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Merely Human in Empire: Giorgio Agamben and the Management
of Human Materiality

by

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Abstract

This thesis proceeds from an anxiety about the effects of depoliticization in the context of a sovereignty rooted in the management of the material lives of its subjects and in a globalized world defined by risk and interdependence. It argues that the production of humanity as a materiality to be managed in spaces of ambiguity must be seen as a differentiating operation of sovereign power aimed at the containment of this materiality's political potential—its potential to effect changes in the social, spatial, economic, even territorial organization of power relations.

Chapter One explores Giorgio Agamben's concept of the merely human, his understanding of bio-power as a depoliticizing power, and his insistence that the effects of such depoliticization are felt materially in the management and containment of human bodies. Chapter One argues that it is politically necessary to force Agamben's argument into confrontation with global structures of inequality in order to account more concretely for the implications of his theoretical argument as well as to use his theory in ways more productive than his text allows. Chapter Two, by focusing on Israeli attempts to depoliticize and manage Palestinians, concludes that it is Palestinian materiality and not only the promise of a Palestinian citizenship that is potentially destructive of the logic of the nation-state. In Chapter Three I focus directly on materiality's relation to space, specifically Israeli territorial and imaginative space and the political thrust of this materiality. This focus leads me to think that the investment in a discourse and production of an apolitical vulnerable humanity creates a discursive and in some cases physical space that reproduces that vulnerability. Therefore my last chapter gestures towards that space by asking how the increasing salience of

humanitarianism in international politics, and more particularly in the Iraq war, is functioning not only to facilitate the workings of Empire but also, and significantly, to redefine the narratives and structures of differentiality that bring this Empire into confrontation with its "subjects" in places like Iraq—this after all is the question that Agamben does not answer and the frustration that the first chapter begins with.

Acknowledgement

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Introduction

In October of 2006, the British medical journal *The Lancet* published a study showing the estimated death toll of Iraqis since the American invasion in 2003 to be around 655,000. The study proved predictably controversial, drawing self-righteous indignation from believers as well as detractors, and its methods and findings were fiercely debated at levels both popular and institutional. What was not debated, and did not appear to create controversy, was the fact that this detrimental evaluation of the war on Iraq and the concomitant indictment of the American invasion were pronounced by a medical journal on the basis of work by researchers at a school of "public health" (the Johns Hopkins Bloomberg School of Public Health).

The war on Iraq is by most accounts *the* dividing international political issue of the time, a political initiative that is seen to have widely transformative effects on the international political scene, reconfiguring the way politics is done on a global scale. It has the potential to define an entire era on a scale much larger and in ways more detrimental than, for example, the Vietnam war: the strategic geographical location of Iraq and the regional investment in the country itself; the connections between the resistance to the war on Iraq and resistance to United States' foreign policies in many other countries; the implications for international law that the invasion of Iraq entails; the implications of security measures and warring techniques developed in Iraq for the development of security measures and warring techniques in other countries—all position the war on Iraq as a defining moment in international politics. And the war, as well as the larger American "War on Terror" of which it is part, has delivered a number of novelties,

contradictions and challenges, from phenomena such as mercenary armies (deployed not by a mercenary regime but by the world's biggest military and political power) to agenda-setting phrases such as "winning hearts and minds", to inventive warring manoeuvres such as "shock and awe" campaigns.

Analysis of the war on Iraq is often provoked by such deliveries and novelties, and making sense of that situation demands attention to the discursive nuances that attend this war's development. A major element in the American campaign to wage and justify this war has been the disregard for Iraq's sovereign status and the extension of a form of American guardianship to the Iraqis dispossessed by the same American decision to disregard the sovereignty of their country—winning hearts and minds, designing a constitution, delivering supplies, setting up a proxy government, etc. Indeed, it becomes difficult to map the relationship between Americans and Iraqis, a relationship that appears to exhaust though by no means deny the more traditional construction of "occupier and occupied".

In the context of this difficult-to-name relationship and the ambiguous contours of the war, it merits attention when it is research on public health that attempts to place this political initiative in perspective, specifically the perspective of its cost to the people on whose behalf this war was presumably waged. The term "public health" conjures up a civil society, the public of a nation-state, and the governmental institutions in charge of monitoring, serving, and controlling such public; these coordinates are rather incongruent with the map of a violent international conflict. Moreover, the implied extension of the term "health", a constitutively relative term, to what surely must mean the life *or* death status of Iraqis is also somewhat jarring. In fact, the overlap between health and the

public on the one hand, and the framework of international conflict on the other, is made explicit by Richard Horton, editor of *The Lancet*, who urged the international community to "reconfigure its foreign policy around human security rather than national security, around health and wellbeing in addition to the protection of territorial boundaries and economic stability." Crucially, he added that "[h]ealth is now the most important foreign policy issue of our time," and hoped that "a renewed foreign policy...might at least be one positive legacy of our misadventure in Iraq."[1]

On one level, Horton's insistence that "human health" should be a focus of foreign policy, in ways national security or territorial sovereignty usually is could be read as a manifestation of the biopolitical discourses governing political space in the contemporary period; indeed, political theorists from Arendt to Agamben, via Foucault, have long interrogated the extent to which bodily life has come to dominate the focus of political action and discourse. Foucault's main thesis on biopolitics as developed in the last few pages of *The History of Sexuality* (Volume I) centers on the growing inclusion in modern politics of the bodily life of the subject, on how power operates today specifically by addressing itself to the life aspect of humanity. As Mathew Hannah explains, in Foucault's thesis on biopolitics,

> [t]he goal of power in its distinctively modern form is human "life" in the broadest sense of the term: power harnesses, optimizes, or frees the energies of individuals and groups. Although in some forms power may be coercive and even deadly, coercion or force is generally intended as a means to the enhancement of life. In this sense, all forms of distinctively modern power are "biopolitical".[2]

[1]Sarah Boseley. "One in 40 Iraqis 'killed since invasion'." *The Guardian*. 12 October 2006. 15 October 2006. http://www.guardian.co.uk/frontpage/story/0,,1920167,00.html

[2] Mathew Hannah. "Torture and the Ticking Bomb: The War on Terrorism as a Geographical Imagination of Power/Knowledge." *Annals of the Association of American Geographers*, 96(3), 2006, pp. 622-640.

In other words, power operates by taking as its object the biological life of the citizen to the extent that life becomes the subject of politics—health and wellbeing, not only or not primarily rights, come to channel the power relationship between sovereignty and its subjects. Hannah's article, "Torture and the Ticking Bomb: The War on Terrorism as a Geographical Imagination of Power/Knowledge," traces recent biopolitical phenomena in the context of the War on Terror to this Foucauldian framework of power relations. He argues that biopolitical power addresses "problems such as infectious diseases, chronic poverty (especially in cities), 'racial' threats brought about by immigration and other forces thought to endanger the health and productivity of national populations that were at the same time national labor forces."[3] Earlier, Hannah Arendt in *The Human Condition* had charted this move towards a politics of the body whereby the necessities of life and the biological aspects of being come to constitute the proper subject of political life in modern times; for Arendt, such a move signalled the destructive overtaking of the political sphere by the realm of the social.[4]

On another level, however, Horton's statements express the clear linkage between politics as the care for and control of bodily life and politics as *foreign policy*, a linkage that is emphatically produced in a humanitarian war. This linkage, despite manifesting what some political theorists will insist has been a latent aspect of political life for decades (if not centuries), does mark a shift in international political discourse.

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[3] Hannah, 627.

[4] Arendt argued that "the emergence of the social realm, which is neither private nor public, strictly speaking, is a relatively new phenomenon whose origin coincided with the emergence of the modern age and which found its political form in the nation-state." Arendt diagnosed the overtaking of the realm of the political by the realm of the social, a move that signalled the shrinking of the public sphere and the retreat from political life as she saw it; "In our understanding...we see the body of peoples and political communities in the image of a family whose everyday affairs have to be taken care of by a gigantic, nation-wide administration of housekeeping" (Arendt, *The Human Condition* 28).

Why, we could ask, is "health" and not the "right to life" the most important foreign policy issue of our time? Especially since what is at stake in *The Lancet* study is the life or death status of Iraqis since the American invasion? Is the discourse of international Human Rights, and of state sovereignty, not adequate anymore to address the issue of the Iraqi citizens' life or death, their right to live? And if not, what coordinates govern the new or supplementary discourse of human security and human health? In fact, what are the implications of the assumed linkage between human security and human health? And what are the implications of Horton's link between human security and human health on the one hand and what is presumably a just and peace-generating foreign policy on the other?

I am arrested by these questions surrounding *The Lancet* study; they represent a discursive moment that indicates and is implicated in a number of detrimental and contemporary political concerns. On the one hand, the problematic is one of discourse, the words used to create the parameters of a specific field of knowledge, in this case of an Iraq where people die everyday in random and routine ways and where deaths could be predicted to the extent that the line between life and death is becoming ever more blurry in Iraq's new wasteland. On the other hand, the problematic is precisely about the politics of life and death, about the management of Iraqi lives in the most material of ways: Iraqis *are* killed everyday in random and routine ways, and the war that has created this wasteland is simultaneously creating new ways of waging war and new standards of accountability in international politics.

Therefore concerns about this management of human life, in ways both material and discursive and specifically in the context of current global changes and challenges,

form the intellectual and political parameters of this thesis. First and foremost, human vulnerability to death, to erasure, to torture, to detainment is being captured more and more outside norms established by nation-states or international law. The Iraqis referenced in *The Lancet* article are a prime example: they are the victims of an invading or liberating army and a resistance or terrorist movement, and they are simultaneously the subjects on whose behalf the invading or liberating army and the resistance or terrorist movement wage their wars. Such ambiguities have been widely chronicled in the last few years, especially in the context of the American War on Terror, but they also exist in other contexts. Changes in global mobility and in the patterns and policies of immigration are also creating spaces and statuses of ambiguity. Illegal immigrants, for example, are beings with no legal status, unrecognized by the states of the countries they make their way into; yet they exist in huge numbers in various countries, contribute significantly to the economy, and are debated as an issue by those who advocate for their recognition and those who do not recognize them yet recognize their existence as a threat and wish to throw them out.

To begin tracking those ambiguities and their dangerous implications, this thesis will concentrate on the extent to which ambiguities surrounding the political status of human beings produce them as especially vulnerable beings, and vulnerable in particularly material ways: vulnerable to death, to erasure, to torture, to detainment. It is the ultimately depoliticizing vulnerability of such beings that interests me in this project and I do see this as a particularly historical vulnerability. Phenomena such as global terrorism, humanitarian intervention, global capitalism, global mobility itself, all contribute to a globalized condition, a condition whose governing political order is now

commonly referred to as Empire. This condition and its governing order are continuously producing spaces of ambiguity: the trucks that smuggle and often suffocate bodies across borders, the holding camps of asylum seekers, entire countries such as Afghanistan and Iraq, medical quarantines. In each instance humanity is produced simultaneously as risky and deserving of protection: these humans are themselves a matter of risk as they upset the economic or demographic or cultural or political balance of the countries and regions they inhabit or flock to (which is why they must be quarantined or held in camps or refused entry). And yet these humans are also deserving of protection as vulnerable and needy beings whose plight may mobilize armies as well as challenges to state sovereignty or international law.

Moreover, policies and discourses of differentiation, of inclusion and exclusion operate within a framework of a hugely unequal and discriminatory global interdependence—think of the rise of anti-immigration political parties as well as rise of the "us and them" rhetoric across much of Europe and North America. It is this unequal and discriminatory interdependence that in part allows for humanitarian interventions in areas such as Iraq and renders almost unrecognizable the extreme dangers suffered in Rwanda.[5] And it is the same unequal and discriminatory interdependence that allows for American corporations' disregard of the US-Mexico border as well as the militant entrenchment of that border in the faces of Mexicans seeking entry into the US. It is those contradictions, those confusions, the production of that kind of ambiguity in the spaces and the statuses of persons reduced by a struggle for survival to beings who are merely

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[5] The popular cynicism surrounding the war on Iraq and its rhetoric of pre-emptive strike against an evil dictator stems in part from the brutal refusal of the US and the most powerful nations in the world to act in cases such as that of Rwanda, where an entire population was subjected to the most horrific slaughter.

trying to survive that weigh heavily on the investigations of this thesis.

Specifically, I take Giorgio Agamben's conception of the merely human as a point of entry into my investigations. Agamben's concept is widely debated and his work suffers from a philosophical density and a historical blindsightedness, as my discussion of his work in the first chapter will show. However, Agamben's conception of the merely human offers a perspicacious analysis of the processes and effects of depoliticization in ways attendant to the overarching theoretical question of what it means to be a political being as well as the current changes in international politics. Thus I find Agamben especially helpful, for despite his disregard for some foundational issues such as imperialism or north/south divisions, and despite the apparent trendiness of the concept of "state of emergency", his work does bridge a fundamental interest in the nature of a political life as well as a heightened sensitivity to the ways in which current changes in the operation of political power might be redefining not only what it means to be a political being but perhaps the very concept of a "life". Agamben's thesis that biopolitical sovereignty operates through the state of exception and that the state of exception is now becoming the norm—despite Agamben's totalizing rhetoric—explains much that is occurring in the context of Empire. And his focus on the depoliticizing effects of approaching the human being merely as that, and the vulnerabilities that attend such depoliticization, go a long way towards identifying the discursive as well as practical strategies that produce or capture human vulnerability by sovereign power.

This thesis, therefore, will be managed by a set of core themes and questions that proceed from this original anxiety about the effects of depoliticization in the context of a sovereignty rooted in the management of the material lives of its subjects and in a

globalized world defined by risk and interdependence. First, and at the most immediate level of observation, is the issue of a humanitarian war and its production of ambiguous spaces and the ambiguous beings that dwell, are killed, and are saved within them. What is the status of that ambiguity and how and where is it produced? To what extent is it useful, theoretically, to approach current dangers to political life through this concept of ambiguity? Second, what kind of sovereignty is it that is invested in such humanitarianism and that produces such ambiguous beings? What is happening to sovereignty at a moment when it appears that the major political confrontation in the world of Empire is between an unbound, unaccountable sovereignty and a humanity defined by risk and vulnerability rather than by citizenship in a nation-state or membership in a particular social group? Third, this idea of risk, of risky beings, is producing a discourse and practice of security that in turn produces human beings as a materiality to be managed, either superfluous or endangered. The dynamic of risk and security is a huge part of the reformulation of international politics and of the framework governing the relations between the politically, economically, militarily privileged and underprivileged today. What are the discourses and effects that attend the operation of this dynamic? This question leads directly into what is perhaps the most theoretical question of this thesis: who is human today? This is the fourth issue governing the investigations in this thesis, the concept of the human as it relates to an international regime of Human Rights as well as the production of the merely human. Who is the human of Human Rights, and how and where is it that one becomes (merely) human? What is happening to the concept of humanity in Empire? And finally, and at the broadest level of interest and investigation, this thesis asks whether humanity can play a political

role in this globalized world where the nation-state and citizen no longer form the nucleus of political life. If humanity is recognized, produced, saved and killed outside previously established norms and units of international politics, is there a potential that such a humanity can form the basis of a global political community?

This thesis is thus a work of discourse analysis and not a political treatise on the concept of the human or on the politics of humanitarian intervention. The questions posed by the focus on these five themes assume that discourses of humanitarianism, of differentiation, of risk and security, are implicated in the material effects of sovereign power. In other words, as the questions show, I see the words used to recognize or efface someone, to produce spaces of danger, as very much a part of capturing the vulnerability of human beings. In fact, it is often the words used or the stories told about and around such beings that alert me to evolving techniques of power and management. For in a moment of detrimental changes in the operation of political power, new ways of knowing the subjects of such power, new ways of producing them, new ways of normalizing the exceptional measures used to capture them are charted, and the words used are fundamental to that process. This is not only a Foucauldian insight; in the context of this thesis it relates primarily to the ways in which the discourse of international law—the way it names and recognizes and differentiates human beings and their rights—appears now under threat of irrelevance or at least the pressure of reformulation. Words such as "enemy combatants" or "winning hearts and minds", or attempts by UN bodies to differentiate between refugees and terrorists, all track contemporary anxieties and chart possible reformulations of the power relations confronting human beings in spaces of ambiguity. Thus, it is often through stories that the following chapters explore what are

ultimately material effects and implications of power relations.

The methods of investigation in this thesis reflect this insistence on the materiality of discourse, the conviction that discourse is never "just words" but rather always a set of assumptions, permissions, excuses, possibilities and curtailments congealed in a word or a phrase. Primarily, and in order to outline and develop my interest in discourse, in overarching theoretical questions, and in the material effects of power relations, I use in this project the three strategies of close reading, interrogations of key theoretical arguments, and analysis of contemporary situations. Thus, I read particular texts such as the Israeli-Palestinian Peace Accords, the writings of Israeli writers sympathetic to Palestinians, or reports on Human Security with the purpose of gleaning particular discursive moments that chart modes and effects of depoliticization or that challenge the text itself in its interpretation of its subjects and their political status. In such a way, not only am I able to identify discursive strategies that effectively depoliticize subjects such as Palestinians, but by relating such discursive strategies to the historical context of the texts studied, to relate the effects of such depoliticization to the historical questions surrounding each particular case. For example, reading texts by Israeli writers sympathetic to the plight of Palestinians reveals a certain spatial anxiety permeating those texts; such anxiety effectively closes off political possibilities that might challenge the spatial and political mapping of the Israeli nation-state. And ultimately, it nuances the questions that must be asked about what a just solution to the Israeli-Palestinian conflict might look like—how a question of justice might or might not be formulated and with what effects. The historical situation thus studied forces not only a reminder that matters of discourse are never only that and that the power relations—between occupier and

occupied in this case—function in part through discourse, but the historical situation nuances the theoretical questions asked in this thesis and challenges their tendency to generalize. And it is also through analysis of the historical situation that the political and ethical investment in this thesis is refined—it is the historical situation that takes me from the close reading of provocative texts to insistence on the question of justice or the pressure of alternative political scenarios. Throughout it all, questions asked by theorists such as Agamben, Arendt, and to a lesser degree Judith Butler—all of whom help me to think through the fragility of human beings and the relative security of political status—frame my readings and interrogations. It is the questions of those theorists that provide me with the vocabulary to ask the questions in this thesis, and it is in reading and critiquing their texts that I am able to approach more closely what is at stake in my investigations.

