of intelligibility that can be discerned in considering singularities. The paradigmatic relation exposes the potential for the singular to stand outside of any existing rule or class and to stand alongside a class that it, itself, constitutes. This implicating of intelligibility can never be a dimension of a deficit-oriented model of learning. Lewis also argues that Agamben’s notion of education involves a kind of “pedagogical gesture” of “inconclusiveness,” that counteracts the limits and dangers of “reducing education ... to mere representation or verification.”42 In contrast to the latter, Lewis suggests that“the best teachers are not those whose work has passed into actuality.”43 Illustrating such a perspective on teaching, Lewis continues: “Thus what is most inspirational about Marx’s Capital or Benjamin’s Arcades Project is precisely their status as fragments.… They exist in a state of suspension between pure potentiality and actualization.”44 Read against the background of Agamben’s method, these “fragments” are paradigms. In their state of suspension, the paradigms are not members of the class they exemplify. But nor are they decisive indicators of new classes. Rather, they expose the potential of classes to be comprehended, that is, their intelligibility, through consideration of the analogic relations among singularities and provisional sets.

## Alt

The sovereign’s ability to exercise biopolitical control is contingent on identity documents like visas—identity stripping makes resistance possible

Ellerman 9 (Antje, Dept of Politics @ U of British Columbia, Undocumented Migrants and Resistance in the State of Exception, p 11-15, <http://www.unc.edu/euce/eusa2009/papers/ellermann_02G.pdf>//shree)

The exercise of sovereignty over homo sacer is ultimately contingent on the state’s knowledge of the individual’s identity. As John Torpey argued, “individuals who remain beyond the embrace of the state necessarily represent a limit on its penetration” (1997, 224). In contemporary states, identity is the authoritative marker of exclusion and inclusion, and, in the case of illegal migrants, a necessary condition for expulsion from the national territory. Migrants whose name and nationality is unknown to the state cannot be issued the identity and travel documents on which lawful deportation to another’s state’s territory hinges. In other words, “unidentifiable migrants are constitutionally rather invulnerable to expulsion” (van der Leun 2003, 108). As liberal states have stepped up their deportation efforts, migrants, in particular unsuccessful asylum seekers, have sought to escape the state’s reach by destroying or hiding their identity documents. This act of resistance is far from exceptional. While the following figures and illustrations all refer to immigration enforcement in Germany, they could easily apply to control contexts elsewhere in the advanced democratic world. German interior officials estimate that, in the mid-1980s, immigration authorities had to obtain travel documents for about 30 to 40 percent of all asylum seekers. By the year 2000, the population of “undocumented” asylum applicants is estimated to have increased to 85 percent (Böhling 2001). The dilemma that an unknown identity poses to the state is aptly captured by a deportation officer’s account of the resistance strategies of illegal migrants: “People have started to realize, ‘if they don’t know who I am, they can’t touch me.’1 What is important to note is that homo sacer’s ability to render herself unidentifiable is ultimately contingent on bare life. The lives of illegal migrants and refugees in many ways exemplify the condition of rightlessness that marks bare life. “The territorialization of life means that the refugee is put in a position where she lacks apportioned rights but depends on the charity or goodwill of aid workers or the police. The refugee is outside the law. Levels of innuendo and violence unthinkable to regular human beings, citizens, are regularly perpetrated against the refugee or asylum seeker. The refugee as homo sacer describes the condition of exclusion that those exempt from the normal sovereignty are subject to.” (Rajaram and Grundy-Warr 2004, 41) While much has been written on the dehumanizing consequences of the denial of membership, the absence of rights at the same time makes possible acts of resistance such as identity-stripping. The vast majority of those who lead “politicized lives” have entered into too many bureaucratic relationships with the state to have the choice to render themselves unknowable. Liberal states infrastructurally penetrate their societies far too deeply (Mann 1984) to allow for a pervasive “creation of fog” (Broeders and Engbersen 2007, 1593) by their citizens. Thus, it is the rightlessness of the illegal migrant that is the source of her capacity for resistance by means of identity-stripping. These self-stripping strategies clearly exemplify the possibility of resistance in the state of exception. In the words of Broeders and Engbersen, “[t]he strategy of noncooperation shows that many immigrants are not docile persons who fully cooperate with the authorities. Many of them are difficult to manage by state officials, and they are able to very effectively frustrate the administrative processing of return programs.” (2007, 1603) We will now return our focus on the state and explore how its officers handle these acts of identity-stripping. In particular, we will examine whether these forms of resistance can succeed in curtailing the state’s sovereign powers. What are the implications of identity-stripping for the exercise of state sovereignty? Confronted with the challenge of expelling an unidentifiable non-citizen across international borders, the hands of the liberal state are tied. International law only obliges states to readmit their own nationals while recognizing the right of states to refuse entry to any non-national. Unless a state seeks to transport individuals surreptitiously to a foreign territory, it simply cannot expel individuals with unknown identities. For the state, the inability to “render legible” those within its custody presents a significant threat to sovereignty. Moreover, as I have argued elsewhere, from the perspective of immigration officers, the inability to execute deportation orders because of missing documents is particularly frustrating because it presents the last in a lengthy chain of administrative actions. “Being unable to bring deportees across the border turns the administrative successes of identifying, locating, apprehending, prosecuting, and detaining deportable immigrants into sunk costs.”(2008, 172). It is important to recognize that the state’s inability to secure travel documents is directly linked to the individual’s refusal to cooperate. Presumably the only effective way for states to induce voluntary compliance would be to grant the migrant residence rights—in which case travel documents would of course no longer be needed. Unable to secure voluntary compliance, state officers are forced to go “embassy-shopping” in the vague hope of identifying the migrant’s nationality. “We need to get papers for a Sudanese national. … we apply for an interview with the Sudanese embassy. … Finally we get an interview. The embassy employee tells us, ‘he’s not from Sudan, he’s from Liberia.’ Then we go to the Liberian embassy, they tell us, ‘he’s not Liberian, he’s from the Gambia.’ The Gambians, in turn, argue, ‘if he is Gambian he’ll have to confirm that he’s applying for papers voluntarily. But maybe he’s not Gambian, he could be from Nigeria.’ We go to the Nigerian embassy, and they say, ‘there is a good chance that he’s from Nigeria. However, you need to provide us with clear evidence.’” (Author interview, deportation officer, district Ostprignitz-Ruppin, Brandenburg, November 27, 2001) Significantly, the diplomatic representatives of the countries of origin of most “undocumented” migrants face few incentives to actively cooperate with the identification efforts of deporting states because they only stand to lose from the return of their nationals. Not only does return migration represent the loss of vital remittances, it often is accompanied by enormous problems in the area of social and economic reintegration. While the deporting states of the Global North have pursued various diplomatic strategies to improve bilateral cooperation to facilitate the issuing of documents—most prominently the conclusion of readmission agreements—success has rarely been forthcoming (Ellermann, 2008). The paper will now examine a number of identification strategies pursued by the German state that target the undocumented migrant herself. These strategies can be distinguished both by the extent to which they rely on the migrant’s cooperation and by the degree of coercion involved.

