



Publication details, information for authors and referees and full contents available at: <http://global-discourse.com/>

ISSN: 2043-7897

Suggested citation:

Perezalonso, A. (2010) 'The Message of Torture: Biopolitics and Barelife in the US Discourse of the War on Terror', *Global Discourse* [Online], 1: II, available from: <<http://global-discourse.com/contents>>.

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## **The Message of Torture: Biopolitics and Bare Life in the US Discourse of the War on Terror**

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**Abstract:** Certain practices of the George W. Bush's administration's 'war on terror' related to the management of human life are examined through the lens of Michel Foucault's concept of biopolitics and Giorgio Agamben's idea of bare life. However, a discursive dimension is added. The practices are assessed as an essential part of the message and a determining factor in the overall content of the discourse. While Foucault provides useful insights, it is Agamben's work that proves to be more accurate for the understanding of the discourse.

### **Introduction**

This essay seeks to examine certain practices of the George W. Bush's administration's 'war on terror' – those related to the management and manipulation of human life, including the extreme form of torture – through the lens of Michel Foucault's concept of biopolitics and Giorgio Agamben's idea of sovereignty as the power to render bare life. I consider these practices as essential elements of the discourse of the war on terror; without them it could not be properly understood. While the roles of biopolitics and bare life have already been considered by other contemporary authors within the context of the war on terror,<sup>2</sup> here I seek to add the dimension of discourse: to assess these practices *as a message* in order to determine its content. That a new meaning emerges does not mean that there is a discursive intentionality in the case of the war on terror from those directly responsible for these practices. It does mean, however, that the message does take place; and that an

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<sup>2</sup> Among others: Michael Dillon, 'Governing Terror: The State of Emergency of Biopolitical Emergence', *International Political Sociology*, 1(2007); Julian Reid, 'The Biopolitics of the War on Terror: a critique of the 'return of imperialism' thesis in international relations', *Third World Quarterly*, 26-2 (2005); Colleen Bell, 'Surveillance Strategies and Populations at Risk: Biopolitical Governance in Canada's National Security Policy', *Security Dialogue*, 37-2 (2006); Louise Amoore, 'Biometric borders: Governing mobilities in the war on terror', *Political Geography*, 25 (2006); Benjamin J. Muller, 'Securing the Political Imagination: Popular Culture, the Security Dispositif and the Biometric State', *Security Dialogue*, 39-2-3 (2008); Andrew W. Neal, 'Foucault in Guantánamo: Towards an Archaeology of the Exception', *Security Dialogue*, 37 (2006).

exchange of information with the population occurs even if it is never fully articulated into language. Therefore, the message becomes an element of the discourse. By implication, the phenomena can be analysed in order to make the message explicit and improve our understanding of the discourse.

When we incorporate practices into discourse analysis we can identify different layers within the discourse of the war on terror. On October 17, 2006, George W. Bush signed the 2006 Military Commissions Act, which provided a clear legal framework for trying non-United States citizens deemed to be “unlawful enemy combatants”. It denied habeas corpus rights to detainees who had not been charged with any offence. While the US government had issued numerous statements prohibiting its military personnel from using torture, the evidence shows that some of the officially sanctioned practices in the war on terror – especially as applied by certain US intelligence personnel – amounted to torture.<sup>3</sup> Thus, there are at least three levels of discourse to be considered: the statements, the legal framework and the actual practices. This essay focuses on the last one and includes some elements of the legal changes as they are directly related to the practices and may even be considered practices themselves.

The three levels are linked and confer new meaning to each other. In a mid-August 2003 email a captain in military intelligence said of detainees classified as unprivileged belligerents: “we want these individuals broken. Casualties are mounting and we need to start gathering info to help protect our fellow soldiers from any further attacks.”<sup>4</sup> As this email became public it became part of the overall text of the discourse, albeit unintentionally. A memorandum sent from the Justice Department to the White House on 1 August 2002, which had to be withdrawn in 2004, “stood the plain meaning of words on their head when it redefined 'torture' to allow a huge range of cruel and inhuman treatment to escape the definitional net of US and international legislation. It also strained belief when it stated that the president had total and unfettered discretion to ensure that prisoners were effectively interrogated, even to the point of authorising torture”.<sup>5</sup> It is possible to analyse the practices as a consequence of the use of language; this route of enquiry has been explored by others.<sup>6</sup> This essay takes an alternative route by assuming that practices are already a message and part of the discourse in order to articulate its content.

## 1. Analyzing Practices as Part of the Discourse

Following Ferdinand de Saussure, the neo-Gramscians Ernesto Laclau and Chantal Mouffe argue that each element of a discourse, conceptual or practical, lacks intrinsic

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3 Adam Roberts, ‘Review Essay: Torture and Incompetence in the ‘War on Terror’’, *Survival*, 49-1 (Spring 2007): 200

4 Adam Roberts, ‘Review Essay: Torture and Incompetence in the ‘War on Terror’’: 201

5 Adam Roberts, ‘Review Essay: Torture and Incompetence in the ‘War on Terror’’: 203

6 Richard Jackson examines language as a cause of political violence in *Writing the war on terrorism: Language, Politics and Counter-Terrorism*, (Manchester: Manchester University Press, 2005)

meaning unless placed next to other elements that define it. Meaning is therefore a function of difference, and therefore unstable in principle and subject to change according to variation in structures of difference. In agreement with this principle, Laclau and Mouffe adopt and modify Antonio Gramsci's concept of hegemony to denote the structuring of meanings through discursive practices. For Gramsci, hegemony was the capacity of a class to transcend its narrow interests in order to symbolise a variety of popular struggles that were external to class or economic practices. Laclau and Mouffe take the idea of hegemony as “an ‘articulatory practice’ that ‘sutures’ concepts and practices around key principles such that certain elements come to be viewed as ‘naturally’ related or contiguous.”<sup>7</sup> Similarly, this essay seeks to identify the derived meaning that emerges from practices when they are understood next to the overall language of the war on terror.

At first sight, it would appear that, following Foucault, it is possible to reduce practices to discourse (or viceversa), given that in his view the power of language is linked to external, material and tactical forms of power. This is why power cannot be fixed or apprehended in the meanings of texts, but must be grasped and traced through the analysis of tactical and material relations of force. Discourse itself may take material forms, and be ‘embodied’ in various kinds of practice. The analysis of these material and extra-textual practised forms of powers should indeed be involved within a Foucauldian methodology, emphasizing both text and context.<sup>8</sup> However, in his empiricism Foucault distanced himself from Jacques Derrida, who would contend that ‘there is nothing outside the text’ and thus concentrated on meanings, ruptures and inconsistencies internal to texts. Foucault's empiricism was based on the extra-discursive, and thus denied that everything could be reduced to text. He was hostile towards Derrida's “reduction of discursive practices to textual traces”, and was more interested in the question of power than issues of language, arguing that

one's point of reference should not be to the great model of language [*langue*] and signs, but to that of war and battle. The history which bears and determines us has the form of a war rather than that of a language: relations of power, not relations of meaning.<sup>9</sup>

If one is to take Foucault's idea of discourse strictly and accept that it is composed of a set of historical and paradigmatic assumptions and rules that determine even how we objectify things, then it would naturally follow that ‘there is nothing outside the text’ indeed. It appears that his difference with Derrida is not of an essential nature but rather one of stressing certain issues over others. Foucault preferred to read relations

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7 James Martin, ‘The political logic of discourse: a neo-Gramscian view’, *History of European Ideas* 28 (2002): 24

8 Derek Hook, ‘Discourse, Knowledge, Materiality, History: Foucault and Discourse Analysis’, *Theory & Psychology*, 11-4 (2001): 529, 530.