Two particular terms used in those investigations must be clarified, for in many ways they contextualize what will follow yet they do not function only as terms; they are themselves unresolved issues or equivocal terms not only in the context of this thesis but also historically: Empire, and Humanity or the Human. As will be shown below, current debates surrounding these terms express a contemporary anxiety about the nature of political changes taking place globally. And like these debates into which this thesis is also an intervention, the analysis in this project is continuously engaged with and never certain about the specific historical and political parameters of each term. What I do try to do, however, is understand the complexity and implications of discourses and phenomena within the apparent parameters of each. Thus, Empire will be used to name the evolution of sovereign power into a direct confrontation between power and human vulnerability in

ways much less mediated by national or international mechanisms of democratic politics or international law—it is thus that the war on Iraq could be read as an act of Empire. And Humanity or the Human will be used to mark that same human vulnerability which today mobilizes the rhetoric and action of humanitarian intervention as well as the human vulnerability which mobilizes theoretical and academic interventions into the nature of the political—it is thus that the human could be read as an indicator of inclusion in the political community of human rights as well as an indicator of a superfluous perhaps dangerous raw material beyond the management of international law. The thesis will grapple throughout with the theoretical and political challenges posed by the two terms, but below I will outline what is at stake for me in those challenges.

Empire

The term Empire has been widely deployed in the past few years to explain and name the apparent shifts in international politics towards unilateralism, humanitarian interventions, and international policing (whether criminal or economic). Though popularized in the academy with the publication in 2000 of Michael Hardt and Antonio Negri's *Empire*,[6] the term has also been eagerly adopted by grassroots organizations and political as well as civil society groups who are ideologically opposed to United States foreign policy specifically or to globalization more generally. The term's deployment in various genres and in different settings adds to its vagueness, its lack of precision as well as its power as a galvanizing term. In the context of this project, Empire attests to this generalized need to mark an apparent shift in international politics.

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[6] Michael Hardt and Antonio Negri. *Empire*. Cambridge, Massachusetts: Harvard University Press, 2000.

I say "apparent shift" because the term Empire has been resisted by theorists also opposed to the same policies and discourses that the term names. A number of theorists have refused or at least avoided the trendiness of the term Empire, opting instead for formulations such as the "New Imperialism" (David Harvey) or "imperialism of our time" (Aijaz Ahmad). The argument usually is that what we are witnessing today in terms of unilateralism on the part of the US and its allies, in terms of the hegemony of global capitalism or in terms of the undercutting of state sovereignty and public or state-funded welfare programs in much of the developing world, is a continuation of or a further development in the imperialism of the last few centuries. Ahmad, for example, argues that "imperialism has been with us for a very long time, in a great many forms, and constantly re-invents itself, so to speak, as the structure of global capitalism itself changes." However, he also argues that "this is the first fully post-colonial imperialism, not only free of colonial rule but antithetical to it...".[7] And it is here that this need to mark a difference in the operation of international politics persists.

Ahmad's differentiation between a colonial and a post-colonial imperialism attests mostly to the vagueness, perhaps the contradictions, that frustrate attempts to understand and name current shifts in international politics. Whereas colonial rule generally necessitated binaries that structured interactions between the center and the periphery, colonizer and colonized, self and other, today's imperialism (to use Ahmad's terminology) mystifies foundational structures as well as distinct subjectivities. Despite the Bush administration's psychopathic use of an "us vs. them" rhetoric and a "good vs. evil" discourse, neither "us" nor "them", "good" nor "evil", can remain constant. In fact,

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[7] Aijaz Ahmad. "Imperialism of our Time." In Leo Panitch and Colin Leys, eds. *The New Imperial Challenge: Socialist Register 2004*. London: Merlin Press, 2003.

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at times it appears that inconsistency itself is what structures the new order as it necessitates emergency measures and exceptional acts that have come to unequivocally mark international politics, in the context of both terrorist attacks and humanitarian interventions.

It is this focus on exceptionalism that most strikingly marks the new order, especially as it relates to the reconfiguring of international conflicts. This exceptionalism is eloquently and convincingly delineated in Hardt and Negri's *Empire* and has lent a convincing power to the term Empire as it is used in the critique of this exceptionalism. Despite *Empire* the book's heavily romanticized rhetoric, its historical selectivity, and its dangerously and at times ridiculously vague conception of the "multitude" as the coming global revolutionary power, the first part of the book offers a concise and astute description of the important and troubling markers of the new order as Empire.[8] According to Hardt and Negri, this world order is not simply an extension of the old, not a further globalization of capitalism. It does not rise spontaneously out of market forces nor is it located in a single state. Empire is virtual: center and margin are continuously shifting. It is characterized as biopolitical power, a sovereignty of sorts but not modeled after the nation-state. According to Michael Hardt, he and Negri understand imperialism to be "the imposition of the national sovereignty of a dominant country over foreign territory through colonial administration, military occupation or economic coercion," while they understand Empire as "a wide network of collaborating powers, including the dominant nation-states, supranational institutions like the IMF and World Bank, the

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[8] See Hardt and Negri, *Empire*, Part I.

major corporations, some of the major NGOs and others".[9] This new world order

operates within a permanent state of exception; the state of exception is the paradigm for

the legitimacy of Empire. This state of exception functions according to a police

mentality; consequently, the use of force in the age of Empire is a form of police action.

It is not only repressive, but has within it its own legitimacy:

> Today military intervention is progressively less a product of decisions
> that arise out of the old international order or even U.N. structures. More
> often it is dictated unilaterally by the United States, which charges itself
> with the primary task and then subsequently asks its allies to set in motion
> a process of armed containment and/or repression of the current enemy of
> Empire. These enemies are most often called terrorist, a crude conceptual
> and terminological reduction that is rooted in a police mentality.[10]

In fact, according to Hardt and Negri it is in the exercise of force as police action that the

power of Empire is legitimized.

In Empire, the judicial system and the courts are marginal. There is an inversion

of the role of law. (Consider the overriding of US Supreme Court decisions on the right

of Guantánamo Bay prisoners to a trial in a court of law by the 2005 legislation that

allows President Bush to basically suspend the role of the judiciary.)[11] The use of force is

sanctioned for moral and not judicial reasons. Empire identifies the enemy as terrorist or

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[9] Michael Hardt. "From Imperialism to Empire." *The Nation* 13 July 2006. September 20, 2006. http://www.thenation.com/docprem.mhtml?i=20060731&s=hardt

[10] Hardt and Negri, 37.

[11] According to Stephen Humphreys, the *Rasul v. Bush* case argued before the Supreme Court in 2004 "upheld the right of non-citizens imprisoned on non-US territory to habeas corpus review. 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. In effect, the court rejected a technical argument attempting to parse between 'sovereignty' (Cuba's) and 'jurisdiction' (of the United States federal courts)....Yet successful court contestation on the appropriate parameters of the anomic zone led ultimately to its expansion: legislation, signed into effect on 30 December 2005, simply suspended all judicial habeas corpus review of Guantánamo detainee cases." See Stephen Humphreys. "Legalizing Lawlessness: On Giorgio Agamben's *State of Exception*." *The European Journal of International Law* 17.3 (2006): 687-691.

mafia or drug lord and intervenes for the well-being of the world—intervention is appropriate for a state of exception. Non-governmental organizations such as Amnesty International and Doctors without Borders, though well-intentioned, help to identify the Enemy of Empire as Sin, according to Hardt and Negri, and pave the way for the moral intervention of the forces of Empire. These NGOs, "precisely because they are not run directly by governments, are assumed to act on the basis of ethical or moral imperatives" and so become "powerful pacific weapons of the new world order" as they denounce, on moral or ethical grounds, the evil that Empire will seek to squash.[12] It is not Hardt and Negri's characterization of these organizations that is compelling here: organizations such as Amnesty International and Doctors without Borders accomplish much that is beyond the moral denunciation that Hardt and Negri speak of. However, the idea that the discursive output of such organizations in some way complements Empire's disregard for the norms of international law as the forces of Empire seek to address "rogue states" is compelling and demands attention—not so much for what this says about these NGOs as for what it says about the way acts of Empire seek legitimacy.

Here, Hardt and Negri's characterization of Empire echoes the thinking of another prominent theorist of this exceptionalism, Giorgio Agamben, whose *Homo Sacer* series has been widely and critically influential in critiquing sovereignty as a state of exception.[13] Unlike Hardt and Negri, Agamben emphasizes the genealogy of biopolitical sovereignty, arguing that the state of exception has always been a constitutive element in

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[12] Hardt and Negri, 36.

[13] Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life.* Trns. Daniel Heller-Roazen. Stanford: Stanford University Press, 1998. See also, *State of Exception.* Trns. Kevin Attell. Chicago: University of Chicago Press, 2005.

politics, and it is specifically in its production of bare life, of life stripped of social, political or legal identities, that the state of exception allows for the exercise of a sovereign power—and a sovereign violence—that is not contained by law. Now, according to Agamben, we live in a permanent state of exception, the state of exception has become the rule, and we are all virtually bare life. And the "logic of exceptionalism", according to Miriam Ticktin in a study using Agamben's theorization on the state of exception, "creates and privileges non-rights-bearing, apolitical, non-agentive victims."[14] It is this victim, according to Agamben, who is the proper subject of a state of exception; it is the non-rights bearing, apolitical, non-agentive victim, that is produced in the state of exception, and humanitarianism is critical to the management of this state of exception.

Agamben's work on current shifts in international politics is relevant here specifically for two reasons. First, Agamben's analysis places great emphasis on the body as the site on which exceptional sovereignty is exercised; this bare life is the proper subject of politics. It is thus that Anne Caldwell concludes, "every potential case for intervention—whether or not it is acted upon—raises as a question the status of life, and calls for a sovereign decision on life."[15] And this also marks the second point of relevance in Agamben's work for this project, his insistence that the threshold between life and death is constantly being redrawn and negotiated. For Agamben, it is the refugee non-citizen who perfectly illustrates this indeterminate being-at-risk, this susceptibility to capture outside of established political norms and even to annihilation. International politics as the exercise of international policing of danger zones, politics as policing,

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[14] Miriam Ticktin. "Policing and Humanitarianism in France: Immigration and the Turn to Law as State of Exception." *Interventions* 7.3 (2005): 347-368.

[15] Anne Caldwell. "Bio-Sovereignty and the Emergence of Humanity." *Theory and Event* 7.2 (2004).

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addresses itself immediately to this threshold of life and death. Even humanitarian organizations, according to Agamben, "can only grasp human life in the figure of bare...life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight."[16]

Thus, it is imperative to question international discourses that shift focus to the care for bodily life, and that emphasize the exceptional measures necessary for its protection, and to interrogate the extent to which such discourses complement, in certain cases even facilitate, the workings of Empire. Empire is used in this thesis to mark sovereignty's increasing operation as the care for, in fact the management of, bodily life globally and through measures exceptional to the principles of state sovereignty and international law. Empire names sovereignty's unmediated confrontation with vulnerable beings beyond the borders and norms of international law and through mechanisms and discourses of management like humanitarianism, policing, aid, and containment.

Humanity

"Humanity" and "the human" are difficult terms to use in this thesis. Since this is not an historical survey of the use of the term or a philosophical study of what it is to be human, there is always the temptation to use the terms as self-explanatory or conceptual givens. However, the problematic aspect of the use of these terms in this context is reflective of a larger historical problematic: who is human, and what constituency—political, social, biological—could the term "humanity" signify? Research into Human Rights indicates that this problematic, though very much of the moment, is not new. The

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[16] Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*, 133.

period immediately after WWII, the period when many of the current Human Rights documents and agreements were drafted or conceived, posed similar questions. Reading Hannah Arendt and Giorgio Agamben as well as the history and development of refugee law and critiques of the Universal Declaration of Human Rights, it becomes clear that WWII, and specifically the German programs of extermination, forced a reassessment of what it means to be human and how and in what form humanity could be captured and protected in international law.

Agamben's work on the poetry and testimony of Primo Levi highlights what Levi saw as Nazism's challenge to the concept of humanity, not only the humanity of the Nazis as the perpetrators of horrific and obscene acts, but also the humanity of the victims they incarcerated in the concentration camps. In the camp, the living and the dead are confused, the human and the non-human are not distinct; for Levi, the victims become "non-men". The humans who populate the camp, those who are not yet killed, cannot nonetheless be recognized as humans any longer. This becomes Agamben's point of entry into the camp in *Remnants of Auschwitz*:

> There is thus a point at which human beings, while apparently remaining human beings, cease to be human. This point is the *Muselmann*, and the camp is his exemplary site. But what does it mean for a human being to become a non-human? Is there a humanity of human beings that can be distinguished and separated from human beings' biological humanity?[17]

Agamben's questions lead him to characterize the camp as a space for the production, in the human, of the non-human, and rather than see the camp as an historical anomaly, he suggests that it is "the hidden matrix and *nomos* of the political space in which we are still living."(166) Though an exceptional space whose presence signals the suspension of

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[17] Agamben, *Remnants of Auschwitz*, 55.

the norm, of the law, the camp is the space where the exception becomes the rule; and since for Agamben biopolitical sovereignty has the structure of the exception (as Chapter One will show), the camp becomes the "most absolute biopolitical space ever to have been realized, in which power confronts nothing but pure life, without any mediation"(171).

Two elements in Agamben's argument are central to his reading of the human in the space of the camp and in the operation of biopower generally: "pure life" and "mediation" (or lack of it). The idea that human beings can be reduced to some pure remnant that as such, or on its own, is somehow non-human is intricately linked, in Agamben's theorization, to the presence or lack of mediation; mediation in Agamben signifies juridico-political structures of recognition—nationalization is an example. Thus, his interest is in any space that like the camp strips its inhabitants of "every political status", and he argues that with regard to the Nazi concentration camps,

> it would be more honest and, above all, more useful to investigate carefully the juridical procedures and deployments of power by which human beings could be so completely deprived of their rights and prerogatives that no act committed against them could appear any longer as a crime (171).

Therefore, Agamben differentiates between a humanity identified by juridico-political structures and a humanity stripped of its juridico-political status; yet he does not see either as distinct from the other. In other words, the human being ceases to be human when stripped of "every political status" yet what remains is a "pure life. Anne Caldwell in her reading of Agamben speaks of those two forms of humanity as "juridical life" and "material life" and extrapolates on Agamben's understanding of sovereignty as bio-sovereignty. Caldwell argues that this bio-sovereignty must be separated "from the liberal

vision of power as formed of consent and limited by law and rights."[18] Writing that

Agamben's account of sovereignty "draws heavily from Schmitt's account of sovereignty

as the decision on the exception, as well as from Benjamin's account of the origins of law

in the rule over life," Caldwell explores Agamben's development of the theories of

Schmitt, Benjamin, and Foucault to posit that sovereignty in Agamben is very much the

"decision on life":

> If, as Agamben argues, sovereignty maintains its power by deciding on the status of life, then a world in which politics places life in question by retaining the power to decide its fate, is not post-sovereign. It is the open expression of the sovereign ban or exception.

While the sovereign ban and the exception will be discussed in more detail in Chapter

One, I do want to follow here the broad lines of thought in Agamben's account of

sovereignty because they lead directly to his presentation of the indistinction between the

human and the non-human in an account which nonetheless is premised on sovereign

power's production of the non-human (as in the camp).

Caldwell's reading of Agamben's account of sovereignty leads her to suggest that

> Human rights, from this perspective [the perspective of sovereignty as the decision on life], is the discourse of life in a state of permanent crisis. Moreover, human rights and sovereignty share the same referent: an indeterminate and precarious bare life.

> The language of human rights does not stand outside the crisis such rights are invoked to counter; it does not stand outside the sovereign powers that produce life as endangered.

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[18] And one could add that the liberal vision of power tends to treat the human as prior to whatever socio-political arrangement structures sovereign power; thus a major strand of thinking behind international Human Rights bases the legitimacy of such rights in the human being's inherent rights, rights that naturally inhere in humans and as such may act to limit or check sovereign power—see chapter Four.

Thus, it is obvious that for Agamben the human is a political category, not one that precedes politicization; human rights are themselves part of that politicization not a system of limits or checks on the operation of sovereign power.

Nevertheless, because sovereignty in Agamben is bio-sovereignty, the human that is produced in the operation of sovereign power is that "indeterminate and precarious bare life" that in the space of the camp becomes the non-human identified by Levi, the remnant of the human. Here lies one of Agamben's strongest insights into bio-sovereignty and also one of his most confusing and disabling accounts of what it is to be human. For while Agamben brilliantly articulates bio-sovereignty's production of the human, which simultaneously politicizes humanity and operates by reducing the human to a "pure life", and while he rejects the liberal account of sovereignty which would separate the recognition of humanity from the operation of power, he, Agamben, does not offer an understanding of the human beyond that of the bio-sovereignty he is viciously critiquing. And even if it were unnecessary or impossible to understand the human outside of the biopolitical discourses governing our understanding of the human, it remains frustrating to deal with an account of sovereignty that sees the production and the annihilation of humanity to be the property of the same discourses and the same arrangement of power.

This frustration becomes especially disabling, politically, when it comes to the question of rights. Andreas Kalyvas in his essay "The Sovereign Weaver" relates this frustration to Agamben's own understanding of rights. Kalyvas argues that rights "mediate between the individual and political power and thereby hinder the absolute deployment of biopolitics. If, however, the state of exception requires individuals to have

been previously deprived of their rights, it is reasonable to infer that had these rights not been revoked, the camp might not have been possible"(115). Agamben, however, does not follow this reasoning. "Unfortunately," Kalyvas continues,

> this important dimension of rights, suggested by Agamben's description of the camp, is never thematized or discussed in relation to his previous critique, according to which because the rights politicize *zoē* they remain within the logic of sovereign biopolitics. There are two lines of arguments that implicate rights, two readings that coexist uneasily in Agamben's texts. While in the one, the camp has to divest its inhabitants of their rights in order to reduce them to naked life, in the other the granting of rights is one of the constitutive operations by which biopower is exercised over the naked life of its subjects (116).