#### The alternative is study, which refuses the Learning Society’s demands for quantifiable ends in favor of study for the sake of study. Only a pure means can truly liberate education.

Lewis PhD 13 [Tyson, PhD in Educational Philosophy from UCLA] It’s a Profane Life: Giorgio Agamben on the freedom of im-potentiality in education. Educational Philosophy and Theory, 46(4), 334–347. RE

-bartleby: I would prefer not to, study for the sake of study, no practical end

-refuse to make judgements about right/wrong, smart/stupid; dwell in the middle without holding self to external standard

-reread the angels stuff/have someone else read it

-tinkering: completely free, no telos; a lot of it “fails” but not concerned with ends just the process of experimentation

Study First and foremost, any theory of study must break with the discourse of the entrepreneurial will. The will is, as Agamben points out, the faculty of sovereign decision making which always produces an abandoned remnant or remainder. If impotentiality is not necessity but contingency, then potentiality is not reducible to a feature of wilful self-production. Agamben (1999, p. 254) writes, ‘To believe that will has power over potentiality, that the passage to actuality is the result of a decision that puts an end to the ambiguity of potentiality (which is always potentiality to do and not to do)——this is the perpetual illusion of morality’. The problem with neoliberalism is that ‘today’s man believes himself capable of everything, and so he repeats his jovial “no problem”, and his irresponsible “I can do it”, precisely when he should instead realize that he has been consigned in unheard of measures to forces and processes over which he has lost all control. He has become blind not to his capacities but to his incapacities, not to what he can do but to what he cannot, or can not, do’ (Agamben, 2009/2010, p. 44). It is this Promethean hubris that bothers Agamben——a hubris that is also found in the capitalist logic of infinite expansion and profit generation. This is the very same hubris that, in neoliberal education, argues that children should maximize their activity and in turn ‘pull themselves up by their own bootstraps’ through a self-initiated entrepreneurialism. Such theories impoverish politics and education precisely in the moment they estrange us from im-potentiality. These theories of entrepreneurial optimism in the capability to self-realize, self-generate and self-manage our potential so as to manifest it in the form of an economically viable commodity (human capital) are not empowering so much as disempowering theories that deny the very real freedom of im-potentiality: our capability to be otherwise, to think otherwise, to live otherwise. Only with the experience of the relation between potentiality and impotentiality does the student begin to realize the contingency of his or her ideas and the finitude of the will. It is Agamben’s task to question the supremacy of the sovereign will (as mastery over our potentialities) through a return to the experience of the creative chaos of a more primary co-belonging of potentiality and impotentiality. This creative chaos exists before the split between abandonment (lack of willpower) and achievement (outcome of willpower). For educators, this means a shift from the discourse of will to that of potentiality/impotentiality as well as a shift from learning to studying. In education, the student experiences freedom in the moment of study precisely by exposing the self to its im-potentiality. This process is ‘indeterminate’ (Agamben, 1985/1995, p. 64): a perpetual means without a specific end. While such indeterminacy might speak to the endless rituals of retraining and reskilling of the learning society, study is different in one key respect: it does not command these endless returns upon a subject under the threat of abandonment. Instead, the eternal return of study is the repetition of being ‘astonished and absorbed’ (Agamben, p. 64), thus rendering inoperative the logic of entrepreneurial self-realization or market necessity, both of which pursue measurable outcomes at the expense of indeterminate exposure, reflection and withdrawing. If learning actualizes specific skill sets in order to separate achievement from abandonment, then study postpones and indistinguishes. Agamben (1985/1995, p. 64) describes studying as a rhythmic oscillation between ‘bewilderment and lucidity, discovery and loss, between agent and patient’. Such movement disrupts any linear narrative of progressive, willful mastery or teleological growth towards definitive ends. In fact, ‘studying and stupefying are in this sense akin: those who study are in the situation of people who have received a shock and are stupefied by what has struck them, unable to grasp it and at the same time powerless to leave hold’ (Agamben, p. 64). Postponement is therefore accompanied by a kind of stupefying indistinguishability between capability and incapability. Justin Clemens (2010, n.p.) provides a wonderful summary of this condition: ‘The scholar, smacked across the forehead by an unexpected enigma, who is no longer convinced that he or she knows what he or she is supposed to know, compulsively pursues his or her stupefacation [sic] through the texts that he or she may once have thought that they had known, deranged by details which now shift and crawl and become other than they are meant to have been’. In other words, we experience the oscillation between impotentiality and potentiality: a paradoxical state where we are neither perfectly ignorant nor yet masters of a subject. All identities are held in indefinite suspension, all judgments are held in reserve, and all avenues are still open for exploration and discovery. It is here that study breaks with the logic of necessity which orients learning towards specific ends (these skills are needed for economic survival) and predetermined measurements (these standards must be fulfilled). If the sovereign will insists on drawing distinctions between this and that, inside and outside, self and other, friend and enemy, success and failure, ignorant and master, then studying is beyond such dichotomous representations. The certainty of will and the necessity of judgment are exchanged for the uncertainty/indeterminacy of stupidity and the contingency of dwelling in the open possibilities that are experienced through study. There is a certain tendency, especially in the learning society which is obsessed with maximizing proficiencies, to villainize stupidity by linking it with pathology or moral lassitude. As such, Agamben’s claim that studying returns us to our freedom and this freedom is ‘stupid’ might sound shocking——an insult to our educational sensibilities. Like Agamben, Avital Ronell (2002, p. 5) has also attempted to rethink the connections between stupidity, thought and scholarship, making the surprising claim that ‘stupidity does not allow itself to be opposed to knowledge in any simple way, nor is it the other of thought’. Knowledge cannot be immunized against stupidity without exposing itself to the germ cell of its own im-potentiality. As an example, Ronell turns to Kant’s examination of stupidity in his Anthropology. For Kant, the stupid subject does not lack knowledge but rather is prone to overstudying and thus excessive reading. To block the supersaturation of the mind with information, reason intervenes and produces a kind of intellectual disgust. But it is here that Ronell pinpoints a certain aporia in Kant’s immunizing logic. ‘At which point’, questions Ronell (2002, p. 295), ‘of the terminable–interminable exercise of reading stupidity sets in is left indeterminable’. In other words, there is always the threat that we have read too much and that we have already become stupid. As with Agamben’s description of study, Ronell argues that stupidity is ‘a structure of exposure’ (p. 9) to indeterminacy or impotentiality. Rather than disavow this structure, Ronell suggests that we take ‘responsibility’ (p. 19) for this capability that is also an incapability: a responsibility for that which