9 Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writings 1972-1977* (New York: Pantheon Books, 1980): 114, quoted in Jan Selby, ‘Engaging Foucault: Discourse, Liberal Governance and the Limits of Foucauldian IR’, *International Relations*, 21 (2007): 328

of power before language and signs, i.e. relations of meaning, but he did not deny that power and discourse were intimately related; on the contrary. Thus, Derrida's preference for language does not logically contradict the essential Foucault, but complements him.<sup>10</sup>

In any case, if we accept Foucault's distinction between relations of meaning and the extra-discursive, such as practices, this essay departs from Foucault in its analysis of the war on terror. In regards to the latter, I intend to analyse biopolitics and other related practices as part of the discourse. I do not propose as a matter of principle that *everything* can or should be reduced to discourse. Rather, I believe that our understanding of the discourse of the war on terror increases if we read some of its practices as a complementary part of the discourse. As such, they carry a meaning and message.

In this respect this analysis is closer to Laclau and Mouffe, who reject the distinction between the discursive and the non-discursive, and insist on “the interweaving of the semantic aspects of language with the pragmatic aspects of actions, movements and objects.” As Jacob Torfing explains, “discourse is co-extensive with the social and cannot be reduced to either its semantic or its pragmatic aspects. All actions have meaning, and to produce and disseminate meaning is to act.”<sup>11</sup>

## 2. Biopolitics and Bare Life: Foucault and Agamben

By biopolitics Michel Foucault meant “the endeavour, begun in the eighteenth century, to rationalize the problems presented to governmental practice by the phenomena characteristic of a group of living human beings constituted as a population: health, sanitation, birthrate, longevity, race...”<sup>12</sup> He noted that these problems have occupied an expanding place since the nineteenth century, constituting political and economic issues up to the present day. The framework of political rationality was linked to Liberalism, considered not as an ideology or a theory, but as a “way of doing things”: a principle and a method of rationalizing the exercise of government which obeys the rule of maximum economy. This practice consists of mechanisms, techniques, and technologies of power.

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10 In his defense, Derrida explained: “what I call 'text' implies all the structures called 'real', 'economic', 'historical', socio-institutional, in short: all possible referents. Another way of recalling once again that 'there is nothing outside text'. That does not mean that all referents are suspended, denied, or enclosed in a book, as people have claimed, or have been naive enough to believe and to have accused me of believing. But it does mean that every referent, all reality, has the structure of a differential trace, and that one cannot refer to this 'real' except in an interpretive experience. The latter neither yields meaning nor assumes it except in a movement of differential referring. That's all.” Derrida, 1988a: 148, cited in Jacob Torfing, *New Theories of Discourse: Laclau, Mouffe and Zizek* (UK: Blackwell, 1999): 94

11 Jacob Torfing, *New Theories of Discourse*: 94

12 Michel Foucault, ‘The Birth of Biopolitics’, in Paul Rabinow and Nikolas Rose (eds.), *The Essential Foucault, Selections from The Essential Works of Foucault 1954-1984* (New York-London: The New Press, 1994; 2003): 202

In the nineteenth century, Foucault writes, sovereignty's traditional right of taking life or letting live was complemented by a new right which penetrated and permeated the old one: the power to "make" live and "let" die.<sup>13</sup> Biopolitics arrived with the transformation in waging war from the defence of the sovereign to securing the existence of a population. From then on, according to Foucault, decisions to fight and kill were made in terms of collective survival and preserving life.<sup>14</sup> The sovereign "right of the sword", was then simply one element among other forms of power. It was organized within a power of management of life as the scientific possibility of transforming life, not only for its value to capitalism as labour, but also as well-being or health. Too many things lay outside the traditional mechanism of the power of sovereignty, both at the level of the detail and of the mass. Discipline was the first adjustment to take care of this. The second adjustment was that of biopolitics, which was more difficult as it implied complex systems of coordination and centralization.<sup>15</sup>

Foucault was interested in analyzing mechanisms and rationalities of governance under conditions of formal freedom or the type of social control which is characteristic of liberal societies.<sup>16</sup> Thus, if we were to adopt a Foucauldian approach, the concept of biopolitics as a practice of liberal rationality would seem to be a useful starting point to examine certain practices of the war on terror. However, it is insufficient when we find examples of extreme practices on human life, such as torture. The problem is that torture is not expected to naturally occur in conditions of formal freedom or in liberal societies. Quite correctly, Jan Selby writes:

It is this specific concern with liberal societies which in my view explains why Foucault paid such scant attention to what Giorgio Agamben has argued is the exemplary form of modern bio-political governance, the concentration camp: Foucault was much less interested in situations of coercive and totalitarian control, than in power relations which operated within the context of, and through, freedom.<sup>17</sup>

Giorgio Agamben has explored and extended the notion of biopolitics by arguing that the defence of life often takes place in a zone of indistinction between violence and the law: the camp, the fundamental biopolitical paradigm of the West. The paradox is that the privileging of life has provided the rationale for some cases of genocide, as one group's life is violently secured through the demise of another.<sup>18</sup>

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13 Michel Foucault, *Society Must be Defended*, p. 241

14 David Campbell, 'The Biopolitics of Security: Oil, Empire, and the Sports Utility Vehicle', in Elizabeth Dauphinee and Cristina Masters (eds.), *The Logics of Biopower and the War on Terror; Living, Dying, Surviving* (Palgrave Macmillan, 2007): 134

15 Katia Genel, 'The Question of Biopower: Foucault and Agamben': 46

16 Jan Selby, 'Engaging Foucault': 331

17 Jan Selby, 'Engaging Foucault': 331

18 David Campbell, 'The Biopolitics of Security': 134; Giorgio Agamben, *Homo Sacer; Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1995): 181

According to Agamben, the threads of research concerning political techniques and sovereign power, and the other concerning the technologies of the self, are intertwined at several points.<sup>19</sup> He writes:

The present inquiry concerns precisely this hidden point of intersection between the juridico-institutional and the biopolitical models of power. What this work has had to record among its likely conclusions is precisely that the two analyses cannot be separated, and that the inclusion of bare life in the political realms constitutes the original – if concealed – nucleus of sovereign power. *It can even be said that the production of a biopolitical body is the original activity of sovereign power.* In this sense, biopolitics is at least as old as the sovereign exception. Placing biological life at the center of its calculations, the modern State therefore does nothing other than bring to light the secret tie uniting power and bare life, thereby reaffirming the bond (derived from a tenacious correspondence between the modern and the archaic which one encounters in the most diverse spheres) between modern power and the most immemorial of the *arcane imperii*.<sup>20</sup>

For Agamben, the logic of sovereignty is that of production and isolation of “bare life” as an exception; life that can be killed but not sacrificed.<sup>21</sup> By examining a legal form of Roman law he identifies the concept of bare life with “sacred life”. The sacredness of life “originally expressed precisely both life’s subjection to a power over death and life’s irreparable exposure in the relation of abandonment.”<sup>22</sup> The production of bare life is the originary activity of sovereignty. Agamben argues that since the beginning of Western patriarchal politics, there has been a distinction between bare life – or the life of the home – and politically qualified life – the life of the polis or public sphere. The life excluded from politics is a life that can be killed without that killing constituting murder. However, it was necessary for politics, so that the political community could be constituted as bounded and sovereign.