For Kalyvas, this "uneasy coexistence" of the two readings of rights is not resolved in a productive manner in Agamben's text: it does not point to a reformulation of rights that may check the possibility of reduction to naked life, the possibility of the camp.

Kalyvas's reading of Agamben takes me back to Hannah Arendt, whose thinking on statelessness and critique of the concept of rights (especially as they relate to Human Rights) critically influences Agamben's work in *Homo Sacer*. Arendt, like Agamben, was particularly suspicious of what she saw as the growing inclusion of bodily life in political life; especially in *The Human Condition*, Arendt had charted this move towards a politics of the body whereby the necessities of life and the biological aspects of being come to constitute the proper subject of political life in modern times. Her strongest influence on Agamben, however, comes through in her critique of totalitarianism and of the concentration camps. Arendt, again like Agamben, was very much interested in the processes which strip someone of "every political status"; she was very much invested in the ways in which juridico-political status produced the human of Human Rights. The law figures in Arendt's thinking as an instrument of inclusion by its applicability, a form

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of interpellation by its acknowledgment. Human Rights, however, are not reducible to human *rights*. In *The Origins of Totalitarianism*, Arendt argues that citizens often lose certain rights but do not as a result become rightless. The loss in war of the right to happiness, for example, does not nullify the validity of Human Rights as a concept or its applicability to such citizens. Rather, the loss of Human Rights has less to do with the lack of applicability of their specific content—for example the right to happiness or right to liberty—and more to do with the distancing of humans from the realm of rights altogether: to lose rights within the community is not the same as to become rightless, to belong to no community and therefore to be covered by no laws.

Arendt's main thesis regarding Human Rights is that they unravel specifically when they are confronted with nothing but the human; it is the stateless person, the non-citizen, who cannot be protected under the umbrella of Human Rights. Agamben picks up on Arendt's critique most directly when he argues that "a permanent status of man in himself is inconceivable for the law of the nation-state". Reiterating Arendt's critique of the concept of the Rights of Man, which she argues are really only the rights of the citizen, Agamben writes that "the paradox here is that precisely the figure that should have incarnated the rights of man par excellence, the refugee, constitutes instead the radical crisis of this concept."[19]

However, for Agamben, unlike for Arendt, biopolitics and sovereignty cannot be separated, and that perhaps is one reason why Agamben does not push for a rearticulation of rights or the expansion of rights as a strategy of "re-politicization". Sovereignty, for Agamben, as will be shown, is bio-sovereignty and the law and the camp, the rule and the

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[19] Agamben, "We Refugees."

exception, can longer be understood as distinct: in fact their indistinction is the mode of operation of bio-sovereignty.[20] And it is this indistinction that is maintained in juridical as well as discursive systems that address and capture the human such as Human Rights or humanitarianism.

Nevertheless, if rights cannot in Agamben do the job of limiting biopolitical sovereignty or invoke a humanity not already marked by the non-human, what articulation of humanity may be useful analytically if one were to understand or imagine a global order not invested in the production and capture of the non-human? What understanding of humanity may allow one to approach more closely a political order that does not deny the "pure life" that remains nor capture it in the grip of an unbound sovereignty? In fact, is it even plausible and productive, analytically and politically, to invoke humanity as a category in the struggle against a global order that increasingly marks the frontier between life and death (in places such as Afghanistan or Iraq) according to seemingly arbitrary coordinates? What constituency does the invocation of such a category today create? These questions remain unanswered for me, and Agamben is more mystifying than helpful here.

Judith Butler offers a different reading of this dilemma and her work, different in discipline, style and terminology from Agamben's, interjects an emphasis on history and an attention to discourse that is absent from Agamben's work. She is much more

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[20] Anne Caldwell suggests that things have changed since Arendt formulated her critique of the rights of Man as the rights of the citizen: "Writing at the end of World War II, Arendt had reason enough to conclude the rights of man had no authority beyond the 'man' invoked as their very source. She could therefore describe man as a 'isolated being who carried his dignity within himself without reference to some larger encompassing order'(291). Agamben, in contrast, knows well that since World War II, international rights documents have separated the rights of man, which we would now call human rights, from citizenship (Agamben 1988:133)." This, however, forces an elaboration of Arendt's critique rather than its dismissal. In fact, Agamben would argue that no more is there a clear distinction between citizen and non-citizen to the extent that the later is depoliticized and rendered at risk; rather, all are now produced and managed as precarious bare life, a claim that is also quite problematic. See Chapter One.

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interested in the specific workings of the biopolitical sovereignty critiqued by Agamben, especially as it relates to the policies of the US at home and abroad. And partly due to her investment in outlining structures of differentiation based on race or gender or sexual orientation, she is able to read the play between the norm and the exception, the human and the non-human, not only through a theory of sovereignty, but also through a discursive analysis of words and images: thus her emphasis on dehumanization. In the chapters that follow, Butler's work allows me to take my understanding of Agamben in different directions, to ask how cultural representations of the human, how the relation between the universal and the particular, how our understanding of sameness and difference, how articulations of justice, proceed from and produce the human as a subject and create or negate the possibility of humanity as a political category. And in asking such questions, I approach more closely what is particularly troubling about this question of the "human". The challenges beyond this attempt are three. First, that sovereignty operates now more than ever *through* the identification of the human, marking the human as its subject; humanitarianism as foreign policy is one way in which a global unmediated power determines need, risk, and value in relation to human life. And what form of the human is identified thus? Second, how do commonality and difference figure in establishing the contours of this category of human, and is there now an outside to the human? Who or what is non-human? And third, can anything like a common humanity be invoked today in the struggle against this biopolitical sovereignty? Can new criteria, such as global justice, be advanced today as a way to mobilize humanity as a political constituency?

Structure

This thesis is divided into four chapters. Chapter One begins with a discussion of Giorgio Agamben's *Homo Sacer: Sovereign Power and Bare Life*. Agamben's book outlines what he perceives a depoliticizing sovereignty that is invested in, in fact based in, the isolation of the human element as the subject of sovereign power. Chapter One explores Agamben's argument first on its own merits, gleaning what is most useful and provocative in Agamben's concept of the merely human, mainly his insistence that biopolitics operates through this isolation of the human element to the extent that the distinction between political life and biological life no longer holds, that bio-power is essentially and constitutively a depoliticizing power, and that the effects of such depoliticization are incredibly material—that is, they are felt materially in the management and containment of human bodies. It is through a close reading of Agamben's text that Chapter One articulates questions critical of the theoretical and political limits of Agamben's argument. I find his argument so compelling that I am forced to question how it could work analytically to explain the more pressing political dilemmas attending mere humanity at the moment. In other words, what Agamben does not consider, and what chapter one asks, is who is merely human in the context of the unequal and overwhelming distribution of economic, political, and spatial resources operating globally today? Especially since Agamben wants to argue that spaces of ambiguity that capture a vulnerable, bare, depoliticized humanity appear now in many places that defy distinctions of inside/outside and that sovereignty is no longer state power or regulated by mechanisms proper to the nation-state? Chapter One argues that it is politically necessary to force Agamben's argument into confrontation with global

structures of inequality in order to account more concretely for the implications of his theoretical argument as well as to use his theory in ways more productive than his text allows. It is thus that Chapter One draws on the work of Judith Butler and of readers of Agamben to establish more specifically what is at stake in a concept of mere humanity in the context of depoliticization and in the context of this thesis and the chapters that follow.

Agamben's main argument is that the isolation of mere humanity and the apprehension of the human as the material vulnerability to which we are all reduced by bio-sovereignty results in the destruction of political subjectivity, a destruction that is coterminous with the production of the human as this vulnerability. My interrogation of the lack of historicity in Agamben's account establishes that the coordinates of rights, space, commonality, and management mark the playing field of biopower's capture of the merely human. In part the following three chapters explore those coordinates in relation to depoliticization and its effects.

It is thus that Chapter Two begins with a textual analysis of the Israeli-Palestinian Peace Accords and the interplay between materiality and citizenship. For in the case of Palestinians we have a people difficult to categorize in a place difficult to mark; they also exist in historical limbo as a people at once stateless and guaranteed a state, rightless and yet negotiators in international agreements. I focus on the Israeli-Palestinian conflict in this thesis for two reasons. First, I find the conflict particularly challenging to mainstream understandings of political conflicts: the Palestinians and the Israelis are not two states at war, the conflict is not a civil war, the Palestinians are not a separatist group or an oppressed minority. They are a dispossessed people, not always and not all recognized as

such, promised a state but not all of them and not exactly clear where and when. And most importantly, they are often placed at the mercy of an occupying power that openly and with impunity challenges international law's ability to categorize and thus offer relative protection to Palestinians. The ambiguity surrounding the status of Palestinians allows me to think through Agamben's theories as much as it forces me to redefine the application of his rather abstract ahistorical thoughts to a reality much more complicated. And second, and simply, I find the Israeli-Palestinian conflict especially unjust and reflective of an injustice that is often compounded by the ambiguity surrounding Palestinians. And it is that kind of injustice, understanding its causes and its longevity, that prompts me to understand theorists such as Agamben in the first place.

Therefore Chapters Two and Three are not an application of Agamben's argument to the Israeli-Palestinian conflict: they are interrogations of concerns similar to those prompted by Agamben's theories, and the chapters function by bringing sets of theoretical and historical concerns into confrontation. Thus Chapter Two insists that the materiality that Agamben opposes to citizenship, and the materiality that he views rightly as political vulnerability, and which marks Palestinian disadvantage, functions in the Israeli-Palestinian conflict as a highly threatening element potentially destructive of Israeli nationalism. Chapter Two, by focusing on Israeli attempts to depoliticize and manage Palestinians, concludes that it is Palestinian materiality and not only the promise of a Palestinian citizenship that is potentially destructive of the logic of the nation-state.

In Chapter Three I focus directly on materiality's relation to space, specifically Israeli territorial and imaginative space and the political thrust of this materiality in such a space. What is of interest here is not the issue of spatial distribution in the Israeli-

Palestinian conflict or the general resonance of spatial configurations with the distribution of political power in a given society. In this chapter I link anxiety about spatial integrity of Israeli space to anxiety about the political legitimacy of the Israeli statist project; however, since my interest in the thesis as a whole is with the relationship between vulnerability and depoliticization, my focus on this spatial anxiety is read through Israeli texts very much in sympathy with a Palestinian humanity beyond immediate political considerations. In other words, I not only try to track the links between physical and political elimination of those apprehended as merely human, but also and more importantly in terms of the whole argument, I explore what political possibilities are foreclosed when a humanitarian rhetoric is employed in the service of a spatial and political anxiety about the very human materiality it seeks to understand and include.

The issue of inclusion is not in itself a focus in the investigations of this thesis and I do not employ terminology specific to debates about inclusion and exclusion. The focus always is on the more material, physical humanity and the discourses which aid in its production. This focus forces new questions and leads me to think that the investment in a discourse and production of an apolitical vulnerable humanity effectively creates a discursive and in some cases physical space that reproduces that vulnerability: think of emergency situations as well as emergency shelters, disasters as well as refugee camps. Therefore my last chapter gestures towards that space by asking how the increasing salience of humanitarianism in international politics, and more particularly in the Iraq war, is functioning not only to facilitate the workings of Empire but also, and significantly, to redefine the narratives and structures of differentiality that bring this

Empire into confrontation with its "subjects" in places like Iraq—this after all is the question that Agamben does not answer and the frustration with which the first chapter begins.

The issues, questions, and concerns outlined above demand scholarly attention and warrant diverse disciplinary approaches. A political philosopher might vigorously track the genealogy of the terms used in this thesis and place them in relation to a history of sovereignty and the nation-state, the development of Human Rights, or even to a more theoretical interrogation of the concepts of need and interdependence. Social scientists could and should ask questions that tie the current changes and challenges in international politics to macro as well as micro socio-economic changes, demanding comparative data on humanitarian interventions, illegal migration and the asylum process, or the experience of rightlessness. What I try to do in this thesis, in ways that I hope will complement such different approaches, is unpack the discursive and political layers through which much of this contemporary ambiguity surrounding the (merely) human is articulated. My work as I see it is not to offer a philosophical treatise on the concept of mere humanity or on depoliticization; and it is not to conduct a qualitative analysis of the concept itself or of the workings of humanitarian intervention. It is rather to offer interrogatory and analytical readings of discourses of depoliticization and outline what is politically at stake in those discourses; this work is an interpretive intervention that outlines political implications materially felt, and an analytical study that interrogates discursive and political acts with the hope of better understanding those implications.

Because of the methodology employed, the four chapters could be related differently. As close readings of texts and discourses of depoliticization and the links

between material and political vulnerability, each of the chapters functions independently to interrogate such texts and discourses and to pose and answer different questions regarding the political possibilities and limitations of such vulnerability. And the chapters also work to frame and highlight the case of Palestinians as a people highly challenged and challenging when it comes to the issue of a political status: Chapters Two and Three which focus on the particularities of the Palestinian condition as a material condition act partly to anchor the investigations of this thesis in a historical situation, in turns distilling and refining the more theoretical and discursive investigations of the framing Chapters One and Four. And as an interrogation of key theoretical texts and concepts, especially that of mere humanity, the four chapters do work progressively, as Chapter One introduces Agamben's concept and the relation he constructs between mere humanity, depoliticization, and a sovereignty invested in and operating through the management of material lives, and the following chapters work to nuance and reformulate my understanding of this concept and the possibilities of its use.

The goals of this dissertation are clearly tied to its interdisciplinary approach. I investigate the concept of the merely human because it speaks to my concerns about the possibilities for political action and my belief that such possibilities are becoming more and more unrecognizable. My aim, as I think should be the aim of other approaches to the same issues, is to understand better the nature and implications of certain pressing political changes today. My focus is specifically on how such changes impinge on or reformulate human beings' ability and opportunity to be political beings: political as in able and willing to participate in the creation and recreation of the world, and the determinants through which human beings may position themselves in relation to others,

and within which they may live and die. Investigating the merely human is one way to comprehend changes in the nature of politics that seem to silence those most in need of being heard amidst the cacophony of voices that speak for and in the name of a new world order. The focus on a theoretical concept addresses underlying reconfigurations of the political that are not immediately visible or accessible if one were to concentrate on the manifestations of shrinkage in political possibilities. However, the move to a case study then allows me to address current injustices in ways that are detrimental to the lived experiences of a group in need of being heard which is what I take the Palestinians to be. It reflects my commitment to a politics of reading which argues that textual strategies can have dire political consequences. The focus on official documents like the Peace Accords and calls for coexistence is an attempt to devise strategies that would work against an alarming trend to rob Palestinians of political agency or to neutralize what agency they have. And yet, because of the move between the local and the global in my focus, one of the goals of this dissertation is to engage with writers like Edward Said or Judith Butler, who are interested in imagining possibilities for a more just world order, and my focus on the Israeli-Palestinian conflict is also invested in imagining alternatives for coexistence between two groups brought together by ideological and territorial divisions as well as economic, social, and political inequalities. I would hope, then, that my investigations would speak to historically felt experiences in the present as well as to theoretical work that imagines broader alternatives for the future.

Chapter One: Mere Humanity and Depoliticization

Of the stories that are beginning to proliferate in the wake of the US war in Afghanistan and its invasion of Iraq, one centers on an ex-soldier in the US army, named Jonathan Idema, now called a "bounty-hunter" by the United States government. Idema was arrested in Kabul for running a "private jail" containing, at the time of the arrest, eight Afghan "prisoners". Idema and his associates, two Americans and four Afghans, were subsequently tried in a Kabul court in a sensational trial amid allegations of FBI cover-ups and Afghan disregard for due process, if not outright legal incompetence. To complicate matters further, Idema and his associates were prosecuted, according to the Afghan prosecutor, for the distress they caused "the people of Afghanistan, the [Afghan] government and the United States." In his defence, Idema alleged that "while we were not in the United States army, we were working for the United States army." When found guilty and sentenced to ten years in jail for torturing Afghans and running a private jail, Idema had the following to say: "I apologize that we tried to save these people...We should have let the Taleban murder every...one of them."[21]

I cite Idema's story because it seems on the one hand representative of emergent stories that speak to a legal and military chaos inaugurated by the War on Terrorism; more of such stories should be emerging, confounding the national, territorial, and categorical boundaries of the law. On the other hand, Idema's story is incongruent: his defence and his prosecution both rest on the extra-legality of his actions. While the US government denies the existence of evidence that would tie it to Idema, government

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[21] BBC News:2004/09/15
http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/south_asia/3657744.stm

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officials have acknowledged that they "received prisoners" through Idema. In other words, what is at stake in Idema's case is not whether or not he operated a private jail. And it is not even whether he was acting on the orders of others. Rather, the case revolves around the very looseness of his relationship with official bodies, whether they be those of the United States army, the United States government, or the Afghan government. Idema is tried in Kabul by the Afghan legal system in part because of the distress he caused the United States government, a government which never clearly defined its relationship to Idema. Idema's statement after his sentencing not only confirms the ambiguity of this relationship but appears to posit that very ambiguity as the legitimating ground for his actions. When Idema states that "I apologize that we tried to save these people", he links his "I" as speaking subject to a collective "we" as acting subject/s. This "we"—US army, US government, ex-soldiers, Americans in general?— appears self-evident in Idema's statement despite its lack of a clear referent; likewise, the word "save" appears in his statement as self-evident. What constitutes the "saving" of "these people"? And how does one demarcate "these people" from the Taleban? In his vindictive and wishful abandonment of these people—"We should have let the Taleban murder every... one of them"—Idema points to the dangerous complexity of the framework which brings together his "I", the "we", "these people", and "the Taleban", a framework organized by the verbs/actions of saving and murder. But the complexity is even thicker: not saving and murder, but "trying to save" and "letting murder", establishing on the one hand the immunity of the "we" (saving is not guaranteed and therefore not obligating) and on the other hand, the sheer power of the "we" to let murder, a power that could be unleashed arbitrarily.