threatens and undermines sovereignty, autonomy and necessity. The risk of studying is that we discover our perpetual stupidity, but it is this very stupidity that offers freedom to think, dream and reflect differently. Perhaps this paradoxical state is best summarized by juxtaposing two famous images of angels which are near and dear to Agamben’s heart. While Agamben does not connect Albrecht Du¨rer’s famous engraving Melancholia I (1514) directly with the idea of study, we can argue that the angel is lost in the hesitation of study (the experience of impotential withdrawing from or the infinite deferment of ends). Describing the relics of the past which fall at the angel’s feet, Agamben (1977/1992, p. 26) writes, ‘these objects have captured forever a gleam of that which can be possessed only with the provision that it be lost forever’. The melancholic figure studies the world indefinitely precisely by suspending the law of the world——rupturing the chronological time of events and the production of things——and transforming its sacred objects into discarded relics. Such a depiction of melancholia disrupts the current links between depression and violence found in the medicojuridical discourses and practices of education in the wake of the 2007 Virginia Tech shootings (Harwood, 2011). At stake here is the rehabilitation of an alternative genealogical understanding of melancholia beyond the medicalization and criminalization of im-potentiality inherent in the logic of learning. Yet if we are to hold true to Agamben’s description of study as a ‘rhythmic’ ‘shuttling’, then we have to bring another angel into the mix: Angelus novus (1920) by Paul Klee. For Walter Benjamin, this angel is flying on the winds of heaven, staring at the catastrophe of the accumulated past just outside the frame of the painting. What is important here is the fixed gaze of the angel, who, I would argue, is studying the past with great intensity and attention. Yet this is not a moment of hesitation and paralysis found in Melancholia I, where the angel is grounded and sedate, staring anemically at a world thrown out of joint. Rather, Klee’s angel is in mid-flight, caught in the crossdrafts of history which pull the figure forwards and backwards simultaneously. This is a true state of indistinction between past and present and forward and backward momentum. Thus, the position of the student as angel shifts from inert passivity (as a saddened state of hesitation and melancholia) to active movement (as a surge or propulsive force). This is not the quiet introversion/withdrawal of hesitation but rather a new, inspirational dynamism. Studying is precisely an angelic state between impotential melancholia and potential joy, a state of agitated or passionate suffering akin to the German concept of Leidenshaft. It is a dialectical movement towards and suspension of all destinations in a singular moment. And it is here, in this state betwixt and between, that the student finds freedom in the paradox of ‘I can, I cannot’. The time and space necessary to study are difficult to come by, yet there are educational experimentations which are attempting to revitalize education by turning away from learning and rekindling a spirit of what Agamben refers to as ‘studious play’ (Agamben, 2003/2005, p. 63; see also Lewis, 2009). Studious play is not so much a synthesis of play and study as it is a state of productive tensions between moving towards and withdrawing from, melancholia and joy. Educator Gever Tulley calls the state of studious play ‘tinkering’, and has opened up a series of ‘tinkering schools’ across the USA. For Tulley, the purpose of education is to expose children to a broad theme (such as wind) and then give them the opportunity to explore this theme through tinkering (building kites, gliders, and so on). There are three functions of the teacher in tinkering schools: to supply students with time, space and materials. The time of tinkering is a time of suspension, where the rules prohibiting certain behaviors (‘Don’t play with fire!’) are left idle. Suspension offers a time of free use wherein time is no longer held above students but rather returns as immanent to their actions and the collective rhythms of their projects (Lewis, 2010). The very concept of ‘tinkering’ has a certain temporal dimension suggesting a deferral of ends, uncertainty of outcomes, and the simultaneous rhythms of withdrawing and progressing. The space of tinkering is a space open to constant reconfiguration: a free space defined by the actions which it houses. Neither a utopia existing in an abstract future or the panoptic space of the contemporary school defined by the surveillance of the test, the tinkering school is an atopia. This atopic space is a common space, open to all. Free time and free space house the freedom of a community that does not yet have a name. In this sense, tinkering is another image of a coming education or education beyond the discourse and practice of learning. In terms of materials, the tinkering school redeems the most ephemeral bits of trash for thematic exploration. According to Agamben, children are ‘humanity’s little scrap dealers’, preserving ‘profane objects and behaviors that have ceased to exist’ (1978/ 2007a, p. 79). Walter Benjamin (1986, pp. 68–69) likewise noted that children are ‘irresistibly drawn by the detritus generated by building, gardening, housework, tailoring, or carpentry’, through which they ‘bring together, in the artifact produced in play, materials of widely differing kinds in a new, intuitive relationship’. As with Agamben, the work of studious play is a transformative one that unleashes free uses from discarded relics. In the tinkering school, students play with trash in order to build rope bridges out of discarded plastic bags and elaborate forts out of discarded wooden pallets. Altogether, the space, time and materials of tinkering suspend the logic of necessity defined by the sovereign’s command. In other words, tinkering separates itself from the logic of separation. Through the process of tinkering, students simultaneously feel the push and pull of both their potentiality to innovate and construct a new world and also the finite and precarious nature of their plans. As Tulley (2009, n.p.) states, ‘nothing ever turns out as planned … ever’. In fact, students quickly learn that ‘all projects go awry’ and learn to accept that all projects can end with success or ‘gleeful calamity’ (Tulley, 2009). Tinkering is a quest, which, for Agamben (1978/2007a, p. 33), is the ‘recognition that the absence of a road (the aporia) is the only experience possible for man’. The results of studious play are not what are important so much as the quest itself as a pure means for experiencing the rhythmic sway of collective and collaborative tinkering. Tinkering is, in the end, precisely the experience of ‘gleeful calamity’ described by Tulley: the recognition of the fleeting nature of our projects coinciding with a profound joy and freedom in these very contingencies. It is, after all, the calamity which introduces contingency into the process, opening up the possibility that things could be different than what they are, that plans can change, that the unexpected turn of events inevitably occurs. Calamity is the indeterminating moment of suspension that keeps open the time, space and free use of tinkering. In the face of gleeful calamity, children do not simply stop their tinkering. Rather, as Tulley (2009) points out, they ‘decorate’ their inoperative machines, structures and contraptions. And in that temporary withdrawal from building and constructing (wherein students lay down their saws, hammers, drills and nails), the children have time to contemplate, reflect and dream. Decoration is a gesture loosened from a predetermined end. When watching such moments, one is struck by the fact that decoration is the exact experience of study, and in turn, potentiality is given back to itself as its most precious gift. When children tinker they are little angels playing with an inoperative world——a world that can be otherwise than.