Agamben detects in contemporary sovereign politics an increase of the “state of exception”. In it, bare life no longer remains on the margins, but occupies all the spaces of politics when it became biopolitics. All life became bare life at this point. This has happened increasingly everywhere since the Nazi camps.<sup>23</sup> He “intends to reveal the mobility of the biopolitical caesuras that endlessly separate and exclude one

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19 Katia Genel, ‘The Question of Biopower: Foucault and Agamben’: 50

20 Giorgio Agamben, *Homo Sacer*: 6; Italics in the original.

21 Katia Genel, ‘The Question of Biopower: Foucault and Agamben’: 43; Giorgio Agamben, *Homo Sacer*

22 Roxanne Lynn Doty, ‘Crossroads of Death’, in Elizabeth Dauphinee and Cristina Masters (eds.), *The Logics of Biopower and the War on Terror: Living, Dying, Surviving* (Palgrave Macmillan, 2007): 13

23 Jenny Edkins, ‘Missing Persons: Manhattan, September 2001’, in Elizabeth Dauphinee and Cristina Masters (eds.) *The Logics of Biopower and the War on Terror: Living, Dying, Surviving* (Palgrave Macmillan, 2007): 37

life – that of the Jews – in order to reinforce and to cause another life – that of the Germans – to emerge from it.”<sup>24</sup> Foucault also noted the Nazi genocide’s relation to biopolitics in the sense of one race of people killing another for its own alleged preservation. However, Agamben deviates from Foucault in two points. First, he believes that biopower and killing, which coincide with one another with the Nazis, are indissociable, while they remain heterogenous in Foucault’s analysis. Second, extermination is not the exclusive paradigm by which to grasp Nazism; it is the production of bare life that can explain this double process. To the extent that the logic of the production of bare life leads to killing, the concentration camp is linked to the extermination camp.<sup>25</sup>

Agamben's analysis is foreign to Foucault in that he is bound to a power and its logic rather than to the plurality of its mechanisms. In this respect, if an examination of discourse refers to something with a meaning common to the multiplicity of practices, the observations in this essay are closer to Agamben than Foucault. Katia Genel observes that for Agamben, “biopower is nothing other than the deployment of the structure of sovereignty in the form of the crisis. Agamben constitutes it as a paradigm rather than locating, as Foucault has done, the discontinuities and historical transformations of the way in which power is exercised”.<sup>26</sup> Agamben’s focus on the power of sovereignty is central for the argument about discourse presented in here, although I do not believe it constitutes a logical contradiction with Foucault’s approach.<sup>27</sup>

### 3. Sending a Message through Practices

The Abu Ghraib scandal, brought to public knowledge by journalist Seymour M. Hersh in 2004 after gaining access to an Army report which described “sadistic,

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24 Katia Genel, ‘The Question of Biopower: Foucault and Agamben’: 55

25 Katia Genel, ‘The Question of Biopower: Foucault and Agamben’: 55, 56

26 Katia Genel, ‘The Question of Biopower: Foucault and Agamben’: 58

27 For an alternative interpretation of the biopolitics of the war on terror see Michael Dillon, ‘Governing Terror: The State of Emergency of Biopolitical Emergence’, *International Political Sociology*, 1(2007): 7-28. Dillon argues that the war on terror “emerged out of a generic biopolitics of contingency in the west, and is being conducted according to its political technologies and governmental rationalities, as much as it was precipitated by a contingent terroristic event directed at the epicenter of geopolitical hegemony in the United States”. (p. 8) Dillon explicitly rejects the notion that the state of emergency of this century is as described by Carl Schmitt or Giorgio Agamben. Rather, he argues that biopolitics have adopted the contingent as their principle of formation, where life is understood by Dillon as constant nonlinear adaptation and change. In this sense, he characterizes biopolitics as encompassing lifelike systems, thus blurring the line between the organic and the inorganic. Apart from the arguable expansion from a traditional notion of biopolitics, Dillon’s argument may explain certain practices such as surveillance but falls short for the analysis of torture. Indeed, torture as a display of overwhelming power (domination) begs for Agamben’s analysis on sovereignty and bare life.

blatant, and wanton criminal abuses”,<sup>28</sup> provided several graphic icons of the sharpest contradictions of the war in Iraq and the war on terror. Shocking photographs of detainees being humiliated, beaten and tortured were published in the world media. Perhaps the best recognized pictures – yet not the ones reflecting the most brutal practices – are those of Specialist Lynndie England holding on a leash a naked prisoner lying on the ground and of detainee Satar Jabar standing on a box with wires connected to his body. Although the Army report was not meant for publication, a message took place, even if unintended. It took place between those who hold sovereign power to render bare life and the world population at large, and became embedded in the discourse. The message was not delivered through words as much through practices and their graphic evidence. Its content was the affirmation and the reminder of the power of the sovereign to dispose of human life at will, to render bare life and to create exceptional spaces of indistinction between law and violence. In this way, the theme of the exceptional power of the sovereign becomes a subtext of the discourse of the war on terror.

Other examples stand next to Abu Ghraib. Amnesty International has pointed out that hundreds of people are held in Guantanamo Bay, the US naval base leased from Cuba which since 2002 has been used for military detention camps for the imprisonment of suspected members of al Qaeda and the Taliban. They are “in conditions which may amount to cruel, inhuman or degrading treatment”. The organisation estimated that 70,000 people had been detained outside the US in the context of the war on terror. It reported on evidence of stress positions, isolation, hooding, sensory deprivation, the use of dogs, cruel and prolonged use of shackles, the use of loud music and strobe lights.<sup>29</sup>

Acts of torture are of course more than the affirmation of the rights of the sovereign. Most obviously perhaps, they are acts of humiliation.<sup>30</sup> Beyond torture, it has been argued that the Bush administration’s desire to humiliate was the reason for the lack of a legal approach to the war on terror (as in pursuing criminals as opposed to declaring a war), for courts would deliver justice, but not “vengeance and counterhumiliation”. Paul Saurette writes: “from this perspective, the attacks on Afghanistan and Iraq served not only military purposes, but psychological ones as well, for what was the implicit message behind the willingness to go in alone without the UN's approval?” Whether consciously intended by policy makers or not, there is indeed an implicit act of communication whenever the US government goes beyond legal or moral boundaries.<sup>31</sup> The enemy and the ‘other’ are humiliated, but a lesser