Idema's story outlines some of the key concerns of our geopolitical present and challenges, as does the War on Terror of which it is part, current theoretical attempts to comprehend the evolution of the New World Order. The War on Terror, of which the war in Afghanistan is just one element, is understood simultaneously as a war targeting an enemy, terror networks, as well as a humanitarian relief effort offering a regime change and the opportunity of democratic politics. As mentioned in the Introduction, the notion of a humanitarian war throws up a plethora of legal, political, and military confusions, and produces populations whose status is unaccounted for and at the mercy of a power unaccountable to national or international law. This chapter is an attempt to understand the workings of that power and its production of such ambiguities. It will explore Giorgio Agamben's concept of the merely human in an attempt to account for the power relations constructed in Idema's story, the power relations operating within the framework of trying to save and letting murder. I will begin by explicating the term through a reading of Agamben's *Homo Sacer: Sovereign Power and Bare Life*, and I will then move to an exploration of the possibilities opened up by the notion of mere humanity, a notion that is coming more and more into focus through stories such as the one offered above. What is the merely human? Who is merely human? And what are the political implications and possibilities of the term? Agamben's work on the merely human (alternately also referred to as "bare life") has emerged as one of the more exciting and problematic theoretical and philosophical interventions into current debates surrounding new political life forms and the evolution of power relations on a global scale. The concept of *homo sacer* addresses precisely the ambiguous subjectivities produced by the War on Terror, a war Agamben sees as an understandable as well as constitutive development in a global environment

overtaken by the biopolitical structures of a state of exception. While I will explicate Agamben's concept at length below, it is important briefly to place in context Agamben's formulation of this concept and outline what is at stake in his formulation.

Agamben advances a theory of power relations based in sovereignty, or what he calls the "sovereign ban". While many theorists account for the changes in political relations globally in terms of the demise of sovereignty or at least the decrease in state powers in the face of global actors and processes, Agamben insists in his analysis on the primacy of sovereign politics. It is this insistence on sovereignty which is most frustrating in his formulation of the merely human (as will be clear below), and yet it is this insistence which facilitates a way out of the tired debate on the diminishing role of the nation-state in the context of globalization. What Agamben does, despite his troubling usage of the "sovereign ban", is to shift attention to sovereignty as a power relation rather than a state structure. As the editors to the recent collection *Sovereign Lives: Power in Global Politics* argue, one must distinguish between sovereignty as an institution and sovereign power, a form of power relations that remains dominant despite the weakening of state structures. Offering a very Foucauldian reading of Agamben, they advocate tracing "the continuance of certain grammars of power and resistance, irrespective of the site or sites in which they are located".[22] Thus, one could say that Agamben lifts sovereign power above debates surrounding the state by arguing that sovereignty as a power relation operates in political structures beyond the Westphalian nation-state, rendering those debates less relevant. Therefore, his work renders itself capable of

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[22] *Sovereign Lives: Power in Global Politics*. Edited by Jenny Edkins, Véronique Pin-Fat, and Michael J. Shapiro. New York: Routledge, 2004, 3.

accounting for the increasing military hegemony and political chauvinism of some states as well as the obsoleteness of the territorial borders of others.

More importantly, I think what makes Agamben's work attractive—despite its extremely narrow encapsulation of Western politics in the structure of the ban—is its elaboration of a political life form constituted by ambiguity, an ambiguity at home in discussions of globalization as well as discussions of the new world order as Empire. While some mistakenly take the concept of the merely human as a substitute for otherness (such as the colonial other), Agamben's term addresses precisely those subjects created by the collapse or the abandonment of older binary categorizations. As in the story that opened this chapter, ambiguity surrounds not so much the so-called enemies of Western progress, but the subjects of humanitarian intervention, the ones that could be saved and let murdered. In other words, and as will become clearer, it is very much Agamben's refusal of the language of outsiders and otherness which renders his conceptualization of the merely human appropriate to a global environment more and more resembling a police state run by one seemingly unstoppable superpower which unabashedly considers the entire world within its reach.[23]

The Merely Human

Taking up what he considers Foucault's definition of biopolitics as "the growing

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[23] Agamben's theories in the *Homo Sacer* books work tangentially with those of Michael Hardt and Antonio Negri in *Empire*. Despite the latter's militant focus on and commitment to the role of global capitalism in the elaboration of current power relations, *Empire* is also concerned with biopolitical power, characterized as post-modern sovereignty (in contrast to the modern sovereignty of the nation-state). Like Agamben, Hardt and Negri also discuss the new world order as a permanent state of exception; the state of exception is the paradigm for the legitimacy of *Empire*. This state of exception functions according to a police mentality and the use of force in the age of Empire is a form of police action. According to Hardt and Negri, there is no "outside" to Empire.

inclusion of man's natural life in the mechanisms and calculations of power",[24] Agamben

contends that this inclusion is in fact what always and already defines Western politics.

Man's natural life, "bare life" in Agamben's formulation, has always been at the centre of

the political structure of Western modernity. Tracing the genealogy of this centrality back

to antiquity, Agamben notes Aristotle's differentiation between "the simple fact of

living" (bare life) and a "politically qualified life", a differentiation that "was to become

canonical for the political tradition of the West".[25] It is the same differentiation that

Foucault points to in articulating the defining characteristic of biopolitics: "'For

millennia,' he writes, 'man remained what he was for Aristotle: a living animal with the

additional capacity for political existence; modern man is an animal whose politics calls

his existence as a living being into question'".[26]

Agamben contends that "the entry of *zoē* into the sphere of the *polis*—the

politicization of bare life as such—constitutes the decisive event of modernity and signals

a radical transformation of the political-philosophical categories of classical thought".[27]

However, he also insists on a certain continuity marking the Western political tradition by

resurrecting the figure of *homo sacer*, a figure of Roman law, as the political figure *par*

excellence of the contemporary political moment. What constitutes this continuity for

Agamben is the relation of exception whereby something is included solely through its

exclusion. The relation of exception is at the very centre of the definition of sovereignty,

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[24] Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*. Tr. Daniel Heller-Roazen. Stanford: Stanford University Press, 1998, 119.

[25] Agamben, 2.

[26] Agamben, 3.

[27] Agamben, 4.

since it is the sovereign who decides on the state of exception; in fact, sovereignty, in Agamben's formulation—a formulation he adopts from Carl Schmitt—*is* the decision on the state of exception. "The paradox of sovereignty consists in the fact that the sovereign is, at the same time, outside and inside the juridical order"; "the sovereign, having the legal power to suspend the validity of the law, legally places himself outside the law".[28] And the sovereign suspends the validity of the law by producing *homo sacer*, the one who may be killed (his death will not be considered a homicide, will not be punished) but is not sacrificed (his death does not fulfill a celebratory function or facilitate any rituals). *Homo sacer* thus does not belong to law and does not belong to religion/nature: he is merely human, a being in whom the very fact of living is isolated and rendered at risk— he may be killed but not sacrificed.

However, *homo sacer* is not exactly outside the law. The state of exception is decided upon by the sovereign, and the sovereign's ability to decide on the exception and suspend the law defines sovereignty as such. Conversely, the sovereign suspension of the law in the state of exception guarantees the application of the law in the normal order. In the words of Carl Schmitt,

> [T]here is no rule that is applicable to chaos. Order must be established for juridical order to make sense. A regular situation must be created, and sovereign is he who definitely decides if this situation is actually effective.[29]

And so Agamben states, [t]hrough the state of exception, the sovereign 'creates and guarantees the situation' that the law needs for its own validity.[30] And therefore, despite

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[28] Agamben, 15.

[29] Agamben, 16.

[30] Agamben, 17.

the fact that the state of exception has no juridical content (not only is what takes place in it that which is not sanctioned by law, but the law as such does not apply to it), it does maintain a legal form through the sovereign decision to suspend the law: "*The rule applies to the exception in no longer applying, in withdrawing from it.* The state of exception is thus not the chaos that precedes order but rather the situation that results from its suspension" (emphasis in original).[31] While one might be tempted to posit a dichotomous structure of order and chaos, state and nature, right and fact, law and (pure) violence, *polis* and bare life, etc., Agamben argues that what anchors such dichotomous political articulations is in fact a zone of indistinction between order and chaos, state and nature, right and fact, law and violence, *polis* and life: this zone of indistinction is the state of exception. In this state of exception, decided upon by the sovereign, the suspension of law captures bare life (since it is not homicide to kill the life isolated as such), and thus law and violence, order and chaos, etc., are blurred.

The state of exception is not chaos or nature; it is not an outside to law or the state. This is crucial if one is to grasp the centrality of the relation of exception to political order that Agamben emphasizes. This is why Agamben is able to say that though the state of exception is a juridically empty space, it is not a situation of *right* nor a situation of *fact*. The state of exception does not exist as such, it is not a given. The state of exception is brought about through the sovereign decision on the state of exception. Moreover, the suspension of the law applies to the state of exception negatively: it applies in not applying. Agamben calls this suspension of the law the sovereign ban, and

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[31] Agamben, 17/18.

the relation of this sovereign ban to the fact of living, to bare life, is structurally similar to the relation of potentiality to actuality: it is characterized by the ability not to be.[32] The state of exception is therefore intricately implicated in the workings of law and order; *"the sovereign nomos is the principle that, joining law and violence, threatens them both with indistinction"* (emphasis in original).[33] Agamben posits that in "Hobbes, the foundation of sovereign power is to be sought 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".[34] Agamben is thus able to argue that the dichotomous formula of nature and state, and the articulation of the "originary political act" as a form of passage from one to the other, must now be abandoned: "Here there is, instead, a much more complicated zone of indiscernability between *nomos* and *physis*, in which the State tie, having the form of a ban, is always already also non-State and pseudo-nature, and in which nature always already appears as *nomos* and the state of exception".[35] And it is due to that always already inscribed bare life in the order of the state that Agamben is able to say that biopolitics has in fact always already been the marker of Western politics.

The risk that the figure of the merely human is susceptible to directly derives from the double exclusion of *homo sacer*. First, the merely human is produced only in isolation. It is by stripping a person of characteristics, affiliations, and identities, that one

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[32] Agamben, 46.

[33] Agamben, 31.

[34] Agamben, 106.

[35] Agamben, 109.

arrives at the mere fact of living inherent in each person, and it is that mere fact of living that is the merely human. Second, and simultaneously, the merely human is captured through the law's suspension, the law's inapplicability to the merely human; the merely human is abandoned by the law: *"The originary relation of law to life is not application but Abandonment"*(emphasis in original).[36] The merely human is therefore that which is laid bare and abandoned—thus no one will be held accountable for its murder. Agamben points out that the Greek word for bare life, *zoē*, has, appropriately enough, no plural. This is an observation that recalls Hannah Arendt's insistence on the political life of the subject as something that is only possible in interaction with others, whereby political life is constituted by a plurality that *zoē*, as Agamben understands it, appears incapable of. However, Agamben's notion of isolation relates more specifically to an isolation *in* the human of that which is only human, the fact of living. And yet Agamben's argument is explicitly an extension of Arendt's insofar as he shares her critique of the notion of "human rights", rights which become meaningless the moment one is confronted with the merely human.

The Arendtian strand of thought in Agamben's argument is under-acknowledged in his text. The notion of isolation which Agamben understands through the sovereign ban anchors Arendt's thinking not only on totalitarianism and the failure of human rights, but also on the very notion of political action, of what it means to be political. And it is this understanding of the political which underlies Agamben's critique of biopolitics. Specifically, isolation functions in Arendt's thinking to elaborate three areas of thought. The first relates to her understanding of plurality, to the nature of a political public space.

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[36] Agamben, 29.

For Arendt, the *polis* is not the city-state as a physical space: "it is the organization of the people as it arises out of acting and speaking together, and its true space lies between people living together for this purpose, no matter where they happen to be."[37] This is why Arendt argues that a political home is not necessarily a territorial space, and this is why isolation and the destruction of that political home/community, is a destruction of the political status of a person or a people. A second and related aspect of Arendt's thinking that obtains also from her views on isolation is that of political action, of what it is to act politically in the world. She argues in *The Human Condition* against isolation (and against contemplation, which she sees as an isolating activity) as politically disabling. For Arendt, a political act is interventionist: one intervenes in the political discourse of a community and as such becomes political. A political act sets in motion what will be acted upon by others: "Action alone is the exclusive prerogative of man; neither a beast nor a god is capable of it, and only action is entirely dependent upon the constant presence of others."[38]

However, third and most pressing for Agamben's *homo sacer*, the notion of isolation speaks to the legal abandonment that marks those who are no longer recognized by the polity. Arendt's most passionate arguments for the "right to have rights" develop out of her thinking on this legal abandonment, an abandonment that characterized the extermination camps. This is why Arendt is adamant about distinguishing modern anti-Semitism from the long history of hatred of Jews, and why she begins her critique of totalitarian politics with the story of anti-Semitism. In *The Origins of Totalitarianism* and

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[37] Hannah Arendt. *The Human Condition.* Chicago: University of Chicago Press, 198.

[38] ---. *The Human Condition,* 22/3.

in discussing anti-Semitism, she distinguishes between traditional religious hatred of Jews which rested on the "crime" of Judaism, and modern anti-Semitism, much more dangerous, which rests on the "vice" of Jewishness. For Arendt, whereas the crime of Judaism may be negated through conversion, there is no escaping the vice of Jewishness, Jewishness seen as an inherent characteristic. Thus, Arendt argues, it is better to be hailed by the law as a criminal than to be abandoned by the law as an outsider—while a crime may be punished, a vice could only be exterminated.[39] Here Agamben's debt to Arendt is clear even though he does not explicitly acknowledge it in this particular context. What ties Arendt's critique of anti-Semitism to her critique of extermination camps to her critique of Human Rights is this notion of isolation that renders one outside the norm, outside the legal order—it is better to be acknowledged by the law as a criminal than to lose all status and be cast outside. Arendt, like Agamben, stresses the denaturalization of Jews prior to their extermination; stateless Jews were also always the first to be deported. This is how Arendt differentiates between losing certain rights within a community and being rightless. The most fundamental right for Arendt should be *the right to have rights*.

Where Agamben reworks Arendt's critique is in his insistence that this isolation of the merely human, an isolation marked by risk, is what sustains the political order that guarantees the rights of the citizen. In other words, whereas Arendt would argue that totalitarian domination is marked by the inclusion of the merely human into the realm of the political, an inclusion that culminated in the concentration camps of Nazism, Agamben would argue that "the process is in a certain sense the inverse of what she takes it to be, and that precisely the radical transformation of politics into the realm of bare life

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[39] ---. *The Origins of Totalitarianism*. New York: Harcourt Brace, 1975, 81.

(that is, into a camp) legitimated and necessitated total domination." For Agamben, "only because politics in our age had been entirely transformed into biopolitics was it possible for politics to be constituted as totalitarian politics to a degree hitherto unknown".[40] This is why for Agamben there is a structural affinity between totalitarianism and democracy. The 1679 writ of *habeas corpus*, which Agamben takes to be the foundational text of European democracy, was also "the first recording of bare life as the new political subject".[41] Democracy announces itself by placing the merely human, "body X", as a foundational figure of democratic politics. The law thus comes to demand the body and democratic politics attempts to ensure that this body is taken care of by the law. With the dissolution of state mechanisms of democratic politics, however, the state of exception comes to take over—the American prison camp at Guantánamo Bay, Cuba would be a prime and timely example—and it is at that moment that totalitarianism becomes possible.[42]

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[40] Agamben, 120.

[41] Agamben, 123.

[42] Agamben argues that as state structures dissolve, the state of exception becomes the rule. However, a number of critics who refuse the demise of sovereignty thesis and who also attest to the changing nature of sovereign power insist that state mechanisms and structures are not being dissolved; rather, they are being restructured according to the interests of transnational capital. Thus, Mark Laffey and Jutta Weldes analyze the "internationalization of the state", a process whereby previously domestic state mechanisms are now projected outward. An example is the extension of the role played by the FBI and the Drug Enforcement Agency beyond the borders of the United States. Likewise, border policing now takes place throughout society through the use of identity and residency cards. Thus, rather than dissolving, state mechanisms are being "rescaled": "As a structure of governance and rule, the state is transformed—internationalized—in the context of globalization in ways that favour the interests of transnational capital—and in particular finance capital—over local or industrial capital and democratic politics." (See Mark Laffey and Jutta Weldes, "Representing the International: Sovereignty after Modernity?" in *Empire's New Clothes: Reading Hardt and Negri*, edited by Paul A. Passavant and Jodi Dean. New York and London: Routledge, 2004.) The different emphases offered by Agamben's argument of the changes in state mechanisms and by Laffey and Weldes obtains from Agamben's labour to divorce sovereign power from the historicity of the nation-state. However, as the case of Guantanamo Bay demonstrates, the dissolution of some state mechanisms, such as the US legal system, appears necessary to the conduct of the War on Terror; democratic state structures are here not rescaled but rather, completely *out-placed*, as the state of exception takes physical and juridical shape (in the prison camp) outside the borders of the United States.

The point to grasp is that it is that same body, the merely human, which is the subject both of democratic and totalitarian politics, and therefore, it is the merely human that always carries within it the risk of its own annihilation:

> The ambiguous (or polar) character of democracy appears even more clearly in the *habeas corpus* if one considers the fact that the same legal procedure that was originally intended to assure the presence of the accused at the trial and, therefore, to keep the accused from avoiding judgement, turns—in its new and definitive form—into grounds for the sheriff to detain and exhibit the body of the accused. *Corpus is a two-faced being, the bearer both of subjection to sovereign power and of individual liberties* (emphasis in original).[43]

It is not totalitarianism that invests the merely human with the capacity to be killed; this rather is proper to the merely human itself. It is also proper to Western politics since it is a politics premised on the exception of bare life, the inclusionary exclusion and exclusionary inclusion of the merely human. And where that merely human is captured through the law's suspension, as in a state of emergency/exception, its destruction is sanctioned through the sovereign ban.

The point at which bare life is entirely politicized is the point at which the state of exception becomes the rule. Nazism, after all, announces itself as a political movement wholly invested in the well being of the German People, a well-being explicitly understood in physical terms through the articulation of the laws on hereditary diseases, eugenics, mixed marriages, etc., culminating in the Nuremberg Laws. "When life and politics—originally divided, and linked together by means of the no-man's land of the state of exception that is inhabited by bare life—begin to become one, all life becomes

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[43] Agamben, 125.

sacred and all politics becomes the exception".[44] The Nazi regime articulated the

indiscernibility of bare life and political life by arguing that it is precisely through the

regime's care for the German body that it cares for the nation: the German body is thus

understood as a physical body as well as the collective body.