#### To “prefer not to” escapes the dependency of the law. We don’t solve it through another law or right, but exert ourselves as independent of the law while coopting the temporary benefits they provide.

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What is the power of Bartleby’s phrase—‘I would prefer not to’—that it could create such resentment, while absolutely immobilising his employer? In recent years, Bartleby has been depicted as everything from a beautiful soul, who must ‘continuously tread on the verge of suicide’ (Hardt and Negri 2000, p. 302) to a ‘new Christ’ (Deleuze 1998, p. 90). In this paper, I will reflect on the reading offered by Giorgio Agamben, for whom Bartleby’s ‘I would prefer not to’ is ‘the strongest objection against the principle of sovereignty’ (Agamben 1998, p. 48). While understanding this claim will require an examination of Agamben’s reading of Aristotle’s metaphysics, I would like to read Bartleby’s enigmatic formula in the context of his work as a scrivener, a legal scribe. What, I will ask, does the statement, ‘I would prefer not to’ do to the law? What does it mean to ‘prefer not’ when the law is in question? For Bartleby, it means, firstly, a withdrawal from the work of copying that makes up the daily routine of the legal firm in which he is employed. While, at first, Bartleby copied ‘by sunlight and candlelight’, he soon ceases his work. He no longer writes—he prefers not to, and he repeats his single formula in response to all his employer’s requests. ‘It is not seldom the case’, this employer muses, ‘that, when a man is browbeaten in some unprecedented and violently unreasonable way, he begins to stagger in his own plainest faith. He begins, as it were, to vaguely surmise that, wonderful as it may well be, all the justice and all the reason is on the other side’ (Melville 1997, p. 35). In a broader sense then, Bartleby’s gesture, in Agamben’s reading, challenges our faith in the law’s capacity to embody and administer justice. If Bartleby presents a challenge to the law, however, the nature of this challenge is not easy to categorise. Bartleby does not copy the law, but n[or]either does he oppose it in the name of another law, a natural law, or a more just law that could be instituted in its place. He is neither an exemplar of civil disobedience, nor a revolutionary. He does not actively resist; he simply prefers not to. This, I will suggest, is precisely what draws Agamben to this scribe who has stopped writing. In Bartleby, Agamben sees an approach to the law that escapes the dialectic of constituent power and constituting power, and makes possible an escape from sovereignty. While Agamben’s account of sovereign power has been the subject of much critical engagement, his more enigmatic suggestion that the law is in need of fulfilment has received less attention.1 In what follows, I will examine Agamben’s reading of Bartleby, in order to elucidate this unconventionally antinomian aspect of his thought. To do this, I will reflect on the ‘philosophical constellation’ in which Agamben places Bartleby (that of Aristotle’s Metaphysics) and interpret his formula in the context of an examination of a potentiality that is, most importantly, the potentiality of the law.