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28 Seymour M. Hersh, ‘Torture at Abu Ghraib: American soldiers brutalized Iraqis. How far does the responsibility go?’, *The New Yorker* ([http://www.newyorker.com/archive/2004/05/10/040510fa\\_fact](http://www.newyorker.com/archive/2004/05/10/040510fa_fact), May 10, 2004)

29 David Mutimer, ‘Sovereign Contradictions: Maher Arar and the Indefinite Future’, in Elizabeth Dauphinee and Cristina Masters (eds.), *The Logics of Biopower and the War on Terror; Living, Dying, Surviving* (Palgrave Macmillan, 2007): 161, 162

30 Paul Saurette, ‘Humiliation and the Global War on Terror’, *Peace Review: A Journal of Social Justice*, 17 (2005): 48, 49

31 Paul Saurette, ‘Humiliation and the Global War on Terror’: 52

sense of humiliation is extended to anyone who demanded or expected restraint from US authorities.

Saurette believes that the desire to humiliate explains tactics of the war on terror: the military strategy of shock and awe sent a message: “You who have humiliated us will in turn be shocked and humiliated by our power. You, and the rest of the world, will then feel awe at our power and thus respect us because we have humiliated you”.<sup>32</sup> Likewise, the prohibition of pictures of dead US soldiers had the purpose of avoiding humiliation of their own pretension of invulnerability. The release of pictures of the dead sons of Saddam Hussein and of the former dictator hiding in a hole had the purpose of humiliating them as less than human. And the acts of Abu Ghraib were a reproduction in the micro level of the same dynamics.<sup>33</sup> If Saurette’s assumption is correct, then sending messages through such practices was an objective rather than an accident. It remains as an interesting assumption, though, since we cannot know with certainty how much was consciously intended.

The message towards the masses is comparable to what takes place in a micro level between the torturer and the tortured. Just as the physical pain of torture “is so incontestably real that it seems to confer its quality of “incontestable reality” on that power that has brought it into being,”<sup>34</sup> the shock of the images of Abu Ghraib and the reports from Guantanamo conferred ‘reality’ on the war on terror and the power of those who wage it. Just as the necessity for torture is precisely that the reality of that power is so highly contestable,<sup>35</sup> practices that do not respect the boundaries are needed for the war on terror for it to be affirmed as urgent.

Elaine Scarry has described the nature of torture as “repeated acts of display” having as its purpose “the production of a fantastic illusion of power”, making it “a grotesque piece of compensatory drama.”<sup>36</sup> If drama is part of the essence of torture, then the images and reports of torture released in the global media become a vehicle of dramatization for the war on terror – again, whether purposely or not. The world’s knowledge of the horrors of Abu Ghraib and Guantanamo has enhanced the effect of torture as a drama of power. Particularly the case of Abu Ghraib, for being so graphic, translated human suffering into “an emblem of the regime’s strength”, to borrow Scarry’s expression.

The translation is made possible by, and occurs across, the phenomenon common to both power and pain: agency. The electric generator, the whips and canes, the torturer's fists, the walls, the doors, the prisoner's sexuality, the torturer's questions, the institution of medicine, the prisoner's screams, his wife and children, the telephone, the chair, a trial, a submarine, the prisoner's ear

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32 Paul Saurette, ‘Humiliation and the Global War on Terror’: 52

33 Paul Saurette, ‘Humiliation and the Global War on Terror’: 52, 53

34 Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World*, (New York-Oxford: Oxford University Press, 1985): 27

35 Elaine Scarry, *The Body in Pain*: 27

36 Elaine Scarry, *The Body in Pain*: 27, 28

drums – all these and many more, everything human and inhuman that is either physically or verbally, actually or allusively present, has become part of the glutted realm of weaponry, weaponry that can refer equally to pain or power. [...] Now, at least for the duration of this obscene and pathetic drama, it is not the pain but the regime that is incontestably real, not the pain but the regime that is able to eclipse all else, not the pain but the regime that is able to dissolve the world.<sup>37</sup>

If the agents of torture (or similar types of shocking practices) are needed for the regime to affirm its reality, it is reasonable to consider that the same logic of power facilitated the public knowledge of at least part of what was taking place in Iraq.

The messages behind the practices of horrific acts are not easily translated into words. However, when attempting to do so, Agamben's notion of *homo sacer* – the sacred man – comes to mind: "*Life that cannot be sacrificed and yet may be killed is sacred life.*"<sup>38</sup> This is directly connected to the power of the sovereign and its sphere, "*the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life... is the life that has been captured in this sphere.*"<sup>39</sup> Is it not reasonable then that Agamben has desciphered with these words the message behind shocking acts of taking life without committing murder – or by extension torturing it? Abu Ghraib, Guantanamo, and even going to war without the consent of the UN Security Council and other practices and actions of US authorities of the Bush administration were exceptional and were even predicated in such terms. The structure of the exception, according to Agamben, is the sovereign ban, and what is caught in this ban is life that can be killed but not sacrificed, "in this sense, the production of bare life is the originary activity of sovereignty."<sup>40</sup> Thus, the medium becomes the message: by showing their ability to exceptionally dispose of human life, the wagers of the war on terror state their sovereignty. Through the violence of the processes by which bare life is excluded, a biopolitical body is produced on which sovereign power can exercise its power, which is perpetrated through the *gesture* of exception. Genel explains:

(T)he state of exception is precisely what is going to generate a certain visibility, to make what is hidden emerge. It is from this perspective that the camp will be analyzed: the hidden face of power, the locus in which the exception is operative, is revealed in the crisis situation, either in the exceptional situation or ultimately in the camp.<sup>41</sup>

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37 Elaine Scarry, *The Body in Pain*: 56

38 Giorgio Agamben, *Homo Sacer*: 82. Italics in the original.

39 Giorgio Agamben, *Homo Sacer*: 82. Italics in the original.

40 Giorgio Agamben, *Homo Sacer*: 83

41 Katia Genel, 'The Question of Biopower: Foucault and Agamben': 52

Other events of less graphic nature contributed to the message. The creation of exceptional laws and their application have not been strictly limited to the space of prisoner camps. Administration lawyers concluded in a March 2003 Defence Department legal memorandum that the president was not bound by either an international treaty prohibiting torture nor by a federal anti-torture law. They argued he had the authority as commander in chief to approve any technique needed to protect the nation's security. After the memo was described in newspaper reports the Bush administration disavowed it. Former White House counsel, Alberto Gonzales, assured that it was not relied upon by policy-makers.<sup>42</sup> Backing off the memorandum and condemning the practices of Abu Ghraib may have somehow obscured the effect of the message but not entirely cancelled it, as repeated practices speak stronger than words. In the end sum of the contradictions between reports of practices and their denial, what remains is the notion of the prevalence and reach of the power of the sovereign.