In fact, what characterizes Nazism for Agamben as a wholly biopolitical regime is

specifically that what is *physical* is immediately *political*: "*The novelty of modern*

biopolitics lies in the fact that the biological given is as such immediately political, and

the political is as such immediately the biological given"(emphasis in original). "But,"

continues Agamben, "only a state essentially founded on the very life of the nation could

identify its own principal vocation as the formation and care of the 'body of the

people'."[45] The program of euthanasia that Hitler implemented, for example, focused on

the mentally handicapped. However, there was no reason to kill these "patients" since the

laws calling for sterilization ensured that such patients would not reproduce. Moreover,

the program was an organizational and financial burden to a state at war. The only

explanation, Agamben argues,

> is that the program, in the guise of a solution to a humanitarian problem,
> was an exercise of the sovereign power to decide on bare life in the
> horizon of the new biopolitical vocation of the National Socialist state.
> The concept of 'life unworthy of being lived' is clearly not an ethical one,
> which would involve the expectation and legitimate desires of the
> individual. It is, rather, a political concept....[46]

The moment bare life becomes the concern of sovereign power, specifically as a political

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[44] Agamben, 148.

[45] Agamben, 147/8.

[46] Agamben, 141.

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concern, is the moment that the state of exception is no longer such as it becomes the rule. Or, to put it differently, the Nazi political project was the creation of a permanent state of exception in which the "German body" maintained its ambiguous character as the physical-national body of Germans. However, this articulation of the "German body" as physical-national is only possible through the articulation of its corollary, the bare life in the camps, the marked-for-extermination bodies of Jews: "The separation of the Jewish body is the immediate production of the specifically German body, just as its production is the application of the rule".[47]

If both bodies, German and Jewish, are caught in this biopolitical grip (which under the Nazis is a complete biopolitical grip), they are differentiated crucially as life worthy of being lived, and as *homo sacer*, a life whose killing is not a homicide and not a sacrifice. On the one hand, a bare life that perfectly coincides with the political life of the nation, the German body; on the other hand, a bare life completely bereft of any political significance, the Jewish body. This is why Agamben insists on the importance of the denationalization of Jews prior to their extermination. The Jews arrive at the camp as merely human and Agamben's *Remnants of Auschwitz* details the gradual processes by which Jews are produced as such. It is as merely human that (formerly) Jewish bodies are annihilated, and it is as merely human bodies that the state bears no responsibility toward them. The camp is of course the physical as well as juridico-political structure that facilitates the reproduction of Jews as merely human; "*[t]he camp is the space that is opened when the state of exception begins to become the rule*. In the camp, the state of exception...is now given a permanent spatial arrangement, which as such nevertheless

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[47] Agamben, 174.

remains outside the normal order"(emphasis in original).[48]

If the emphasis is on the *production* of the merely human, an emphasis characterized by Agamben's attempt to link the production of the merely human to juridico-political structures central to Western politics, how do we begin to determine who is more at risk of becoming merely human? How do we come to identify the modalities of power that assess the value or non-value of life? In other words, to what extent is Agamben's notion of *homo sacer* useful in analyzing current political conflicts?

These questions are ones of history. Not only are they pressingly historical, in the sense that our present is marked by a high level of biopolitical differentiation across the globe according to North/South, East/West, or developed/underdeveloped divides. They are questions of the role of history, or rather the lack of it, in Agamben's argument. One of the major departures of Agamben in his analysis of biopolitics is his insistence on a historical continuity across the time of western politics, a continuity anchored by the sovereign ban. As Andreas Kalyvas argues, in an article entitled "The Sovereign Weaver",

> Agamben explicitly rejects Foucault's thesis that political modernity represents a break with the past, marked, among other things, by the passage from the juridical model of a unitary and localizable sovereign power to diffuse, transversal and impersonal disciplinary relations.[49]

Kalyvas goes on to argue that there is an "odd representation of historical time" in Agamben's argument and he relates such representation specifically to Agamben's

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[48] Agamben, 168/9.

[49] Andreas Kalyvas. "The Sovereign Weaver." In *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's Homo Sacer.* Edited by Andrew Norris. Durham and London: Duke University Press, 2005, 107-134, p. 111. Kalyvas also points out that Agamben "rejects Arendt's interpretation of sovereignty as a post-classical concept alien to the ancient Greek political tradition. For Arendt, sovereign power instead grew out of the Judeo-Christian theological notion of the divine will, and survived, though in an inverted form, the transformations brought about in the modern world" (109).

understanding of the origins of sovereignty as reaching back to ancient Greece and Rome. What emerges is a vision of history that is highly abstract and one that sidelines "the reasons, forces, interests, struggles, movements, strategies and actors that were and are still involved in the unfolding of biosovereign politics".[50]

I think Kalyvas's critique of Agamben, though appearing dismissive of its lack of historicity—charging Agamben at one point of being "quite unpolitical"—constructively points to an elaboration of Agamben's thesis. For example, absent from Agamben's thesis is a focus on imperialism and its relation to developments central to biopolitics. (Here I am reminded of Arendt's critique of totalitarianism and the concentration camps, a critique that accords imperialism a constitutive role in mid-century European developments.) The questions I ask above begin to push Agamben's thesis to account for differentiality in terms of the historical moment framing his current analysis of the triumph of biopolitical sovereignty. As Leonard C. Feldman argues, in a study that applies the concept of bare life to an analysis of homelessness in the U.S.,

> Agamben moves too quickly from an analysis of how specific figures (*homo sacer*, the outlaw, refugees) embody bare life, to the apocalyptic and totalizing claim that in modernity we are all virtually bare life. In so doing, he misses an opportunity to examine how the politics of bare life is implicated in the production of political injustices and subordinate political statuses. Outlaws of various forms [in Agamben's formulation] are not the victims of particular injustices but rather signifiers of a new universal condition.[51]

One way to begin interrogating the theoretical leaps Agamben depends on is to insist on the question of *who* is merely human. Thus, while one does not necessarily have to reject Agamben's claim that we all have become virtually *homines sacri*, one could at least

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[50] Kalyvas, 112.

[51] Leonard C. Feldman. *Citizens without Shelter: Homelessness, Democracy, and Political Exclusion.* Ithaca and London: Cornell University Press, 2004, 20.

insist on the claim's insufficiency as an analytical method in understanding the geopolitical dangers of the present.

The Merely Human and Differentiality

The importance of Agamben's reformulation of Foucault's understanding of biopolitics is precisely his attempt to link the workings of biopolitics to juridico-political institutional settings. Agamben argues that the structure of the camp replicates itself in different ways every time a space is created in which bare life is captured, regardless of the crimes committed—an example is any holding space for refugees before their fate is decided. Moreover, Agamben elaborates Foucault's main thesis to argue that it is not so much the growing inclusion of bare life in the *polis* that is characteristic of modern politics. Rather,

> the decisive fact is that, together with the process by which the exception everywhere becomes the rule, the realm of bare life—which is originally situated at the margins of the political order—gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zoē*, right and fact, enter into a zone of irreducible indistinction.[52]

It is the space of exception, as a zone of irreducible indistinction, where bare life's inherent capacity to be killed is realized. However, what is significant about such a formulation is that democratic spaces exist on a continuum of sorts with such zones: in the focus on bare life in democratic spaces, bare life's capacity to be killed is retained since it is inherent in the isolation of bare life as such. Modern democracy, according to Agamben,

> presents itself from the beginning as a vindication and liberation of *zoē*, and...it is constantly trying to transform its own bare life into a way of life

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[52] Agamben, 9.

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and to find, so to speak, the *bios* of *zoē*. Hence, too, modern democracy's specific aporia: it wants to put the freedom and happiness of men into play in the very place—'bare life'—that marked their subjection.[53]

On the one hand, Agamben's argument provides a framework in which to analyze the increasing currency of humanitarian interventions, whether economic or military, and to recognize the dangers inherent in a logic which prioritizes the mere fact of living. Humanitarian intervention prides itself on its concern for the merely human. Humanitarian organizations derive their legitimacy in part from this fact of neutrality and impartiality, arguing that their "subjects" are not designated by race, political or religious affiliation, or any marker of identity; rather, it is the human being in need, and it is fair to say that this human being is usually bare life as such, a merely human.[54] Humanitarian organizations bring people in industrialized countries into contact with this bare life by articulating a responsibility towards that which is merely human: one does not help starving African children for any reason other than they are merely human. "Merely

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[53] Agamben, 9/10.

[54] Humanitarianism will be discussed in Chapter Four. However, it must be noted that humanitarianism is itself undergoing changes in the context of Empire: a number of scholars of humanitarianism now refer to a "new humanitarianism" or "political humanitarianism" and point to the increasing "muddling" of the traditionally distinct areas of political strategies and humanitarian action as humanitarian action is being determined and shaped more by the liberal concerns and demands of the Western donor countries, and as humanitarian work is stylized to fit with long-term political goals which are structurally opposed to traditional humanitarian work which focuses on the short-term goal of alleviating suffering. See in this regard Joanna Macrae and Nicholas Leader's "Apples, Pears and Porridge: The Origins and Impact of the Search for 'Coherence' between Humanitarian and Political Responses to Chronic Political Emergencies" in *Disasters* Vol.25, issue 4, pp.290-307. On the one hand, these changes support the readings of humanitarian organizations given by Hardt and Negri as well as Agamben: the work of humanitarian organizations is being streamlined into the political agendas of the US and other western countries who seek to impose political, economic and social changes in poorer countries. On the other hand, such characterization forces one to reassess the principles of "impartiality" and "neutrality" and the focus on immediate alleviation of suffering characteristic of traditional humanitarianism, principles and a focus that Agamben all too lightly dismisses as contributors to the production of bare life. The challenge is to respond to the need for immediate and impartial alleviation of suffering without sacrificing the historical and political context of a conflict and the historical and political conflict within which recipients of aid may remain other than merely human. While this goal sounds as idealistic or out of reach as that of world peace, the challenge should remain in sight of intellectual and political attempts to understand the work of humanitarian organizations.

human" in this context is both a marker of extreme commonality and extreme difference. Extreme commonality is inherent in the fact of merely living that unites the fortunate and unfortunate; extreme difference is identified specifically through the fact of merely living which differentiates the unfortunate from fortunate. The merely human that is central to the logic and rhetoric of humanitarian organizations often places the subject of such intervention in a space of indistinction between inside and outside, sameness and difference, a space of indistinction whose subject is bare life. It is not my object here to investigate the workings of humanitarian organizations, only to posit how Agamben's arguments could be used to analyze what often appears to be a troubling aspect of humanitarian intervention: humanitarian organizations "can only grasp human life in the figure of bare or sacred life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight"(133).[55]

On the other hand, Agamben wants to argue that "we are all virtually *homines sacri*".[56] While he does focus on the figure of the refugee as a specific example of *homo sacer*, he does not seem to see the need for criteria that would explain why some are more likely to be captured as bare life. How would one account for the fact that refugees do not usually come from industrialized Western states, or that humanitarian interventions do not target the citizens of such states? Or, more importantly, if "one of the essential characteristics of modern biopolitics...is its constant need to redefine the threshold in life

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[55] Agamben, 133. Feldman makes a similar argument concerning domestic calls for homeless shelters: "Implicit in the demands for more shelters is the assumption of what is being sheltered: in Agamben's words, bare life. In other words, coeval with the emergence of the shelter is the constitution of the sheltered subject as bare, needy life, stripped of all privacy, kept warm by some blankets and a sleeping mat" (111).

[56] Agamben, 115.

that distinguishes and separates what is inside from what is outside"[57], is it possible to theorize the apparently global dominance, in so far as it is Western dominance, of biopolitics, without investigating the way this threshold is articulated? In discussing the Nazi concentration camps Agamben mentions the "hidden difference between birth and nation [which] entered into a lasting crisis following the devastation of Europe's geopolitical order after the First World War".[58] He also mentions the incapacity of the Jews to be integrated into the new order and the concomitant capacity to be killed inherent in such a condition. However, that does not explain *why* it is that Jews could not be integrated. And if today we are all *homines sacri*, and yet there are specific juridico-political structures in which bare life is captured, we must contend that we are not all equally susceptible to being *homo sacer* even if we are all virtually so.

In what follows I want to suggest the ways in which we might theorize the selectivity inherent in the production of the merely human in the hopes of pushing the concept's analytical capabilities to account for what Judith Butler, in *Precarious Life*, calls "the differential forms of allocation" that determine vulnerability and grievability on a global scale. My aim is less a critique of Agamben's concept, and more an attempt to use this concept in ways his text does not apparently allow. For, ultimately, I want to understand the political possibilities, if any, afforded by an analysis of the inherent vulnerability of bare life. I begin by sketching out two arguments that account for the above-mentioned selectivity and then move to consider how the concept of the merely human might work to bring such arguments into focus.

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[57] Agamben, 131.

[58] Agamben, 129.

Emphasizing juridico-political structures, the production of bare life which might then be annihilated depends on the institutional setting organizing the violence. That stateless peoples are usually the ones abandoned by the law, cast outside its influence or its protection, and subjected to regimes of violence aimed at their destruction, indicates the importance of state and international recognition of the status of various communities. Thus, one could argue that it is when a people become stateless or when a person becomes a refugee that their production as bare life which might be killed is realized. To hypothesize, illegal immigrants within European and North American countries constitute bare life, and one hears of incidents where such aliens perish in scenarios where no social, legal, or political conventions exist for their protection or for acknowledging their death as an affront to the society in which they "live"—indeed, unacknowledged, they "live" only as bare life and as such neither their life nor their death registers in the social, legal, or political consciousness of the host country. In this case one could then argue that the specificity marking the merely human is institutional—or rather the lack of an institutional status.

I borrow the term "institutional setting" from James Ron in his analysis of ethnic cleansing in Serbia and Israel. In his book, *Frontiers and Ghettos: State Violence in Serbia and Israel*, Ron posits that "the notion of institutional setting is borrowed from organizational sociology, and refers here to a clearly defined social or geographical space where organizational action is shaped by notions of appropriate and legitimate behavior". The book argues that "[t]he crucial difference between frontiers and ghettos is the extent to which states control these arenas and feel a bureaucratic, moral, and political sense of

responsibility for their fate".[59] Constituting different institutional settings, frontiers and

ghettos are then organized by different regimes of violence: whereas the ghetto allows for

harsh and sometimes deadly policing, the frontier marks the possibility of annihilation, of

ethnic cleansing. Analyzing different regimes of violence in different periods in both

Israel and Serbia, violence aimed at Palestinians and ethnic Albanians respectively, Ron

argues that in both places "[t]the border...functioned as a signalling mechanism, defining

different areas for ethnic cleansing and harassment".[60] Thus, while Kosovar Albanians

were marked by the same national/religious difference as their counterparts in Bosnia,

they were not subjected to ethnic cleansing as long as Kosovo remained a Serbian

province. And yet, due to that same difference, Kosovo was also not properly a Serbian

province and so it received the status of a ghetto; Kosovar Albanians were discriminated

against, detained, harassed, shot at, but they remained for all intents and purposes the

responsibility of the Serbian government in so far as Kosovo remained a part of Serbia

proper. However, according to Ron, when Kosovo's claim of independence was

recognized by members of the international community its status changed to that of a

frontier, and ethnic cleansing then became possible and commenced.

Ron's analysis is definitely compelling in tracing the different material

implications of changes to status across the time and space of the conflict in the Balkans.

However, in its focus on the significance of institutional status it appears dismissive of

the importance of difference when it is not related to status, such as difference constituted

by religion or nationality—Agamben too does not accord such difference importance in

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[59] James Ron. *Frontiers and Ghettos: State Violence in Serbia and Israel.* Berkeley: University of California Press, 2003, 8,9.

[60] Ron, 74.

his theorization.[61] Judith Butler below will argue that such difference is crucial, must be granted constitutive theoretical and political weight in understanding the challenges to and changes of status in any given social and political framework. And yet the crucial point in Ron's analysis for my purposes here is that his argument invests institutional setting, and thus institutional status, with an analytical importance that speaks to the susceptibility of some and not others to annihilation and not necessarily or primarily on the basis of social identity or an easily discernible marker of communal difference. Thus, it provides a more nuanced and less totalizing explanation of the dynamics of depoliticization, a process that is by no means static or predictable. In other words, Ron's argument emphasizes the formal structures that allow for the production of the merely human rather than the substantive qualities that establish difference. The difference in his analysis is not between Serbians and Albanians; it is between Albanians in so far as they remain a formally-recognized part of the larger Serbian polity and Albanians as an externalized other to whom the state bears no responsibility and therefore, simultaneously, bears the power to annihilate.

This point gains a more immediate contemporary significance in Ron's analysis of Israeli violence directed at Palestinians. While detailing the historical shifts in that violence from the establishment of the State of Israel in 1948 to the 1967 annexation of Palestinian territories, to the Invasion of Lebanon and the attempts to manage the

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[61] And recent developments in the management of humanitarian crises force the issue of such difference: note Hurricane Katrina and the institutional neglect before and after the crisis that left a majority of poor and black communities in the southern United States devastated and dispossessed in ways that appeared to shock the American public. Race definitely was not and could not be discounted in the pictures of Black Americans reduced by such neglect to new levels of mass collective need and dismay. In fact, it would be interesting to analyze specifically that shock, the sense expressed openly that one expects such pictures from other places in the world but not from the US—it would be enlightening to track the way difference, in this case racial and class difference, is mapped within and outside the borders of the US and the ways in which Hurricane Katrina and its aftermath may force a reassessment of such mapping.