#### And, to “prefer not to” is a way of opening up space in the law by refusing to give an affirmation or negation of the law. We refuse to re-inscribe the narrative that the law can help us.

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Two key things are at stake in this attempt to assure the actuality of potentiality: firstly, if we are always able to be other than we are, this destabilises the attempt to found state power on the representation of a fixed substantive identity. Secondly, the re-potentialisation of the past, by granting possibility to what is or has been, disrupts the tradition, and its codification in law, that is premised on the erasure and forgetting of manifold un-actualised possibilities. It is here that Agamben positions Bartleby. In the formula ‘I would prefer not to’, he sees a liminal zone suspended between affirmation and negation, being and nonbeing, predicated on the renunciation of any will or reason to choose either option. Thus, Bartleby, he argues, conducts an experiment in what can either be or not be, an experiment in potentiality itself, which requires the overturning of the principle of the irrevocability of the past. If conducting such an experiment makes Bartleby a new Messiah, Agamben argues (in what is the most original, if also the least textually grounded aspect of his reading of Melville’s story) this is because it ‘inaugurates an absolutely novel quastio disputata, that of ‘‘past contingents’’’(Agamben 1999, p. 267). Thus while, for Deleuze, Bartleby is ‘the new Christ’ (Deleuze 1998, p. 90), Agamben’s Bartleby comes ‘not to redeem what was, but to save what was not’, to redeem those broken promises, unrealised potentials and forgotten struggles that are covered over by tradition and law, by renouncing the copying that presupposes and repeatedly affirms their forgetting (Agamben 1999, p. 270). Thus, Bartleby, in Agamben’s reading, responds to what in Time That Remains, he terms the ‘messianic modality’—exigency. In exigency, Agamben locates the demand of the forgotten, but this demand is not simply to be remembered and inserted into a new tradition, nor to be frozen in commemoration, but ‘to remain with us and be possible for us in some manner’ (Agamben 2005, p. 41). The messianic modality, which Agamben finds in Bartleby, is thus one in which potentiality does not precede actuality but follows it, restoring it to contingency and enabling the forgotten to act on the present.