It should not be surprising then that citizen's rights and social contracts are overlooked since "only bare life is authentically political"<sup>43</sup> from the point of view of sovereignty. Agamben sees this as the reason for Hobbes to seek the foundation of sovereignty "not in the subjects' free renunciation of their natural right but in the sovereign's preservation of his natural right to do anything to anyone, which now appears as the right to punish".<sup>44</sup> The paradox of sovereignty is that the sovereign is simultaneously outside and inside the juridical order. Commenting on Carl Schmitt, Agamben observes that while juridical order grants to the sovereign the power to proclaim a state of exception of the juridical order, then the sovereign legally places himself outside the law. The paradox may be expressed this way: "I, the sovereign, who am outside the law, declare that there is nothing outside the law."<sup>45</sup> Thus, while Amnesty International complained about the US using the language of human rights while violating human rights, it "can have it both ways precisely because of the operation of sovereign power that is at the same time the law and above the law."<sup>46</sup>

In the case of the Bush administration's war on terror the right of doing anything to anyone was claimed not so much in its own territory but beyond the frontiers of the US, as the focus of the punishment were Arab and Muslim people. When considering the targeting of another group of people, the role of biopolitics in its extreme form is revealed in traits of totalitarianism.

As Agamben sees biopolitics in the extreme, genocides such as that of the Jews by the Nazis were not a punishment nor a sacrifice, but the killing of bare life

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42 Joel D. Aberbach, 'The Political Significance of the George W. Bush Administration', *Social Policy & Administration*, 39-2 (April 2005): 144

43 Giorgio Agamben, *Homo Sacer*: 106

44 Giorgio Agamben, *Homo Sacer*: 106

45 Giorgio Agamben, *Homo Sacer*: 15

46 Cristina Masters, 'Body Counts: The biopolitics of Death', in Elizabeth Dauphinee and Cristina Masters (eds.), *The Logics of Biopower and the War on Terror; Living, Dying, Surviving* (Palgrave Macmillan, 2007): 53

(“as lice”, in Hitler’s words). Thus, the dimension of the killing was neither religion nor law, but biopolitics.<sup>47</sup> The two traits that characterize totalitarianism are the power to decide on the value or non-value of life and biological facts becoming political facts. For Agamben, the genocidal phenomenon that characterized Nazism is intelligible from the biological dimension.<sup>48</sup>

In this Agamben follows Foucault closely. Foucault argues that racism, after emerging in the sixteenth century as a discourse which he calls “race wars”,<sup>49</sup> is the basic mechanism of power in modern states that allows the sovereign power to kill in a society ever more characterized by biopolitics, which takes life as its objective. The result is that “the modern state can scarcely function without becoming involved with racism at some point, within certain limits and subject to certain conditions.” Racism becomes necessary to determine “what must live and what must die.”<sup>50</sup> It is compatible with the exercise of biopower: it establishes a relationship between one’s own life and the death of the other in a biological-type relationship. Therefore the “inferior race” is not killed only to eliminate a threat, but also to “make life in general healthier: healthier and purer”.<sup>51</sup>

David Mutimer has suggested that the war on terror is the most recent expression of the racist discourse that allows for sovereignty and biopolitics to function together in one of its most virulent articulations.<sup>52</sup> He writes:

The discourse of the war on terror, while not explicitly racist in the Nazi sense is extensively racialized. It has articulated its enemy as people identifiable not just by their religion, as important as that obviously is to their representation, but more particularly by their (racial) appearance. Whether it is the often discussed “racial profiling,” or the pervasive, everyday association of Islamist terrorists with the features of Arabs, the war on terror has produced a global discourse more racist than any we have seen since the time of European colonialism.<sup>53</sup>

In most of its spoken and written language the war on terror denies racism and embraces opposite values, yet related practices have told a different story. The overlapping of two contrasting levels of message does not result in the cancellation of either, but in the confusion and paradoxical mixture of both. By torturing and killing people while speaking of equal rights and universal values the resulting suggested idea is that the sovereign state could do this to anyone, even if for the moment it is

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47 Giorgio Agamben, *Homo Sacer*: 114

48 Katia Genel, ‘The Question of Biopower: Foucault and Agamben’: 55

49 David Mutimer, ‘Sovereign Contradictions’: 166

50 Michel Foucault, *Society Must be Defended*: 254

51 Michel Foucault, *Society Must be Defended*: 255

52 David Mutimer, ‘Sovereign Contradictions’: 168, 169

53 David Mutimer, ‘Sovereign Contradictions’: 172, 173

only to members of the 'other race'. This is a new message which appeared by the combination of the explicit discourse and the discourse composed by acts of torture, killing and arbitrariness.

For Foucault, a normalizing society is at least superficially a biopower, and as such, “racism is the indispensable precondition that allows someone to be killed, that allows others to be killed. Once a State functions in the biopower mode, racism alone can justify the murderous function of the state”.<sup>54</sup> Though it is true that racism plays an important role in the early stages of genocide, Foucault does not explain how systematic murder can be expanded in later phases to members of the race purported to be defended. Furthermore, while he recognizes that only rarely has the discourse of race wars been expressed in an overtly racial fashion,<sup>55</sup> he does not explicitly ask what is the significance of the contradiction of a society engaging in practices with a racist undertone while at the same time declaring that it embraces the opposite values. Nor does he ask what the result of this contradiction may be. (That such a contradiction is possible is due to the fact that modern racism is not bound up with mentalities or ideologies, but with the technique of power.<sup>56</sup> This is comparable to, and explained by, the contradiction between sovereignty and biopolitics, where sovereignty allows the state to kill its people, while biopolitics demands that those same people be made to live.<sup>57</sup>) When the official discourse is not racist while torture and killing occur in semi-visibility and almost exclusively targeting another race, the door opens for the idea that the sovereign State can indeed torture and kill anyone, even if for the moment it does only to others.

Foucault did take note of Nazism taking the play between the sovereign right to kill and the mechanisms of biopower to the paroxysmal point where “exposing the entire population to universal death was the only way it could truly constitute itself as a superior race and bring about its definitive regeneration once other races had been either exterminated or enslaved forever.”<sup>58</sup> While not taken to the extreme of Nazism, this play, he believes, is in fact inscribed in the workings of many modern states, both capitalist and socialist. Thus, in every case of authorities relaxing their intolerance towards torture or indiscriminate killing we find the potential of universal death.

### *3.1. Emergency and Exception as Normalcy*

Implicit within the sovereign power of rendering bare life is the power to declare exception of the law, but also exception in terms of emergency. Parallel to the paradox of sovereign power being at the same time the law and above the law we find the paradox that the exceptional and the emergency may become norm. The exception is

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54 Michel Foucault, *Society Must be Defended*: 256

55 David Mutimer, ‘Sovereign Contradictions’: 172, 173

56 Michel Foucault, *Society Must be Defended*: 258

57 David Mutimer, ‘Sovereign Contradictions: Maher Arar and the Indefinite Future’: 168

58 Michel Foucault, *Society Must be Defended*: 259-261

not a simple state of chaos but a kind of exclusion which always maintains itself in relation to the rule “in no longer applying, in withdrawing from it”. While the sovereign suspension is a zone of indistinction between nature and right, it presupposes the juridical order in the form of its suspension.<sup>59</sup> Agamben reasons that the exception is the structure of sovereignty, and as such it is not an exclusively political and juridical concept, but “the originary structure in which law refers to life and includes it in itself by suspending it.”<sup>60</sup> This is relevant because the war on terror, based on a discourse of danger and emergency, has proven the ability of the sovereign to make exceptions and by doing so it affirms and normalizes its own power.