Intifadas, Ron identifies the different periods in which Palestinians did face practices of ethnic cleansing. It is after Israel annexed the territories in 1967 that Israel's policies came to reflect a harsh regime of policing rather than ethnic cleansing. Managing the territories and keeping the Palestinians under control proved a challenging task for Israel, but "[by] spinning a powerful web of infrastructural power to control Palestinian territory and population, however, Israel unwittingly transformed the Palestinians into semi-protected, quasi-members of the polity".[62] This web of infrastructural power included methods of surveillance such as use of identity cards, control of resources such as water and electricity by linking them to those of Israel, and various other administrative mechanisms that were meant to keep the population under control and allow Israel more creative methods of collective punishment. The effect, however, was that "[e]ach rule, norm, and regulatory device imposed limits beyond which Israeli violence could not go, but simultaneously generated incentives for new forms of 'appropriate' violence".[63] The immediacy of this analysis stems from Ron's cautionary argument that due to their shifting and uncertain status after the Oslo Accords, Palestinians now again face the possibility of ethnic cleansing. The Oslo Accords bestow on Palestinians a pseudo independence from Israel, regardless of the reality of total dependence, political, economic, and military. "Oslo, in other words, had begun to reverse Palestine's ghetto status", and "Palestine is now suspended between ghetto and frontier, and Israeli methods have adapted accordingly". The rhetoric that accompanies the shifting regime of violence is also telling:

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[62] Ron, 127.

[63] Ron, 148.

> The extent to which Israeli commentators now speak of the West Bank and Gaza as 'foreign' and 'hostile' lands is quite remarkable. Israeli discourse in the 1980s spoke of law-and-order, police-style enforcement in Palestine, but now the language has shifted to that of war and counterinsurgency. The region has been reconstructed, both discursively and in practice, as an object of war. [64]

"Foreignness" itself thus appears to gain prominence to the extent that those with a vague institutional setting, or who lack a "legitimate" institutional status (like the Kosovar Albanians after "independence") gain a semblance of institutional distance from those with the power to capture them as bare life that may be killed.

I see a number of implications for this theorization of the susceptibility to annihilation in terms of shifting institutional settings. First, this theorization complements Agamben's insistence on the state of exception as a concept captured in juridico-political form. That which is produced as bare life to be annihilated is that which is abandoned by the law, that to which the law no longer applies. The less institutional control over a population, the less institutional responsibility towards that population, so that the production of bare life is simultaneously the withdrawal of institutional recognition. (This is a point that Butler also makes differently, as will become apparent below.) This theorization complements Agamben's and Arendt's critique of Human Rights as rights which properly apply only to citizens and become meaningless the moment they confront those who are not. This, in other words, is a theorization based very much in a critique of sovereignty, not only in so far as state sovereignty comes to trump the assumed universal thrust of Human Rights, but also in the sense that sovereignty comes to determine the limits of inclusion and exclusion in that universal community governed by Human

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[64] Ron, 198/9.

Rights. It is the sovereign decision on the state of exception, in Agamben's formulation, and the institutional abandonment that marks the Frontier, in Ron's formulation, that produces that which is merely human and therefore unrecognizable in terms of the rights universally owed to Humans.

Of course, there is a marked difference in the spatial, and perhaps temporal, configuration of the arguments provided by Agamben and James Ron—the state of exception and the Frontier—and I do not mean to posit them as identical. I only mean to suggest the affinity between the two arguments, an affinity that pertains to the centrality of formal categories in their analysis of who it is that can be annihilated with immunity. That affinity, more specifically, obtains from a formulation of difference as something that resides not in racial, cultural, ethnic, or religious specificity, but rather in a negative institutional status that signals the political and legal unrecognizability of that which is then susceptible to annihilation.[65] This I believe is the second implication of theorizing this susceptibility in terms of institutional status: that sovereignty remerges as central to an understanding of difference in ways that contemporary strains of thought in the humanities (identity politics, postcolonial theory, theories of multiculturalism, of cosmopolitanism, globalization studies) tend to marginalize if not at times render

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[65] The importance of institutional lack as detrimental to the lives of stateless peoples is also argued by Hannah Arendt. In *Eichmann in Jerusalem*, Arendt insists that Adolph Eichmann must be prosecuted for crimes committed not against the Jewish people, but for crimes "against the human status perpetrated upon the body of the Jewish people". The difference for Arendt is theoretically and legally crucial. In one of the most controversial aspects of her analysis of the concentration camps, she finds that the principle of selection depends on circumstantial factors and that "only the choice of victim, and not the nature of the crime, could be derived from the long history of Jew-hatred." This in turn leads her to prefer the term "administrative massacres" to genocide, specifically because genocide often implies the otherness, the foreignness of the group targeted; for Arendt, the extermination in the camps dealt with beings rendered superfluous, unrecognizable, which is why Jews were not killed in the camps as Jews but as denaturalized, unidentifiable beings along with others rendered similarly. See Arendt's *Eichmann in Jerusalem: A Report on the Banality of Evil.* New York: Penguin, 1994. Chapter Four will offer a more detailed reading of Arendt's insistence on this point.

irrelevant.

If the difference detrimental to the production of bare life must be located primarily in the institutional shift that marks such difference, then a third implication is that the violence aimed at the merely human, and the susceptibility to annihilation, both exist on a continuum that links those within the sphere of legality to those without. It is the same Kosovar Albanian who is relatively protected as a Serbian citizen and then annihilated at the Frontier. And it is the same Israeli soldier who adapts his or her violence according to the shifting spatiality of his or her tour of duty between, on the one hand, the ghetto of the Palestinian territories and, on the other hand, the frontier that confronts him or her with Palestinians inside Lebanese borders. In terms of Agamben's argument, this continuum is articulated in relation to *corpus* as a two-faced being, one which is simultaneously the bearer of individual liberties and the bearer of subjection to sovereign power. It is the same body, that of the merely human, which is the subject of democratic as well as totalitarian politics.[66]

This inherent vulnerability of the human body is the focus of Judith Butler's analysis of the resurgence of sovereignty as the arbiter in global confrontations today. In *Precarious Life: The Powers of Mourning and Violence*, Butler analyzes the post-September 11 unilateralism of the United States in terms of the "differential allocation of grievability that decides what kind of subject is and must be grieved, and which kind of subject must not". This differentiality, in turn, "operates to produce and maintain certain exclusionary conceptions of who is normatively human: what counts as a liveable life and

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[66] Agamben, 125.

a grievable death," she asks.[67] Butler's question articulates differently one of the primary

concerns of this chapter: who is susceptible to annihilation. Like Agamben, Butler sees

this susceptibility to follow from "bodily life". For Butler, social vulnerability follows

from physical vulnerability:

> The body implies mortality, vulnerability, agency: the skin and the flesh
> expose us to the gaze of others, but also to touch, and to violence, and
> bodies put us at risk of becoming the agency and instrument of all these as
> well. Although we struggle for rights over our own bodies, the very bodies
> for which we struggle are not quite ever only our own. The body has its
> invariably public dimension. Constituted as a social phenomenon in the
> public sphere, my body is and is not mine.[68]

Starting from the premise that "each of us is constituted politically in part by virtue of the

social vulnerability of our bodies—as a site of desire and physical vulnerability, as a site

of a publicity at once assertive and exposed",[69] Butler goes on to ask what might be made

of this vulnerability, this interdependency, of the grief that has the potential to be

universally experienced as a consequence of this vulnerability.

The official governmental and media response to September 11 impresses upon

Butler the extent to which loss, that which is potentially universalizing, could be

experienced in such a way precisely to strike at that universalizing potential. The tragedy

of September 11 was handled in ways that highlight and entrench the fact that

> lives are supported and maintained differently, and there are radically
> different ways in which human physical vulnerability is distributed across
> the globe. Certain lives will be highly protected and the abrogation of their
> claims to sanctity will be sufficient to mobilize the forces of war. Others
> will not find such fast and furious support and will not even qualify as

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[67] Judith Butler. *Precarious Life: The Powers of Mourning and Violence*. London: Verso,
2004, xiv/xv.

[68] Butler, 26.

[69] Butler, 20.

'grievable'.[70]

Butler's analysis points to the inherent vulnerability of bodily life not simply as a physical, biological fact (bodies could be hurt, mutilated, destroyed), but as a socially constituted and politically constituting fact. This physical vulnerability is enacted as a social and political dependency—we are given over to others, we are undone by each other, and "violence is, always, an exploitation of that primary tie, that primary way in which we are, as bodies, outside ourselves and for one another".[71] And yet, despite the universalizing potential of that primary tie—"Loss has made a tenuous 'we' of us all"[72]— Butler is clearly concerned with the differential evaluation of that loss. Thus, on the one hand, Butler's analysis complements Agamben's concern with "bare life, life conceived as biological minimum, [which] becomes a condition to which we are all reducible"; on the other hand, she insists that a more complex theorization is necessary to account for "how sovereignty...works by differentiating populations on the basis of ethnicity and race, how the systematic management and derealization of populations function in order to support and extend the claims of a sovereignty accountable to no law".[73]

Butler's theorization of susceptibility to annihilation emphasizes language and speech acts that allow for the shifting institutional settings that inaugurate a power structure accountable to no law. It is not the sovereign decision on the state of exception that authorizes the transformation of subjects into bare life; rather, it is the dehumanization of said subjects which works with the declaration of the state of

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[70] Butler, 32.

[71] Butler, 27.

[72] Butler, 20.

[73] Butler, 68.

exception to produce a model of sovereignty that is "discretionary, even arbitrary".[74] In

indirect reference to Agamben's argument in *Homo Sacer*, Butler argues that

> [i]t is not, literally speaking, that a sovereign power suspends the rule of
> law, but that the rule of law, in the act of being suspended, produces
> sovereignty in its action and as its effect. The inverse relation to law
> produces the 'unaccountability' of this operation of sovereign power, as
> well as its illegitimacy.[75]

What interests me here is not so much the similarities or differences between Agamben's

argument and Butler's. Rather, I am interested in Butler's focus on what she calls

"dehumanization", and alternately the "derealization" of humanity, by which she means

the reduction to a biological minimum that can then be maltreated or eliminated extra-

legally, and the relation between this dehumanization and discourse. Not only are there

theoretical differences in their understanding of sovereignty, but Butler's analysis also

uses a more familiar rhetoric than Agamben's and so posits a relatively traditional binary

of human and dehumanized or animal. However, her analysis is helpful in pointing to the

cultural discourses and values that authorize such dehumanization at least on the level of

speech acts. As her analysis demonstrates, the inmates at Guantanamo Bay are referenced

in official speech (by the US government, Department of Defence, Donald Rumsfeld,

etc.) as "something less than human, and yet—somehow—they assume a human form.

They represent, as it were, an equivocation of the human, which forms the basis for some

of the scepticism about the applicability of legal entitlements and protections".[76]

Ambiguity surrounds not only the legal status of those detainees—as

"illegal/(unlawful?) combatants" outside the framework of the Geneva Convention—but

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[74] Butler, 63.

[75] Butler, 66.

[76] Butler, 74.

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also their human status when they are officially represented as a unique danger to society, something uncontrollable, something the law is not qualified to address. Butler names this particular method of representation 'deeming', the process by which the state designates a person, or a population, suspicious in such a way that no evidence need, or could, be presented for their detention, a process moreover that because of its ambiguity lends itself to differential application: "Although 'deeming' someone dangerous is considered a state prerogative in these discussions, it is also a potential license for prejudicial perception and a virtual mandate to heighten racialized ways of looking and judging in the name of national security".[77] When it is not evidence of a particular activity that determines who is suspicious, suspiciousness must then reside in some characteristic rather than in some act, whether this characteristic is defined in racial, religious, cultural terms or even values. Those deemed suspicious are then deprived of the protection of the law for they appear to constitute a danger to the very value system which respects the rule of law and thus they appear foreign to it, unfamiliar, threatening, unknowable, and therefore known as that to which the law does not apply. According to Butler,

> [i]f it is the person, or the people, who are deemed dangerous, and no dangerous acts need to be proven to establish this as true, then the state constitutes the detained population unilaterally, taking them out of the jurisdiction of the law, depriving them of the legal protections to which subjects under national and international law are entitled. These are surely populations that are not regarded as subjects, humans who are not conceptualized within the frame of a political culture in which human lives are underwritten by legal entitlements, law, and so humans who are not humans.[78]

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[77] Butler, 76/7.

[78] Butler, 77.

Butler's gesture here is towards a "political culture" which confers the status of humanity in a differential manner; moreover, her gesture implies that such differentiation exists prior to, or apart from, the decision on the state of exception even as she argues that this differentiation is central to it. One of the implications of Butler's argument is that the very definition of humanity is itself constituted by difference and confers differential treatment. What becomes necessary is to look not only to the contemporary evolution of juridico-political structures that enable the emergence of a sovereignty unbound by laws and independent of their legitimacy, but to the cultural frameworks that provide an understanding of the human. For

> it is not just that some humans are treated as humans, and others are dehumanized; it is rather that dehumanization becomes the condition for the production of the human to the extent that a 'Western' civilization defines itself over and against a population understood as, by definition, illegitimate, if not dubiously human.[79]

Here Butler clearly identifies that "differential allocation of vulnerability" as a posited Western superiority that shields Westerners from the ambiguity surrounding the humanity of the West's others.[80] One could thus say that an excess of the human attaches to some

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[79] Butler, 91.

[80] On the one hand Butler's critique retains an emphasis on otherness as a historical experience: here colonial rhetoric haunts the imperialism of the present, and a legitimate critique of Agamben's would be his lack of interest in the history of colonial conquest and its role in the evolution of Western political thought and developments in sovereignty. However, another reading of Butler's critique is possible and useful in this context. The dehumanization that Butler speaks of is the other face of the humanitarianism which also establishes a global hierarchy, a moral economy of the subjects of humanitarian intervention. In an article offering a Foucauldian reading of liberal governance gone global, Michael Dillon argues that that cultural evaluations of other peoples are necessary for determining the eligibility of some for life improvement. According to Dillon, culture "becomes the locale…for those signifying practices that define whether or not you are engaged in the exercise of self-regulating freedom in the approved manner and whether or not, if failing at these complex practices, you nonetheless also constitute a deserving case for aid and assistance designed to improve you." And he contends, "[b]iopolitics is … a very discrete form of humanitarianism that requires measures of cultural governance in order to specify improving and improvable life processes." Here Dillon's critique implies that cultural *othering* is not only central to dehumanization as Butler sees it,

lives, clearly here those of Westerners, an excess that sets them apart from those who are reduced to a biological minimum.

Implications and Possibilities

Or perhaps it is the opposite, that an excess of the human attaches itself to those reduced to a biological minimum? This question I think results from the discrepant use of the "human" in by Agamben, and by Butler. It is clear that for Butler that which is human is the bearer of rights denied to that which is non-human, animalistic, or pseudo-human. Thus, she argues that the speech act which questions the humanity of those the United States considers a risk is a performative, violent act: it is in dehumanizing those others that they are deemed a unique risk to be disposed of at will, and it is as dehumanized others that they pose a risk. In other words, Butler's point is not simply that dehumanization leads to the representation of those others as a risk to national security; it is also that they pose a risk *because* of their ambiguous or suspect humanity.[81] Therefore, Butler insists that the political challenge we face is "the challenge of cultural

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but also to humanitarianism, the humanitarianism which reads in cultural markers the signs of eligibility for rehumanization IMF style. See Michael Dillon, "Culture, Governance, and Global Politics."

[81] Here the historical context of Butler's argument forces her argument slightly away from the focus on vulnerability and risk and more towards a specific invocation of the non-human-as-terrorist. Butler is writing post-9/11 and the figure at the heart of her analysis of dehumanization is not the vulnerable human we are all reduced to which she begins with. It is rather the figure of the "terrorist" and not just any terrorist but that captured by the US and indefinitely detained in Guantánamo Bay. There is a tension in Butler's text between an interest in vulnerability as a universal base humanity which she as well as Agamben would argue is captured in states of exception, and a focus on the specific vulnerability of the inmates at Guantánamo. Where those lines blur is where the merely human as conceived by Agamben takes on a specificity that may be contradictory to Agamben's understanding of the merely human; for Agamben the merely human is not the other, not the enemy. But one could also make the argument that, despite the discursive constructions of "us and them", the inmates at Guantánamo are also not the enemy traditionally conceived which is precisely why they are captured and placed extra-legally.

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translation"[82], a challenge to our "parochial understanding of the human".[83] For "[t]o come up against what functions, for some, as a limit case of the human is a challenge to rethink the human. And the task to rethink the human is part of the democratic trajectory of an evolving human rights jurisprudence".[84] Moreover, Butler argues for this as an "ongoing task of human rights to reconceive the human when it finds that its putative universality does not have universal reach".[85] For Butler, then, the universal potential of human vulnerability and loss must be channelled into a constant universalization of the definition of the human and therefore of human rights.

The concept of the merely human, on the other hand, does not stand in binary opposition to that which is fully human. Rather, the merely human might be conceived as that which is nothing but the human, a concentration of the human that the law, based as it is on the abandonment of that which is nothing but the human, cannot recognize. To understand the merely human thus is to conceive of it as an excess of the human, an excess that attaches itself to those whose political and social space is reduced to the contours of their body so that *they appear to be nothing but the human vulnerability to which we are all reducible* according to Butler. This, I believe, is the analytical potential of Agamben's conception of the merely human, a potential which I find realizable when pushed to account for the differentiality that Butler insists upon. My point is this, that if the body carries within it its own susceptibility to annihilation as Agamben and Butler

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[82] Butler, 90.

[83] Butler, 89.

[84] Butler, 90.

[85] Butler, 91.

would argue, and if that susceptibility is distributed differentially across the globe as Butler insists, then we must identify the structures of global inequality that force upon some the complete and exclusive identification with mere humanity. In other words, if Butler is correct, and I believe she is, that the inherent vulnerability of bare life is universalizing yet realized differentially across the globe, then patterns must be identified to account for that differentiality, especially since, as she also points out, a marked privilege separates those in the West from those outside. But if Agamben is correct, and I believe he is, that the inherent vulnerability of bare life exists across shifting institutional settings that capture bare life and we are all virtually *homines sacri*, then the differentiality marking the merely human cannot be reduced to discourses (even in the Foucauldian sense of discourse) such as racism or a posited Western superiority.