In the story of ‘Bartleby, the scrivener’, a man of the law—a self-declared ‘unambitious lawyer,’ doing ‘snug business among rich men’s bonds, and mortgages, and title-deeds’ (p. 4)—one day ‘in answer to my advertisement’ finds a motionless young man upon his office threshold. (p. 11) ‘After a few words touching his qualifications’ (p. 11) he engages him as a law-copyist. This young man, Bartleby, is given a desk in a corner of the lawyers own office, behind a high folding screen—‘thus, in a manner, privacy and society were conjoined.’ (p. 12) At the third day of employment, Bartleby is asked to help the lawyer on a specific task. In response he says ‘I would prefer not to.’ Baffled, but extremely busy, the lawyer, after being given this formula two more times, asks someone else to help him. A few days later, the same thing happens. ‘Why do you refuse?’ the lawyer asks, upon which Bartleby answers, again, ‘I would prefer not to,’ and after some more pressure and after hearing the opinions of all of his co-workers on his conduct, gives the lawyer ‘to understand that […] his decision was irreversible.’ (p. 14-5, my empasis). Again, the lawyer, hurried by business, postpones ‘the consideration of this dilemma,’ (p. 16) to the next day, when he reflects as follows: Nothing so aggravates an earnest person as a passive resistance. If the individual so resisted be of a not inhumane temper, and the resisting one perfectly harmless in his passivity, then, in the better moods of the former, he will endeavor charitably to construe to his imagination what proves impossible to be solved by his judgement. Even so, for the most part, I regarded Bartleby and his ways. Poor fellow! Thought I, he means no mischief; […] his eccentricities are involuntary. He is useful to me. I can get along with him. If I turn him away, the chances are that he will fall in with some less-indulgent employer, and then he will be rudely treated, and perhaps driven forth miserably to starve. Yes. Here I can cheaply purchase a delicious self-approval. (p. 17) © 2007 Raymond van de Wiel – www.raymondvandewiel.nl 8 This status quo is maintained for some time—during which both the lawyer and his employers, involuntarily start using the word prefer ‘upon all sorts of not exactly suitable occasions’ which the lawyer took to be a sign of a serious mental affection (p. 27)—until Bartleby decides upon ‘doing no more writing.’ (p. 28) The lawyer then says he must leave, but Bartleby, of course, says he ‘would prefer not to.’ The lawyer, now in a state of ‘nervous resentment,’ (p. 33) settles himself by recalling the divine injunction ‘A new commandment give I unto you, that ye love one another’ (p. 34) After Bartleby’s decision, the lawyer believes the status quo would have continued ‘were it not for the unsolicited and uncharitable remarks obtruded upon me by my professional friends who visited the rooms,’ upon the peculiar ‘unaccountable’ presence of Bartleby in his offices. (p. 35). In the end, the lawyer, completely at a loss, decides to vacate the offices. Bartleby stays behind, gets evicted by the new occupant, but ‘persists in haunting the building generally, sitting upon the banister of the stairs by day, and sleeping in the entry by night.’ (p. 39). Consequently, he is removed to a prison as a vagrant. The lawyer visits ‘the silent man’ (p. 45) there twice. The second time he finds him ‘strangely huddled at the base of a wall’. ‘Eh!—He’s asleep, ain’t he?’ asks the grub-man, upon which the lawyer mumbles ‘With kings and counsellors.’ (p. 45) I will not venture to give a full-fledged interpretation of this story, as the main concern of my engagement with this story is an understanding of the various utilizations of the concept of resistance. I have, nevertheless, given an extensive summary of the story, more extensive than strictly necessary for my purposes, because it will show that it reverberates Kant’s theory on many points—on self-interest, autonomy, even on the concept of Grace, that sovereign and gratuitous love of God, which ‘”descends” on us’ as a deus ex machina (certainly so in Copjec’s essay) to help Kant ‘escape’ from the charges of complicity with contemporary evils.32 As we have seen, Bartleby’s resistance is given in the form of what Deleuze has called the ‘formula’ I would prefer not to. The lawyer calls it a ‘passive resistance’, but it is not inconsequential. The lawyer also calls it a ‘refusal’, although in an exchange where the lawyer indignantly responds ‘You will not?’ to his formula, Bartleby responds, with equal emphasis, ‘I prefer not.’ (p. 19) Agamben writes that Philippe Jarowski has observed that ‘Bartleby’s formula is neither affirmative nor negative and that Bartleby neither accepts nor © 2007 Raymond van de Wiel – www.raymondvandewiel.nl 9 refuses, stepping forward and stepping backward at the same time’ and that Deleuze suggested that the formula ‘opens a zone of indistinction between yes and no, […] between the potential to be (or do) and the potential not to be (or do).’33 In this enumeration, a small error surfaces. Bartleby does not ‘step forward and backward at the same time all the time; it is his formula which does so. Bartleby himself, although we only learn this in indirect quotes, at several key moments does actively ‘step forward’, that is, (upon being provoked) he irreversibly decides not to comply with a request of the lawyer (p. 15), and even more unequivocally, when he (without any provocation) decides to stop writing: ‘I noticed that Bartleby did nothing but stand at his window in his dead-wall revery. Upon asking him why he did not write, he said that he had decided upon doing no more writing.’ (p. 28) Agamben is right to conclude that nothing is farther from Bartleby ‘than the heroic pathos of negation.’34 However, he is not correct to state that ‘Bartleby does not consent [and also does not] simply refuse.’35Again, his formula is more ambiguous, leaving open the possibility that he will obey at a later moment. Bartleby himself, however, closes the door with ‘irreversible’ decisions (Lawyer: ‘Do no more writing? Bartleby: ‘No more.’(p. 28)). This is not incongruous with Agamben’s conceptualisations; it is a suspension at the same time as it is a refusal—a refusal which suspends obeying, which suspends cooperation. Nor is it incongruous with Kant’s mathematical model. To rephrase Agamben in Kantian terms: on the threshold between ‘a’ and ‘–a’, is not the colourless abyss of the lack (Nothing) but the luminous spiral of the positive ground (possible, potential).36 Bartleby’s ‘suspension’, then, is a resistance, even though he does not formulate it as such all the time. Bartleby’s resistance is not an active resistance, nor is it a passive resistance; rather it is what Kant calls a negative resistance, a potential resistance, a possible resistance. Now let us go back to Agamben’s implication of Kant by way of Kafka’s parable. Scholem wrote, as we saw, ‘where the wealth of significance is gone and what appears, reduced, so to speak, to the zero point, still does not disappear […], there the Nothing appears.’ Why is the law here the figure of the ‘Nothing’ and not simply in suspension? After all, the gatekeeper keeps the possibility open that the man from the country will be allowed to come in later. Whereas Bartleby refuses/suspends the law/yer, the law refuses the man and as it were also suspends him (or his right to gain access to the law).

#### The affirmative’s epistemic approach to the topic is one of maintaining sovereign power. The alternative is to reject the 1AC as an epistemic endorsement of Whatever-being – the view that life is important irrespective of qualifiers.