Making and creating exceptions would probably not be possible without the discourse of threat. It also allows for preventive intervention, for every danger may in some sense evolve into crime<sup>61</sup> or tragedy, and for disciplinary social measures. Foucault illustrates by commenting on the plague-stricken town:

[A]gainst an extraordinary evil, power is mobilized; it makes itself everywhere present and visible; it invents new mechanisms; it separates, it immobilizes, it partitions; it constructs for a time what is both a counter-city and the perfect society; it imposes an ideal functioning, but one that is reduced, in the final analysis, like the evil that it combats, to a simple dualism that of life and death: that which moves brings death, and one kills that which moves.<sup>62</sup>

A similar pattern is repeated in other situations of emergency or crisis. Through them, “the state of exception becomes the rule”, becomes normalized, “and the hidden foundation of sovereignty is revealed, exposing the specificity of political modernity.”<sup>63</sup> Agamben explains that the crisis is made possible by means of a double process of the “politicization of life” which consists in the increasing inscription of life within the political order, “which in turn makes its exposure to power increasingly radical.”<sup>64</sup>

The pattern may be extended to include not only danger but also risk, as a notion which does not imply a particular precise danger embodied in a concrete group of people, but as the effect of a combination of abstract factors which make more or less probable some sort of harm to order or society.<sup>65</sup> We have seen this extension in some instances in the war on terror as well when individual citizens have been

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59 Giorgio Agamben, *Homo Sacer*: 17, 18, 21

60 Giorgio Agamben, *Homo Sacer*: 28

61 Christian Borch, ‘Crime Prevention as Totalitarian Biopolitics’: 97

62 Michel Foucault, *Discipline and Punish*: 205

63 Katia Genel, ‘The Question of Biopower: Foucault and Agamben’: 53

64 Katia Genel, ‘The Question of Biopower: Foucault and Agamben’: 53

65 Castel R, ‘From Dangerousness to Risk’, in Burchell G, Gordon C, Miller P (eds), *The Foucault Effect: studies in governmentality*, (Chicago: University of Chicago Press, 1991): 287, quoted in Christian Borch, ‘Crime Prevention as Totalitarian Biopolitics’: 101

targeted with little or no connection to terrorist activity. The logic of the war on terror easily extends its focus of attention from danger into risk. This movement:

entails a potentially infinite multiplication of the possibilities for intervention. For what situation is there of which one can be certain that it harbours no risk, no uncontrollable or unpredictable chance feature? The modern ideologies of prevention are overarched by a grandiose technocratic rationalizing dream of absolute control of the accidental, understood as the irruption of the unpredictable.<sup>66</sup>

With a discourse of a constant state of emergency, it is no surprise that danger extends into risk, enabling intervention to respect no limits. Under such circumstances virtually every aspect of life may be regulated since nothing is too insignificant or marginal to evade intervention. Thus, Christian Borch argues of the idea of crime prevention that it has an expansive character that knows no natural limits, amounting to “a biopolitical power that contains totalitarian traits” in the sense of aiming at “controlling possible forms of behaviour and abolishing the uncontrollable before they have become a problem.”<sup>67</sup>

The above elements found a concrete example in the case of Canadian Maher Arar, who was pulled aside and sent to be interrogated as a suspected terrorist while passing through JFK airport in 2002. Because of a tenuous link of passing acquaintance with someone suspected of a connection to al Qaeda, he was held for almost two weeks in the US, was then deported to Syria, where he was born, and held in a three feet wide prison for ten months, where he was tortured.<sup>68</sup> As with the case of Abu Ghraib, what I seek to determine is what this particular case adds to the discourse in its level of practices as part of a message. While the abuses of the jail of Abu Ghraib took place in a country which experienced war and violence on every day life, a state of affairs which is the opposite of normalcy, the case of Arar brings such practices closer to the regular citizen of the US or any of its allies. It is thus a step in the direction of normalizing the exceptional. This is reinforced by the fact that the authorities *knew* of such a tenuous and circumstantial link to al Qaeda, for it establishes that the norm is that anyone should expect to have the details of their lives known as part of the ever more common practices of surveillance.

While it is indeed a step into normalization we must take notice that the authorities seek to retain a sense of these cases being exceptional, as if defending an image of normalcy which would be to some extent still in accordance to the language of values and rights. This may be the reason why torture was put into practice outside US territory. Mutimer observes that the Canadian police felt it necessary to hand Maher Arar to the US for the probable reason that it enabled them to circumvent

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66 Castel R., ‘From Dangerousness to Risk’, quoted in Christian Borch, ‘Crime Prevention as Totalitarian Biopolitics’: 101, 102

67 Christian Borch, ‘Crime Prevention as Totalitarian Biopolitics’: 102, 103

68 David Mutimer, ‘Sovereign Contradictions’: 160, 161

human rights guarantees for Canadian citizens. Similarly, the US felt it necessary to deport him to Syria, probably because “the U.S. officials knew that in Canada Maher Arar was unlikely to be tortured and by extension that they were fairly certain that in Syria he would be”.<sup>69</sup> As shocking as it is to assume that the authorities of US and Canada calculated in terms of evading human rights guarantees and favouring torture, Mutimer’s is a reasonable assumption as it appeared to be a regular practice for the US government under the Bush administration to perform “extraordinary renditions” (critics have correctly described them as “outsourcing torture”).<sup>70</sup> Bush himself admitted that the CIA ran secret prisons overseas. “This program has been, and remains, one of the most vital tools in our war against the terrorists,” he said. “Were it not for this program, our intelligence community believes that al-Qaida and its allies would have succeeded in launching another attack against the American homeland.”<sup>71</sup> Asked about the interrogation techniques, Bush said

I cannot describe the specific methods used – I think you understand why. If I did, it would help the terrorists learn how to resist questioning and to keep information from us that we need to prevent new attacks on our country. But I can say the procedures were tough, and they were safe and lawful and necessary.<sup>72</sup>

He denied, however, that he was talking about torture – a significant fact when considering the discourse of normalcy and values. He added that interrogation was not taking place at the moment because “CIA officials feel like the rules are so vague that they cannot interrogate without being tried as war criminals, and that’s irresponsible”.<sup>73</sup> According to ABC News, CIA sources revealed details about their “Enhanced Interrogation Techniques” in such prisons. They included grabbing, slapping, forcing to stand up for more than 40 hours, keeping prisoners and their cells cold, and waterboarding. The sources described the techniques in equal terms as Bush: “harsh”, but not torture.<sup>74</sup> The authorities have brought ‘closer to home’ exceptional practices, yet they have attempted to partially conceal them by performing them abroad, having others perform them and describing them in more benign terms (harsh but not torture). This is probably the reflection of the paradox of a discourse that functions on a spoken level as well as a level of practices that contradict but do not cancel each other.