Juridico-political structures that capture bare life and the shifting institutional settings that aid in its production cannot explain the differentiality insisted upon by Butler. And Butler's focus on the discourses which work in tandem with such production and lend it legitimacy cannot identify the patterns which explain that differentiality. This chapter is first an attempt to understand the concept of the merely human and it argued that while we are all virtually *homines sacri*, some are more susceptible to annihilation than others. Secondly, I have tried to suggest the ways we might account for that differentiality whether in terms of formal categories that signal the law's withdrawal, or in terms of the discourses that dehumanize as they produce that to which laws that guarantee universal rights cease to apply. Finally, what I want to argue is that the total identification with mere humanity can be identified globally by recourse to the analysis offered above. My argument is this: those who come to represent an excess of the human,

an overwhelming and exclusive identification with the vulnerability inherent in mere humanity, are those whose political, social, economic, and even geographical space is reduced to their bodily space. What I mean by this argument is that global inequalities today produce populations who, due to hunger, disease, environmental (including territorial) degradation and unsustainability, are so caught up in the struggle for basic survival that they come to represent an excess of the human. This excess is perhaps paradoxically the reduction to a biological minimum, an excess that is at once based in that which is "mere" and "minimum" and yet which produces these populations as superfluous and thus susceptible to annihilation. The more one is reduced to a biological minimum the more one comes to represent an excess of the human that the law cannot recognize. This is the thrust of the differential production of the merely human. And it is that excess which the privileged few of the world try to guard against today through policies aimed more and more at containment, stabilization, and the shoring up of national and territorial borders, and as Butler would argue, cultural and legal borders as well.

It is not only famine or disease that reduce one's spatiality to that of the body. Refugees are also those whose political, social, and economic space is reduced to that of the body as they are abandoned by methods of statist or communal recognition.[86] Above all it is their geographical space that is reduced to their bodily space—Albanian refugees crossing borders on foot have literally no space except the space occupied by their

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[86] The term "refugee" conventionally has a double usage. On the one hand it is a category designated as such by the United Nations as in "refugee status" and United Nations High Commissioner for Refugees. On the other hand, "refugee" is a descriptive term applying to those who are forced out of their homes and who are on the move fleeing fates worse than displacement. It is this sense of "refugee" that informs my and Agamben's use of the term.

bodies, and even that is always disappearing as they are constantly on the move. The body of the refugee "unhinges" what Agamben calls the trinity of nation-state-territory, and this is why the refugee cannot be conceived of except as a temporary phenomenon, for the system of the nation-state cannot conceive of a "stable statute for the human in itself".[87] What space do those possess, who perish in the waters off of Florida or the ones who suffocate for lack of air in trucks crossing into the spaces of others? Those are humans who have no space, who can only be recognized by the spatiality of their bodies, the amount of physical space they occupy and to which they are considered "alien". The body of the refugee, the body of the illegal immigrant, the emaciated body of those suffering the effects of famine and desertification, the body that is the bearer of the AIDS virus, all are bodies reduced to a biological minimum and all are an excess that the legal, social, economic, territorial, even cultural systems cannot accommodate.

Those are all bodies that appear to threaten the legal integrity or social cohesion or economic sustainability or cultural purity or territorial capacity of those spaces that the underprivileged in today's world flock to, mainly the metropolitan centers of the West, but increasingly a few similar places elsewhere. It is perhaps a generalization but definitely not an oversimplification to say that a North/South divide organizes those trends of global movement and fuels attempts to "manage" the planet in order to guard against the consequences of such trends. As Paul Rogers puts it, in *Losing Control: Global Security in the Twenty-first Century*,

> [m]anaging the planet, means, in the final analysis, controlling conflict
> and, within the framework of the development/environment interaction,
> several issues are likely to come to the fore, stemming from migratory

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[87] Agamben, *Means Without End: Notes on Politics.* Trans. Vincenzo Binetti and Cesare Casarino. Minneapolis: University of Minnesota Press, 2000, 21.

pressures, environmental conflict and anti-elite violence. None of these are new and there are recent examples of all.[88]

What is interesting about Rogers's analysis is his focus on the security paradigms used to deal with such problems and he draws attention to the increased use of "private security organizations" that provide protection worldwide not only to unpopular elites, but also to natural resources and business interests. From the gated communities in wealthy cities in South Africa to the American firms providing security for Afghanistan's new leaders, privatized security is becoming increasingly commonplace and is increasingly directed against what Rogers calls a "majority of the disempowered".[89] Rogers quotes analyst Wolfgang Sachs in his analysis of the North/South divide, a quote which bears repeating:

> The North now glowers at the South from behind fortress walls. It no longer talks of the South as a cluster of young nations with a bright future, but views it with suspicion as a breeding ground for crises. At first, developed nations saw the South as a colonial area, then as developing nations. Now they are viewed as risk-prone zones suffering from epidemics, violence, desertification, overpopulation and corruption. The North has unified its vision of these diverse nations by cramming them into a category called 'risk'. It has moved from the idea of hegemony for progress to hegemony for stability.[90]

The diagnosis of risk exists in a symbiotic relationship with the demand for security, and this symbiotic relationship is at the center of global political confrontations today. This chapter opened with the story of an ex-US soldier running a private jail in Afghanistan, a term that seems to cause less consternation that it should. But the story itself reflects this symbiosis between risk and security in Idema's vindictive regret that "we should have let the Taleban murder every...one of them". The "them" in this statement represents the

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[88] Paul Rogers. *Losing Control: Global Security in the Twenty-first Century*. London: Pluto, 2002, 95/6.

[89] Rogers, 95.

[90] Quoted in Rogers, 95.

risky subjects of the South whom one could try to save but has the power to let die. They are not the Taleban, not the enemy; they are the (potential) victims of the Taleban, and yet *they* are the proper focus of this "hegemony for stability" mentioned by Sachs.[91] Managing these populations globally is the task of the evolving sovereignty outlined by Agamben and Butler, and it is the project of global security that animates this sovereignty.[92]

For Sachs and Rogers, the interdependence of North and South, the global conditions that connect and separate the haves and the have-nots, and the concomitant symbiosis of risk and security I identify above, form the basis for an ethical choice that might redirect global politics. In other words, they, as well as anti-globalization activists or intellectuals (and to a lesser degree politicians) opposed to the new security paradigm exemplified by the War on Terror, posit that the vulnerability inherent in the human condition must form the basis for a politics that addresses global injustices. Either this vulnerability is used to confirm the status quo and to fortify the borders protecting the

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[91] This comes closer to understanding Agamben's insistence that we are virtually *homines sacri*: I think the point is that the Afghanis captured by the US in Afghanistan as illegal combatants as well as the Afghanis decided upon as subjects of humanitarian intervention by the US are within the reach of the sovereign ban. I would still maintain, however, that both categories of the people of Afghanistan are far removed from that of the citizen in an American or Canadian or European metropolis, even if protectionist democratic processes in those places appear to be rapidly dissolving.

[92] In keeping with the view that sovereignty is being rescaled on a global scale, Walter C. Opello and Stephen J. Rosow in their recent study of the evolution of the nation-state in the context of globalization argue that what has diminished is "popular sovereignty". That in fact statist politics are still quite dominant internationally and perhaps more dangerous than before precisely because they have lost that connection to territory. Sovereign, managerial power is externalized to "a network of international organizations; this insulates power form any form of popular sovereignty and generates the space for economic liberalism to emerge and appear as legitimate. People regardless of nationality or political identity, are subject to the discipline imposed by the World Trade Organization, International Monetary Fund, World Bank, transnational corporations, and global financial markets, but they have only very restricted recourse through the political (i.e., electoral) process to hold these entities accountable." See Walter C. Opello and Stephen J. Rosow's *Nation-State and Global Order: A Historical Introduction to Contemporary Politics*. (2nd edition). London: Lynne Rienner, 2004, 272. Thus, the globalization of sovereign managerial powers extends to the extent that democratic mechanisms that are able to hold such powers in check diminish; in other words, while statist mechanisms proliferate globally, those of citizenship, also globally, disintegrate.

privileged from the risk posed by the desperate majority, or this vulnerability is used to articulate a discourse based in universal responsibility to address the causes of conflict, the roots of injustice. That is an ethical argument, based in an ethical choice. For Agamben and Butler, however, this vulnerability is investigated as a political category. In other words, they ask what might be made politically of this vulnerability, vulnerability not as an effect of global injustices, but vulnerability as an inherent human condition, potentially the basis of a politics no longer revolving around borders.

The North and South can no longer be seen, and perhaps have never been seen, merely as geographical terms. But even as terms that designate political and economic and developmental differences, the North and South have now become themselves spatially unhinged, as privilege becomes ever more mobile and security, now privatized, adapts to counter the increasing desperation of the disempowered. Fortification, stabilization, harsher border controls, the rise of anti-immigration political parties across the West, more stringent security requirements, all speak to the increasing anxiety surrounding the borders separating a privileged minority and a disempowered majority. It is thus not surprising that both Agamben and Butler gesture towards a politics that takes the permeability of borders, including bodily borders, as its constitutive given. The terms used by Agamben and Butler enact a political gesture that challenges the notion of the border as that which separates, and is also a political gesture based in rupture, in penetration, in Agamben's notion of "topological deformation".[93] This is why Butler focuses on the political possibilities of grief. "What grief displays…is the thrall in which our relations with others hold us, in ways that we cannot always recount or explain, in

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[93] Agamben, *Notes on Politics*, 26.

ways that...challenge the very notion of ourselves as autonomous and in control".[94] This condition of being given over to the other, of being outside oneself and for another, follows in Butler's formulation, as argued above, from the vulnerability inherent in the human-as-biological-minimum. Butler's question regarding this vulnerability is primarily a political question: "Is there a way in which the place of the body, and the way in which it disposes us outside ourselves or sets us beside ourselves, opens up another kind of normative aspiration within the field of politics?".[95]

To conceive of bare life and the inherent vulnerability it signifies as a political category is to perceive the ethical imperative to help others less fortunate as secondary to the political survival of the community. In other words, the ethical imperative follows from the ontological fact of interdependence, a fact that contradicts the notion of autonomy exemplified by the figure of the citizen. One does not address this interdependence in order to alter the courses of injustice in today's world; one rather recognizes this interdependence as the basis of a political community no longer authorized by the denial of this interdependence. This is why for Agamben it is the refugee, and not the citizen, who is "perhaps the only thinkable figure for the people of our time and the only category in which one may see today...the forms and limits of a coming political community".[96] The refugee represents the rupture with the system of the nation-state, it unhinges the trinity of state-territory-nation, and it makes visible the potential for a politics based in extra-territoriality.

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[94] Butler, 23.

[95] Butler, 26.

[96] Agamben, *Notes on Politics*, 16.

What this politics might look like, however, is hard to imagine, not only because Agamben's *Homo Sacer* project is as yet unfinished, but also and more importantly, because Agamben advocates nothing less than the overthrow of the structural paradigms of Western politics. While the lack of practically foreseeable alternatives should not take away from the force of his critique of existing paradigms, it does appear dangerously disabling, if not philosophically self-indulgent, from the point of view of confronting precisely the dangers of the present that Agamben outlines so presciently. The difference between Butler and Agamben is telling in this respect. While she is troubled by similar developments in sovereignty as Agamben, and while she is acutely aware of the dangers of what she calls the "de-subjectivation" of people, Butler suggests radical changes *within* the sphere of citizenship and rights. This is a crucial difference and it relates to Butler's understanding and critique of human rights. Butler's concern is not simply with the content of the human, who counts as human, but also with the legal and political status of the human, the human as a bearer of rights which are denied to those who are dehumanized. Thus, she not only advocates a re-articulation of what it is to be human, through the notion of cultural translation: "[i]t is, we might say, an ongoing task of human rights to re-conceive the human when it finds that its putative universality does not have universal reach".[97] She also wants to revitalize the "role of law in the articulation of an international conception of rights and obligations that limit and condition claims of state sovereignty".[98] Thus, Butler does see in the system of rights, the rights of the citizen, the grounds for a re-articulation of human rights on a global scale, an

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[97] Butler, 91.

[98] Butler, 98.

articulation that would act upon the biopolitical structures taking over the management of international relations as well as the management of peoples on a global scale.

Ultimately, the difference between Agamben and Butler (and Agamben and the majority of critics of biopolitics) is Agamben's complete rejection of sovereign relations, a rejection in turn based on his rigid understanding of sovereignty through the sovereign ban. This encapsulation of sovereignty, and indeed the entire time of Western politics, in the sovereign ban is frustrating for a number of Agamben's enthusiastic readers. Leonard Feldman, for example, who uses Agamben's bare life as the organizational framework for his analysis of homelessness in the U.S., is not convinced

> by Agamben's contention that only bare life is authentically political, nor by his contention that discourses of citizenship, rights, and publicity are essentially a masking of our collective status of bare life, caught within the sovereign ban. Such an apocalyptic vision leads to the suggestion that "every attempt to found political liberties in the rights of the citizen is, therefore, in vain." This strong version of the argument seems to me to empty the category of bare life of its critical content.[99]

Feldman, following traces in Agamben's own text, finds in Arendt's critique of Human Rights a way out of Agamben's dismissal of the discourse of rights and citizenship. Focusing on Arendt's insistence on the "right to have rights", he gestures toward the establishment of a political community no longer based on the exclusion of bare life. For Feldman, "[t]hat the 'right to have rights' might be emergent in political action and not grounded in the image of a bare, sacred life indicates a way out of the bare-life predicament: nurturing forms of political action that trouble and contest the citizenship/bare-life opposition."[100] This leads Feldman to insist on pluralization as a

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[99] Feldman, 19.

[100] Feldman, 21.

policy of acknowledging not only alternative forms of dwelling within the spaces of American cities, but also nurturing "alternative spaces of political activity (the street newspaper movement, homeless encampments protesting distributive injustices and shelter policies, alliances between homeless and non-homeless activists, litigation challenging the constitutionality of public-space restrictions".[101] It is through rewriting the content of citizenship (citizenship no longer substantively invested with home-dwelling) as well as its form (citizenship no longer conceived differentially) that one contests the dynamics of inclusion/exclusion that constitute the sovereign ban. Similarly, the editors of *Sovereign Lives*, Jenny Edkins, Véronique Pin-Fat, and Michael Shapiro, want to salvage out of Agamben's argument a trace of resistance to the power dynamics he so powerfully outlines. Thus (and through a reading that I think evokes Arendt's critique of depoliticization) they argue for a reinstatement of power relations rather than their escape, insisting that

> [s]ince sovereign power relies on two things—first, the drawing of lines between forms of life and, second, the production thereby of a generalized bare life—there are two ways in which the demand for a return to politics can be articulated: the refusal of sovereign distinctions and the acceptance of bare life.[102]

Therefore, like Feldman and Butler, they advocate a reinstatement of a politics of representation on the one hand, in terms of who counts as a human being, and a politics of pluralization in terms of what counts as a political life.

I remain uncertain if such attempts are a dilution of the critical edge of Agamben's argument and of the analytical powers of the concept of the merely human.

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[101] Feldman, 23.

[102] *Sovereign Lives*, 12/3.

And I am unclear as to what Agamben's extra-territorial politics might accomplish in terms of guarding against the violations of human life across the time and space of globalization. However, the critical thrust of Agamben's analysis of bare life holds not only for understanding what is at stake in the production of bare life, but also for understanding the processes and discourses which aid in its production. It is to those processes that I want to turn in the next chapter, and it is in the hope of better using and understanding Agamben's concept that I want to return to the dilemma of rightlessness. As Andreas Kalyvas argues,

> There are two lines of arguments that implicate rights, two readings that coexist uneasily in Agamben's texts. While in the one, the camp has to divest its inhabitants of their rights in order to reduce them to naked life, in the other the granting of rights is one of the constitutive operations by which biopower is exercised over the naked life of its subjects."[103]

In the next two chapters I propose to unpack this dilemma by considering if and how a dispossessed people might enter into the sphere of rights in the bid for political materialization. Such a consideration might begin to outline the differences between, and the possibilities inherent in, on the one hand attempts to include the excluded and grant political recognition to those previously outside the sphere of citizenship and rights, and on the other hand Agamben's gesture toward an extra-territorial politics that makes of the status of the dispossessed the grounds for a new political reality trumping that of sovereignty.

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[103] Kalyvas, 116.

Chapter Two: The Threat of Palestinian Materiality[104]

In *Means Without Ends: Notes on Politics*, Giorgio Agamben recounts the story

of 400 Palestinian men banished by Israel to the snowy mountains of Lebanon, which he

calls a "no-man's-land". "These men", he argues,

> certainly constitute, according to Hannah Arendt's suggestion, "the
> vanguard of their people". But that is not necessarily or not merely in the
> sense that they might form the originary nucleus of a future national state,
> or in the sense that they might solve the Palestinian question in a way just
> as insufficient as the way in which Israel has solved the Jewish question.
> Rather, the no-man's-land in which they are refugees has already started
> from this very moment to act back onto the territory of the state of Israel
> by perforating it and altering it in such a way that the image of that snowy
> mountain has become more internal to it than any other region of Eretz
> Israel. Only in a world in which the spaces of states have been thus
> perforated and topologically deformed and in which the citizen has been
> able to recognize the refugee that he or she is—only in such a world is the
> political survival of humankind today thinkable.[105]

Agamben's story of the banished and stateless Palestinian men is perhaps the most direct

reference he makes to a contemporary case in outlining the radical edge of the refugee

non-citizen, and by implication of an anti-sovereign, or perhaps post-sovereign politics.

The attempt is overly dramatic and sketchy at best. But the story brings into focus the

kind of framework where a non-citizen ruptures the material and symbolic spaces of the

nation, challenging the status quo of the nation-state. The spatial removal of the non-

citizen, the material excision of the non-citizen, "act[s] back", threatening the political

coherence of the nation-state by perforating its spatiality. What is thrown outside rears its

threatening head inside, contorting the nation-state's image of itself, performing what

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[104] A version of this chapter was published as "Peace Material: Giorgio Agamben and the Israeli-Palestinian Peace Accords." *New Formations*, 62, Fall 2007.

[105] Giorgio Agamben, *Means Without Ends: Notes on Politics*, Minneapolis, University of Minnesota Press, 2000, 25/6.

Agamben has called the unhinging of the "trinity of state-nation-territory".