Caldwell 4

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Can we imagine another form of humanity, and another form of power? The bio-sovereignty described by Agamben is so fluid as to appear irresistible. Yet Agamben never suggests this order is necessary. Bio-sovereignty results from a particular and contingent history, and it requires certain conditions. Sovereign power, as Agamben describes it, finds its grounds in specific coordinates of life, which it then places in a relation of indeterminacy. What defies sovereign power is a life that cannot be reduced to those determinations: a life "that can never be separated from its form, a life in which it is never possible to isolate something such as naked life**.** " (2.3). In his earlier Coming Community, Agamben describes this alternative life as "whatever being." More recently he has used the term "forms-of-life." These concepts come from the figure Benjamin proposed as a counter to homo sacer: the "total condition that is 'man'." For Benjamin and Agamben, mere life is the life which unites law and life. That tie permits law, in its endless cycle of violence, to reduce life an instrument of its own power. The total condition that is man refers to an alternative life incapable of serving as the ground of law**.** Such a life would exist outside sovereignty. Agamben's own concept of whatever being is extraordinarily dense. It is made up of varied concepts, including language and potentiality; it is also shaped by several particular dense thinkers, including Benjamin and Heidegger. What follows is only a brief consideration of whatever being, in its relation to sovereign power.      "Whatever being," as described by Agamben, lacks the features permitting the sovereign capture and regulation of life in our tradition**.** Sovereignty's capture of life has been conditional upon the separation of natural and political life. That separation has permitted the emergence of a sovereign power grounded in this distinction, and empowered to decide on the value, and non-value of life (1998: 142). Since then, every further politicization of life, in turn, calls for "a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only 'sacred life,' and can as such be eliminated without punishment" (p. 139). This expansion of the range of life meriting protection does not limit sovereignty, but provides sites for its expansion. In recent decades, factors that once might have been indifferent to sovereignty become a field for its exercise. Attributes such as national status, economic status, color, race, sex, religion, geo-political position have become the subjects of rights declarations. From a liberal or cosmopolitan perspective, such enumerations expand the range of life protected from and serving as a limit upon sovereignty. Agamben's analysis suggests the contrary. If indeed sovereignty is bio-political before it is juridical, then juridical rights come into being only where life is incorporated within the field of bio-sovereignty. The language of rights, in other words, calls up and depends upon the life caught within sovereignty: homo sacer. Agamben's alternative is therefore radical. He does not contest particular aspects of the tradition. He does not suggest we expand the range of rights available to life. He does not call us to deconstruct a tradition whose power lies in its indeterminate status.21 Instead, he suggests we take leave of the tradition and all its terms. Whatever being is a life that defies the classifications of the tradition, and its reduction of all forms of life to homo sacer. Whatever being therefore has no common ground, no presuppositions, and no particular attributes.It cannot be broken into discrete parts; it has no essence to be separated from its attributes; and it has no common substrate of existence defining its relation to others. Whatever being cannot then be broken down into some common element of life to which additive series of rights would then be attached. Whatever being retains all its properties, without any of them constituting a different valuation of life(1993: 18.9). As a result, whatever being is "reclaimed from its having this or that property, which identifies it as belonging to this or that set, to this or that class (the reds, the French, the Muslims) -- and it is reclaimed not for another class nor for the simple generic absence of any belonging, but for its being-*such*, for belonging itself." (0.1-1.2).Indifferent to any distinction between a ground and added determinations of its essence, whatever being cannot be grasped by a power built upon the separation of a common natural life, and its political specification. Whatever being dissolves the material ground of the sovereign exception and cancels its terms**.** This form of life is less post-metaphysical or anti-sovereign, than a-metaphysical and a-sovereign. Whatever is indifferent not because its status does not matter, but because it has no particular attribute which gives it more value than another whatever being. As Agamben suggests, whatever being is akin to Heidegger's Dasein. Dasein, as Heidegger describes it, is that life which always has its own being as its concern-- regardless of the way any other power might determine its status.Whatever being, in the manner of Dasein, takes the form of an "indissoluble cohesion in which it is impossible to isolate something like a bare life. In the state of exception become the rule, the life of *homo sacer*, which was the correlate of sovereign power, turns into existence over which power no longer seems to have any hold" (Agamben 1998: 153).We should pay attention to this comparison. For what Agamben suggests is that whatever being is not any abstract, inaccessible life, perhaps promised to us in the future. Whatever being, should we care to see it, is all around us, wherever we reject the criteria sovereign power would use to classify and value life**.** "In the final instance the State can recognize any claim for identity -- even that of a State identity within the State . . . What the State cannot tolerate in any way, however, is that the singularities form a community without affirming an identity, that humans co-belong without a representable condition of belonging" (Agamben 1993:85.6). At every point where we refusethe distinctions sovereigntyand the state would demand of us, the possibility of a non-state world, made up of whatever life, appears.

#### Alt solves the case – whatever-being cannot be reduced to bare life, which makes violence against it unjustifiable – without bare life, the state has no credence by which they can unequally apply the law

### Solves health care

#### Resolves diseases that are paradoxically unaccounted for in the areas that need it the most

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In anthropology, there has been much work on issues of time in science and medicine. Especially the future has come to play a critical role in thinking about medicine today. Anthropologists have shown that future thinking operates at the heart of such diverse fields as medical prognosis, especially in cancer treatments (Jain 2013) or end of life care (Kaufman 2005), but also in the realm of public health, where future epidemic threats are tied up in rituals of scientific prophecy, where the known and the unknown are productively put to play, as Carlo Caduff has argued (Caduff 2014). And yet, the figure of the prophet or the prophetic – the future time and the unknown – is not the only mode at stake in medicine and public health. As important is a different temporal mode: messianic time. In his essay, Agamben explicitly distinguishes the messianic from the prophetic or apocalyptic. Messianic time, Agamben writes,

“is not the end of time, but the time of the end, (…) the time that contracts itself and begins to finish” (2). (…) “It is the time that it takes for time to come to an end, to accomplish itself. Or, more exactly, the time we need in order to accomplish, to bring to an end our representation of time. (…)– in this sense: the time which is left to us” (5).