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69 David Mutimer, ‘Sovereign Contradictions’:161

70 David Mutimer, ‘Sovereign Contradictions’:161

71 ‘Bush admits the CIA runs secret prisons’, *The Boston Globe*, ([http://www.boston.com/news/nation/washington/articles/2006/09/06/bush\\_to\\_unveil\\_plan\\_for\\_gitmo\\_trials/](http://www.boston.com/news/nation/washington/articles/2006/09/06/bush_to_unveil_plan_for_gitmo_trials/)), September 6, 2006)

72 ‘Bush admits the CIA runs secret prisons’

73 ‘Bush admits the CIA runs secret prisons’

74 Brian Ross and Richard Esposito, ‘CIA’s Harsh Interrogation Techniques Described’, *ABC News*, <http://abcnews.go.com/WNT/Investigation/story?id=1322866>

Mutimer observes that one of the elements that stood out of Arar's case is "the arbitrary way that the rights we expect apply to us all were denied to him".<sup>75</sup> This way the sovereign power to do anything to anyone is confirmed by bringing it closer to 'us' (a Canadian citizen) while retaining the racist aspect of its application (born in Syria). A man was rendered bare life while his legal rights were the same as those of any other Canadian. Therefore, the act of making his an exceptional case was both a confirmation of the racist aspects of the war on terror and an expansion of the power of the sovereign which situates itself above every citizen's rights. As there was nothing special about this particular citizen, one must assume that the same can happen to anyone else, and as such it ceases to be an exception and becomes an example of a norm, albeit until now one rarely or not openly used. For Agamben, in fact, a generalization of the *homo sacer* may be expected in modernity as life is more clearly placed at the centre of State politics. Sovereignty places all of its subjects in risk of being rendered exceptional or bare life.<sup>76</sup> As such, these are no longer proper exceptions but a consequence of the essential structure of sovereign power. In terms of discourse, the sovereign speaks through these actions in an assertion of its power. According to Judith Butler extraordinary conditions – such as a state of emergency – permit extraordinary action.<sup>77</sup> However, there was no point in torturing Arar, not even from the logic of emergency. Practices which started as a consequence of a discourse of emergency and danger were then moving to a point where the original emergency bore neither relevance nor direct connection with the original threat. The exception ceases to exist and slowly turns into a new normalcy which was in fact always essential: that of sovereign power as described by Agamben.

A further logical step in the process of normalization is be related to the legal sphere. A September 2006 document by Amnesty International illustrates how this took place in the Bush administration's war on terror:

The US administration's interpretation of the law has been driven by its policy choices rather than a credible postulation of its legal obligations. One core policy choice was to frame its response to the 11 September attacks in terms of a global "war" rather than as a criminal law enforcement effort. The law would have to be made to fit this "new paradigm", as President Bush characterized the situation in a 7 February 2002 memorandum on detentions... The government's policy of indefinite detention without charge, as practiced in Guantánamo and elsewhere, is thus a direct consequence of the war paradigm. Instead of treating these detainees as criminal suspects, the US authorities have branded them as loosely-defined "enemy combatants" in a global conflict. That the USA sees the world as the "battlefield" is illustrated by the fact that those currently held in Guantánamo include individuals picked up in Gambia,

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75 David Mutimer, 'Sovereign Contradictions': 162, 163

76 Giorgio Agamben, *Homo Sacer*: 111, quoted in David Mutimer, 'Sovereign Contradictions': 163

77 David Mutimer, 'Sovereign Contradictions': 164

Bosnia, Mauritania, Pakistan, Egypt, Indonesia, Thailand, and United Arab Emirates, as well as Afghanistan.<sup>78</sup>

According to an August 2002 Justice Department memo written for the CIA and addressed to Alberto Gonzales, torturing al Qaeda terrorists in captivity abroad “may be justified” and international laws against torture “may be unconstitutional if applied to interrogations” conducted in the war on terror.<sup>79</sup> Three weeks after Bush's admission about CIA prisons the Military Commissions Act was approved by Congress, conferring on the president the right to declare ‘alien unlawful enemy combatants’ to be tried in Military Commissions, suspending the writ of habeas corpus and prohibiting a combatant under trial from invoking the Geneva Conventions as a source of rights. In January 2007 Alberto Gonzales claimed the authority to deny the right of habeas corpus to US citizens against a 2004 Supreme Court's decision.<sup>80</sup>

These series of shifts in legal interpretations together represented a movement from the exceptional into normalcy. Naturally, if practices are to be read as discourse, so are changes in law. What is more clearly manifested in the definition and implications of an “enemy combatant”, in the legal justification of torture or in the suspension of the right of habeas corpus is the paradox of the sovereign observed by Agamben, in which the sovereign, who is outside the law, declares that there is nothing outside the law.<sup>81</sup> By obtaining from the juridical order the power to proclaim a state of exception, the sovereign is in turn in a position to change the juridical order by making use of this very power.

The sovereign also turns into law – and thus discourse – its power to strip life of its political qualities and render it bare. The USA Patriot Act, the central piece of legislation enacted in the context of the war on terror, states that any US citizen can be stripped of their citizenship “if, with the intent to relinquish his nationality, he becomes a member of, or provides support to, a group that the United States has designated as a 'terrorist organization.’”<sup>82</sup> Under the Domestic Security Enhancement Act, also known as “Patriot II”, a citizen could be involuntarily expatriated if his intent is “inferred from conduct.” This would conceivably allow the Department of Justice to summarily remove a citizenship without judicial review by alleging that the citizen engaged in activities which the government defines as “terrorist”.<sup>83</sup> Since both

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78 ‘United States of America: Military Commissions Act of 2006 – Turning bad policy into bad law’, *Amnesty International*, (<http://web.amnesty.org/library/Index/ENGAMR511542006>, September 29, 2006)

79 Dana Priest and R. Jeffrey Smith, ‘Memo Offered Justification for Use of Torture’, *The Washington Post*, (<http://www.washingtonpost.com/wp-dyn/articles/A23373-2004Jun7.html>, June 8, 2004)

80 Adam Roberts, ‘Review Essay: Torture and Incompetence in the 'War on Terror': 210

81 Giorgio Agamben, *Homo Sacer*, p. 15

82 Stefan Halper and Jonathan Clarke, *America Alone: The Neo-Conservatives and the Global Order* (Cambridge: Cambridge University Press, 2004): 286

83 Stefan Halper and Jonathan Clarke, *America Alone*: 286-290

the definition and the decision of removal come from the same source, this amounts to an explicit proclamation of the right to decide over life as political or bare.