For Agamben, the messianic is operational time, that is time in which we are, in which we act. It is real time, the time that is left to us after the messianic event. In messianic time, other than in prophetic time for example, the messianic event has already occurred, it has already happened, and salvation is already accomplished. And yet, as Agamben shows, to be really achieved, salvation needs supplementary time, so that it can be brought to an end.

In Agamben’s conception, the time of the end is always extended time as much as contracted time. Logics of continuous progress and linear development do not work out in messianic time. Rather, the time of the end allows to account for inversions of past and present as much as for salvation’s temporal thickness and extension, that goes beyond one particular event. Messianic time thereby stretches and is in need of active instantiation, of active perfection, for salvation to be accomplished.

Conceiving of time beyond the structure of event, beyond beginnings and endings, seems particular important in the field of medicine and public health, in which attempts to end diseases are – of course – paramount, but so are recurring failures to do so. Tuberculosis control is no exception here. This is why I want to use Agamben’s conception of messianic time to think about TB control as an extended time of the end of disease, as a process over time, not a point in time, as the time it takes to end the TB epidemic. It is the time that is needed to accomplish the end of disease after a messianic event, a cure, and thus realize men’s definite salvation from this disease.

In TB control, messianic time is the time which is left in order to treat, cure and finally end tuberculosis. Messianic time then, is the present and future ending of this disease. It is the time that is left to end TB. It is one of medicine’s temporal modes. This time, if we follow Agamben, is active time, operational time. Medicine’s messianic time starts with a messianic event, a cure, and extends its operations in the future through continuous action. Since for the end of disease to be truly accomplished, messianic time needs supplementary time and thus deferment. Salvation needs constant perfection, medicine needs more time to develop better, more effective agents, different compounds, more combinations.

Ending and Embodying Tuberculosis Today

A renewed aspiration to end TB on a global scale has been simmering since the early 2000s, after decades of neglect of international TB control, with creations like the Global Fund or the TB Alliance. This renewed ambition becomes nowhere clearer than in the brand new “Global Plan to End TB 2016-2020”, whose motto is to “shift the paradigm from barely controlling the epidemic to ending it altogether.” In the executive summary of the Plan, a call for the perfection of existing treatment and control strategies coexists with a call for more novelty, more innovation, and more knowledge. “The Global Plan demonstrates that huge gains can be made by improving the quality and reach of existing medical interventions. But, these will only get us so far. Without the development and deployment of new tools, we cannot end TB”, so it says.

In the Global Plan, messianic time, that is the time that is left to end disease, has already started, but is in need of perfection, in need of action. What is needed is more investment in the time that is left, to bring the time of disease to an end.

In contrast to this renewed interest and investment in TB, in routine TB control in the rich countries of the North, where I have done my ethnographic fieldwork, messianic medicine meanwhile has contracted the time of the end, as if the end of disease had already arrived. This anticipation of the end of disease, this constantly making present of its end, makes it unconceivable for some patients to acknowledge tuberculosis as an event in their lives, to embody it. This was the case for Rebecca, a white, middle class French woman, who had TB and talked in the following words about it:

She (the radiologist) told me that it was tuberculosis. Voilà. I didn’t quite believe her. Because for me, this is a disease which is disappearing … For me, TB, is something you have if you are not vaccinated, and if you are vaccinated, you don’t have it … So for me, what is it, this disease? It’s an old disease. For me, it’s really something that has disappeared, because one talks less and less about it. … Tuberculosis, it’s a strange disease (une maladie étrangère), a disease that I didn’t suspect at all. For me, it’s a vaccine that you get when you are a kid, and that’s it. That’s all. Finished. (…) It’s really, (…) a disease of the middle ages. Dirt, I don’t know, tramps, bad hygiene, and all the rest of it. Famines, you know, all these little things, but not today, not in the environment we live in. We eat well – how to tell you – we don’t live in poverty, we are not, you see, all these things, which make this disease happen … If we were, I don’t know, in Africa, then – ok (là, je veux bien). Because over there, you get TB with all these other diseases … But not here, not in France (Rebecca, white secretary, married with two children, lives in Paris, interview transcript, October 13, 2006).

Rebecca beautifully expressed what she felt like when she was diagnosed with TB: a paradoxical experience of disease, a kind of counter-intuitive embodiment of the past, where TB can only exist as a revenant, because it should have already been ended, dead, gone – at least in the global North.

Beyond Ends

So why should we think through such abstract temporal and quasi-religious ideas about science, diseases and epidemics? To understand the differing temporal and promissory logics of medicine and public health as well as their powerfulness not as accessories, but as constitutive of these fields: the stubborn insistence on, and search for the near ends of diseases and epidemics – which is indeed medicines raison d’être – despite history’s many examples of failures; to understand the messy medical practices in the time that is left, that can lead to calls for more economic and scientific investments in a desire of synthetic salvation, but also to medical futilities and counter-intuitive embodiment, as the example of Rebecca has shown. If one wants to be able to grasp the meanings of such epistemological contradictions and everyday practices as well as their consequences for the experience of disease, one should supplement the exploration of medicine’s economies and technologies of disease control with an interrogation of their inherent faiths, hopes and desires, in which time plays a central role. Messianic time is one of medicine’s temporal modes, that holds together the unstable worlds of science and public health, and that links their counter-intuitive, counter-factual and paradoxical histories, presents and futures, beyond clear temporal divisions. In messianic time, there is no such thing as linear time. Messianic time is full of contradictions, deferments and realisations, which are a productive means to think about medicine as a messianic enterprise with conflicting practices, discourses and temporalities.