### 3.2. *The Camp: On the Outside, Yet Within*

In Agamben's work we read that the space that is opened when the state of exception begins to become the rule is the camp. This is a figure which he understands in a wide sense, including not only concentration, prisoner or refugee camps, but other less obvious spaces which could include borders or high security airports. All of these are spaces where the rule of law is temporary suspended and as such remain outside the normal order, yet they are permanent. In the Nazi regime the state of exception as a justification for the concentration camps ceased to be referred to as an external and provisional state of factual danger and came to be confused with juridical rule itself. Nazi jurists were aware of the particularity of the situation to the point that they defined it as a "state of willed exception". In that case the discourse implicit to practice became explicit in the juridical sphere. In the new paradigm of the camp the norm becomes indistinguishable from the exceptional. With the appearance of the camp the sovereign is no longer limiting himself to declaring the exception as a response to a danger to society, but "he now de facto produces the situation as a consequence of his decision on the exception". In this sense the juridical and the factual get confused to the point that the camp becomes "*a hybrid of law and fact in which the two terms have become indistinguishable.*"<sup>84</sup>

Furthermore, to the extent that the inmates of the camp are stripped of political status, reduced to bare life and managed as such, the camp is the extreme of a biopolitical space, since power and bare life are confronted without any mediation. As such it is a paradigm of political space.<sup>85</sup> If we add the discursive dimension, then the establishment of a camp could be interpreted as a declaration of regression into a primal political state without political rights where the sovereign is defined as such because of its monopoly of violence. Agamben, however, would not see it as a regression but rather as a feature of modern states under crisis. He writes:

In this light, the birth of the camp in our time appears as an event that decisively signals the political space of modernity itself. It is produced at the point at which the political system of the modern nation-state... enters into a lasting crisis, and the State decides to assume directly the care of the nation's biological life as one of its proper tasks... The growing dissociation of birth (bare life) and the nation-state is the new fact of politics in our day, and what we call *camp* is this disjunction.<sup>86</sup>

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84 Giorgio Agamben, *Homo Sacer*: 168-170. Italics in the original.

85 Giorgio Agamben, *Homo Sacer*: 171

86 Giorgio Agamben, *Homo Sacer*: 174, 175

In terms of the war on terror it is easy to recognize in Agamben's analysis the latest and most clear manifestation of the camp in Guantanamo Bay. The US government claims that those held are beyond US law and the constitutional rights they would be afforded as prisoners on US soil. Under the Bush administration, Guantanamo held some 650 men (as well as some children) without charge or trial. They were denied the right to legal counsel and subject to degrading and cruel conditions such as solitary confinement and intensive interrogation without the presence of a lawyer. Most had not been charged and the US considered them "enemy combatants", which allowed for them to be held indefinitely without recourse to the courts, as mentioned above. The US would not declare them prisoners of war nor clarify their legal status in front of a tribunal as required under the Third Geneva Convention; but rather it planned to try them by military tribunals.<sup>87</sup> Under the light of Agamben's work these anomalies should be no surprise. The very nature of Guantanamo Bay as a camp would determine and require the existence of undefined legal figures such as the "enemy combatant" and exceptional tribunals. As a paradoxical space where the exception has been granted a permanent space and political life has been rendered bare, it would be impossible for regular legal conditions to prevail.

The fact that the tribunals which would be taking care of the procedure are military is also significant in terms of discourse. Since they are widely perceived as administering a rougher version of justice than civil courts<sup>88</sup> and form part of the branch of government which can legitimately make use of violence, the sword prevails over citizenship. Thus nothing mediates between power and bare life.

An interesting feature of the camps of the war on terror is that those which were more openly violent remain further away from US territory. Agamben recognized rather benign spaces such as airports and cities as camps.<sup>89</sup> He argued that in every modern state the line determining the point in which biopolitics turned into "thanatopolitics", or the politics of death, was gradually moving into areas other than the political.<sup>90</sup> We could certainly find examples of these specifically linked to the discourse of the war on terror. However, borders tend to be more violent<sup>91</sup> and Abu Ghraib, Guantanamo and secret detention sites where forms of torture were practiced remain outside US territory. This is significant for more than one reason. As noted above, the US government argued against granting legal rights to inmates of Guantanamo on the basis that it is not US territory. But in fact, this is not Cuban territory proper either, just as Abu Ghraib and the secret detention centres do not quite correspond to the political borders within which they are found. They are what Engin F. Isin and Kim Rygiel call abject spaces, defined as

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87 Engin F. Isin and Kim Rygiel, 'Abject Spaces: Frontiers, Zones, Camps', in Elizabeth Dauphinee and Cristina Masters (eds.) *The Logics of Biopower and the War on Terror; Living, Dying, Surviving* (Palgrave Macmillan, 2007): 197

88 Stefan Halper and Jonathan Clarke, *America Alone*: 290

89 Engin F. Isin and Kim Rygiel, 'Abject Spaces': 182

90 Giorgio Agamben, *Homo Sacer*: 122, 123

91 For an analysis of the US-Mexico border as a camp see Roxanne Lynn Doty, 'Crossroads of Death'

extraterritorial spaces where international and national laws are suspended... spaces for holding refugees, asylum seekers, deportees, combatants, insurgents, and others caught in the new global policing and policies net. These spaces include various frontiers controlled by state authorities, zones where special rules and laws apply, and camps where laws are suspended.<sup>92</sup>

Isin and Rygiel indicate that those who are constituted through these abject spaces “are rendered as neither subjects nor objects but inexistent insofar as they become inaudible and invisible.”<sup>93</sup> This is correct in the sense that most of these people are not granted any right to speak and remain anonymous. But they are not entirely invisible as, intended or not, the world has already been shocked by the cases mentioned in this essay. However, Isin and Rygiel reveal with their observation a possible reason for the US government to create the most extreme camps away from its territory: while the true nature of the power of the sovereign gets exposed through such practices, the aspiration to keep a certain sense of rights and values remains. Abject spaces reflect the paradox that while the sovereign’s right to render bare life is immanent to the modern state, it needs to be affirmed in spaces in the ‘outside’, so that the explicit language of citizenship with rights can exist ‘within’. Guantanamo Bay and the most extreme camps reveal the duplicity of the discourse. The two levels of the message are equally relevant for the production of the discourse. The explicit language speaks of these spaces as exceptional because of an emergency or state of exception. The unspoken message which is presented on the level of facts affirms the brutality of the power of the sovereign.

#### **4. Conclusions**

The discourse of the war on terror cannot be fully understood without an analysis of the level of practice, considered as part of the discourse itself. Language and practice together confer an additional meaning that neither do separately. While Foucault's concept of biopolitics is a useful platform to understand certain practices of the war on terror, the work of Giorgio Agamben on bare life and the camp are more to the point. Through these concepts we see that the main message emerging from torture as a central practice – whether intentional or not – is an affirmation of the power of the sovereign to strip life of its political qualities and to turn it into bare life. That is, to turn a citizen into a human being without rights to protect them from the sovereign, the holder of the monopoly of violence. This message often contradicts the message at the level of the spoken word, yet it is not cancelled by it. The message as a whole then becomes paradoxical and the paradoxes and contradictions manifest in different ways: exceptional circumstances yet normal; outside society yet within; the threat from small groups yet measures for everyone.

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92 Engin F. Isin and Kim Rygiel, ‘Abject Spaces’: 181

93 Engin F. Isin and Kim Rygiel, ‘Abject Spaces’: 181, 182