In outlining the biopolitical structure of exception that captures bare life, Agamben proceeds from the relationship between the figure of the citizen (central to modern state politics) and the material condition of being human which is overwritten by that of citizenship. It is that ambiguous and detrimental relationship between materiality and citizenship that I want to explore in this chapter, specifically in the context of the Israeli-Palestinian conflict and the Israeli-Palestinian Peace Accords at a time when the Palestinian quest for statehood finally took form in international politics. I want to understand the political possibilities for the figure of the non-citizen within the framework provided by Agamben and analyzed in Chapter One, the framework where bare life is the vanishing presupposition of the citizen and where the indistinction between inside and outside, physical life and political life, gestures not only to the extreme dangers of the present but also to the political possibilities of the future. In addition, I want to understand the political alternatives available to and provided by the Israeli Palestinian conflict, alternatives that articulate a challenge to the discourse of the nation-state, a discourse which has so far proven impossible and deadly within the territorial and imaginative spatiality of Palestine/Israel. I begin with a consideration of what is termed in the Israel the "Demographic Problem", emphasizing the materiality of Palestinians, understanding what is at stake in that concept and clarifying its role in the conflict. I proceed to a textual consideration of the Israeli Palestinian Peace Accords, the peace agreement which sought to allow the Palestinians to materialize politically, to become a people in a state of their own. I am interested to see how or if the Accords, which are statist in their logic, are able to deal with the materiality of Palestinians, a

materiality that Agamben would say threatens the logic of the nation-state. Viewing the Accords specifically in terms of this confrontation with materiality provides, I believe, an alternative articulation of opposition to the Accords, one which reassesses their failure not in terms of imbalances and injustices, but in terms of closing off political possibilities beyond the logic of the nation-state. Those possibilities, the possibilities sparked by Agamben's story of the banished Palestinian men, I arrive at via Edward Said's reading of the historical intimacy between Israelis and Palestinians. Constructing useful theoretical links between two theorists as far apart in subject matter and temperament as Agamben and Said is part of the difficult and exciting work to explore alternatives provided by Agamben's challenge to statist politics and by the vulnerable materiality of Palestinians. To what extent that materiality could animate alternative political possibilities for Israelis and Palestinians is partly what is at stake in my attempt to better understand Agamben's work.

Agamben and the Israeli-Palestinian Conflict

The Israeli-Palestinian conflict has conflicting accounts and histories. It is characterized by some as the Israeli struggle for existence against destructive and overwhelming Arab hostility of which the Palestinians are representative. The Palestinians view the conflict as a rightful struggle against foreign occupiers with Israel as a colonial settler state. Many who advocate for peace between the two groups see the conflict as one between two "rights", or one of "right vs. right", and call upon both groups to "coexist". The conflict is certainly vicious, tragic, and convoluted. The enormous imbalance in power, however, between Palestinians and Israelis must be

acknowledged, and the status of Palestinians as a stateless people, an occupied people with a huge refugee camp-dwelling population and all the hardships and humiliation and long term devastation that entails, cannot be sidelined as a mere variable in the accounts competing to characterize the conflict.

To analyze the relationship between materiality and citizenship in the context of the Israeli-Palestinian conflict is not to encapsulate the experiences of Palestinians and Israelis and the long history of the conflict in Agamben's conception of bare life. The conflict has been one of the most complex and tortured of modern times and exceptionally challenging: it partakes of religious, national, territorial, historical, racial, and imperial tensions as well as exploitative and manipulative engineering of the many states, Arab and Western, invested in the conflict. Philosophically as well as historically, the establishment of the state of Israel and the concomitant resistance to it by Palestinians has posed and continues to pose questions regarding the possibility and implications of national exclusivity, the failures of assimilation, and the limits of the inclusive liberal state (whether in terms of Western states' ability to include Jews or in terms of Israel's ability to include Palestinians).

However, and crucially, Palestinian statelessness and Palestinian refugees remain the most pressing elements of the conflict, and Palestinian nationalism remains constitutive of Palestinian identity within and outside the geographical contours of Israel/Palestine, a fact that the Peace Process has failed to address truly or directly, as the analysis of the Accords below will show. Palestinians have long struggled against their statelessness and they continue to work actively in the pursuit of their nationalist project before and after Oslo. Secular and religious, in Gaza city and in the refugee camps of

Lebanon and Syria, in mainstream political parties and through small grassroots NGOs, Palestinians have tried and do try to challenge the conditions of their historical misfortune, their *nakba*. And yet for just as long Israel has managed not only to thwart the Palestinian nationalist project, sometimes to deny it entirely, but also and with relative immunity to continue uprooting, deporting, detaining, torturing, executing Palestinians, what amounts to a brazenly unaccountable management of the very materiality of being Palestinian.

How Palestinian statelessness figures in the Peace Accords, how and why the link between the refugee experience of Palestinians and their nationalist struggle, which is also a struggle for an internationally legitimate political subjectivity, is fractured or severed—this is what an analysis of Palestinian statelessness as a condition of materiality in an Agambenian sense will illuminate. An analysis of that materiality will suggest that in the case of Israelis and Palestinians the confrontation cannot and should not be read only as a struggle between two nationalist projects competing over a historically marked territory; rather, the conflict should also be read as a confrontation between a citizenship constituted by an exclusive ethno-religious nationalism and an undesirable materiality denied conceptually and by turns managed and eviscerated historically. The destruction of that materiality, the physical elimination of Palestinian persons, may in fact eliminate all traces of Palestine: that is the logic of ethnic cleansing perpetrated by a colonial settler-state, and there were certainly moments in the history of the establishment of the state of Israel and its management of the conflict that such logic operated even if only or primarily at the level of discourse.[106] To fail to recognize the challenge of Palestinian

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[106] See for example, James Ron in *Frontiers and Ghettos: State Violence in Serbia and Israel*, Berkeley, University of California Press, 2003, 127.

materiality, the very physical fact of being Palestinian, to the Israeli statist project is to fail to grasp the most elemental and decisive aspect of the colonial trauma generated by the establishment of a settler-state. Agamben's work on the concept of "bare life" is one way to begin unravelling the challenges and the dangers of humanity as materiality.

The Demographic Problem

In the last decades of the twentieth century, studies in Israel of Jewish vs. Arab (i.e. Palestinian) birth rates and deaths, and analyses of family planning patterns, have resulted in projections of at least equal numbers of Jews and non-Jews by 2015 or later. Such projections are interpreted differently across the political spectrum but they have certainly "become one of the central points of debate in ... [Israeli] political discourse".[107] The argument basically is that due to the fact that more Israeli families, women specifically, choose to have fewer children, the Jewish birthrate is falling while Palestinian mothers continue producing a large number of children thus threatening to produce a Palestinian majority in the future, and by implication threatening the Jewish character of the State of Israel. Thus behavioral and cultural changes in what are perceived to be separate sociological entities (Jews and Palestinians) contribute to a potential political crisis striking the Zionist ethos which strives for an exclusively Jewish state at least in character if not in composition. And there is little consensus on how such a 'crisis' could be read or dealt with. For some, the demographic problem is a threat that must be combated at all costs, a horror destructive of all that the establishment of the State of Israel has achieved for world Jewry. For others, the demographic problem is a

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[107] David Grossman, *Sleeping on a Wire: Conversations with Palestinians in Israel*, New York, Picador, 1993 and 2003, 202.

welcome sign of the coming multiculturalism of Israel, the inevitable dismantling of what

is perceived as the racist Zionism of the state.[108]

What is of interest to me here is not so much the implications and interpretations

of the demographic problem, but rather *the political trajectories that allow for the*

formulation of such a problem in the first place. First of all, the demographic problem

reconfigures Israel proper and the occupied areas as one territorial unit stretching from

the Jordan River to the Mediterranean; it analyzes patterns and projections not within

Israel or in the Occupied Territories but in both, drawing the borders not between two

areas but between two ethnic groups, or rather between Jews and non-Jews, in one

geographical area encompassing Israel and the Occupied Territories. It thus posits a

return to a state prior to, or beyond, the establishment of the State of Israel. The borders

of Israel are, to begin with, physically porous (no consensus of where the State begins or

ends, and when the State begins or ends—1948, 1967?) and politically rigid (Israel as the

state of Jews). The demographic problem, by rendering the idea of the border

simultaneously irrelevant and threatened, conjures up the materiality of bodies as

something beyond the control of the state. Thus, reproduction appears as something that

overpowers the state at its most significant mechanism of control, the border. The

demographic problem produces an image of spectacular chaos as bodies appear to

reproduce in ways that threaten the logic of the nation-state.[109]

Secondly, and simultaneously, the demographic problem reconfigures

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[108] See for example, Tom Segev in *Elvis in Jerusalem: The Americanization of Israel*, New York, Metropolitan, 2002 and Ephram Nimni in *The Challenge of Post-Zionism: Alternatives to Israeli Fundamentalist Politics*, New York, Zed Books, 2003.

[109] It is customary for Palestinian women in television interviews to present reproduction, their ability to produce Palestinians to replace those killed or detained by Israelis, as a strategy of resistance to the Israeli state. In many ways, the very act of Palestinian reproduction becomes an act resisting erasure by a settler state that has traditionally represented Palestine as "land without people for a people without land".

Palestinians within Israel, the Arab citizens of Israel, as a continuation of Palestinians inside the Occupied Territories and Gaza; regardless of where the geographical border is drawn, those Palestinians who continue to reside geographically within the Green Line are transferred politically outside it. The spectre of too many Palestinians where there should be none renders those Palestinians within the Green Line invisible within Israel and yet as that which in itself renders invisible (irrelevant) the national borders of the state. Thus, within the context of the demographic problem Palestinian nationalism is overtaken by Palestinian materiality: it is the *mere* presence of Palestinians, their numbers within a geographically limited space that is supposed to signify an ethnically-exclusive political space, that becomes threatening.

The borders of the nation-state come apart, are rendered immaterial, the moment the state must confront what Agamben calls the "vanishing presupposition of the citizen", the human that cannot or is not contained in the figure of the citizen. However, Israel is a particular kind of nation-state and the Israeli citizen is a particular kind of citizen. Israel is a colonial settler state: it originated in a program to acquire land already inhabited by others, to import an exclusively Jewish population for the specific aim of producing a Jewish majority to override as well as replace an existing Arab majority, and operates by maintaining a two-tiered system that privileges Jews and reduces Arabs to at best second class citizens in a Jewish state. It is also an expansionist state that continuously annexes and settles land in a bid to enlarge its territorial hold. The demographic problem, however, nuances the idea of Israel as a colonial settler state. Confronting the materiality of Palestinians most clearly—as the human element that is not and cannot be contained in the figure of the citizen—the demographic problem is a delineation and unmasking of the

problematic of the Jewish state. Israel cannot simply subjugate Palestinians forever because the threat of their materiality holds even more as subjugated people (as Palestinian non-citizens). As non-citizens, they retain the threat of their being Palestinian in their person, their physical presence between the Mediterranean and the Jordan River, and their bodies, attest to the foreignness that cannot be tolerated and that threatens to overpower the norm, rendering the notion of the *citizen* obsolete. On the other hand, Israel cannot make citizens out of those Palestinians, out of that Palestinian materiality, because the notion of the Israeli citizen is substantially constituted by Jewishness: the demographic problem makes visible what Israel must continuously make invisible in order to pass as a modern liberal democracy, that the Israeli citizen is in fact only and primarily a Jewish citizen. To make Israeli citizens out of Palestinians is to render the notion of *Israeli* obsolete.

My reading of the Demographic Problem is Agambenian to the extent that I oppose materiality to citizenship and formulate the threat as one not only to the concept of a Jewish majority but to the concept of the citizen. In this context, I believe it is the very statelessness of Palestinians that is a threat to Israel, much more so than any intended Palestinian statehood. Thus, for Israel to argue finally that Palestinians can and must have a state of their own is to guard against the perforation of the Israeli nation-state and its *raison d'être* by Palestinian bodies; if Palestinians continue to exist and to reproduce, not as citizens (the Palestinian People within a Palestinian state) but as stateless *people* populating the land between the Jordan River and the Mediterranean, they threaten to overrun the conceptual as well as geographical and political boundaries

of the state.[110] The capture of Palestinians within the framework of a nation-state—one that is inadequate, diminutive, geographically and politically unviable, but a state nonetheless—could work to neutralize the inherent threat of Palestinians as the human element reproducing beyond the containment of state borders. The timing of the Peace Accords, the shift in Israeli policies in the 1990s towards an acknowledgment of Palestinians and their right to a state, could be read in part as an attempt to contain the demographic threat. Quite possibly, the political materialization of Palestinians in a state of their own becomes less disturbing than the unchecked *materiality* of Palestinians.

However, the Agambenian reading does not account for the fact that Israel is a colonial settler state whose territorial borders are for strategic and political reasons unclear. And the concept of the colonial settler state must be nuanced enough to account for the specificity of the Israeli citizen as a Jewish citizen. On the one hand it is in Israel's interests as a colonial settler state to deal with the Palestinians as a materiality that may be policed, suppressed, even exterminated, and thus to work against the political materialization of Palestinians as citizens in a nation-state. On the other hand, that materiality comes to perforate the Israeli landscape causing havoc with the statist discourse that works against the political materialization of Palestinians in the first place. *The Palestinians' subjugation is threatening and their assimilation is destructive.* Their excision, the rendering outside of Palestinians, is materially and imaginatively difficult for a state which views any borders separating it from Palestinians as a grave compromise

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[110] Agamben argues that the term 'people' contains within it a split between the 'People' as political entity and 'people' as naked life; '[t]he same term names the constitutive political subject as well as the class that is excluded—*de facto*, if not *de jure*—from politics.' *Notes on Politics*, 29.

of its divine right to the entire territory of Palestine/Israel.[111] This is why the Peace Accords must be read in part as Israel's attempt to reconcile its expansionist logic as a colonial settler state with the logic of the nation-state, reconciling its constitutive investment in territorial expansion and ethnic exclusivity with the nation-state's investment in rendering invisible that specifically colonial logic.

Israel's strategy in the Peace Accords, I believe, and specifically in the context of the Agambenian reading of Palestinian materiality, is to grant Palestinians an unviable and viciously impossible form of non-territorial statehood. In what follows, I will argue that the Peace Accords work to reduce and deform the materiality of the Palestinian condition, literally and metaphorically, dismembering the Palestinian nation in ways obscenely appropriate to the deformation and territorial dismemberment of the proposed Palestinian state. As an alternative to the extermination of Palestinians, their subjugation or their assimilation, the Peace Accords work to fracture the very materiality of the Palestinian condition, rendering it diffuse, illusionary, and as deterritorialized as possible.

The Context of the Accords

The Peace Accords between Israel and the Palestinian Liberation Organization (PLO) constitute a series of agreements that gave form to negotiations between the two sides that began in Oslo: the 1994 Gaza-Jericho Agreement (Oslo I), the 1995 Interim Agreement on the West Bank and the Gaza Strip (Oslo II), the January 1997 Hebron

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[111] Palestinian materiality adds a complexity to the nationalist conflict that is literally present in the continuous establishment of settlements. It should be a staggering fact that Israeli settlements increased dramatically *after* Israel signed the Peace Accords which were said to recognize the nationalist claims of Palestinians. Likewise, Israel establishes a Wall to separate it from the very Palestinians that it continues to occupy. Always and along with a politics of separation, there is a politics of containment, both a material manifestation of the contradictions posed by a settler state on the one hand embroiled in practices of occupation and exploitation and on the other hand invested in an ethno-religious exclusivity and discourse of denial as a constitutive element in the establishment of the state and its survival.

Protocol, the October 1998 Wye River Memorandum, and the September 1999 Sharm el Sheik Memorandum. Known also as the Oslo Agreements, they follow the Declaration of Principles, arguably the most significant document in the Accords, signed by Israel and the PLO on the White House Lawn in September 1993. The preliminary Oslo negotiations that gave rise to the Declaration were conducted in secret, not perhaps too out of the ordinary as peace negotiations go, especially when the conflict is as bitter and volatile as that between Israelis and Palestinians. However, what makes this secrecy problematic is that the Oslo negotiations took place alongside the *public* negotiations between Israel and the Palestinians taking place in Madrid. The Madrid talks, inaugurated in 1991, in effect set in motion the Middle East peace process, with delegates from Israel and the occupied territories. They took place amidst intense public and media scrutiny, and enjoyed an international spectrum of support, most notably that of the US, the European Community, and the former Soviet Union.

The Oslo negotiations are in effect the clandestine face, the shadowy other, of the *de facto* aborted negotiations in Madrid. They are for all intents and purposes the hijacking of the public Madrid negotiations. Unlike the negotiations in Madrid, the ones in Oslo involved the PLO, at that time still considered a terrorist organization any kind of communication with which was criminalized by the Israeli government. In 1991 the PLO was at the weakest stage in its history, with a debilitated leadership, most of its leaders having been assassinated over the years by Israeli agents; an exiled leadership ousted from Beirut in 1982, losing its popular base and its integration into the realities of the Palestinians in the refugee camps or the territories; an ostracized and internationally humiliated leadership following Arafat's disastrous support for Saddam Hussein during

the first Gulf War. One could make much of the lack of resources and expertise available to such leadership, the lack of continuous public affirmation of the tracks chosen in the negotiations, of the discrepancy in terms of international clout and political, legal, economic, and military power between the players—the secrecy of the Oslo negotiations works in part to cover up that lack and that discrepancy. And indeed critics have pointed to the timing of the negotiations with the PLO and their secrecy as fundamentally exploitative, and to Yasser Arafat's participation as a form of capitulation, of selling out the Palestinians, in exchange for his organization's symbolic survival.[112]

However, the detrimental effects of secrecy and the hijacking of the public negotiations could be read politically not only at the level of strategic gains and losses but also at the level of recognition and representation. What if the shadowy nature of the negotiations was necessitated not only by the safeguarding of powerful Israeli interests at the expense of weaker Palestinian demands, but also by the very fact of statelessness which marks the weaker partner? In her analysis of the Oslo Agreements in the context of international law and specifically the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Allegra Pacheco, an American-Israeli human rights lawyer, argues that the Madrid Talks "failed" in large part because of the Palestinian negotiators' insistence on the applicability of international human rights to Palestinians.[113] The Geneva Convention applies specifically to a civilian population

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[112] Edward Said is only the most known of many who have painstakingly shown the extent of Israeli manipulation and PLO capitulation, and the grave historical injustice as well as the more commonsensical impracticality of the provisions for a Palestinian state in the Accords. See Said's *Peace and its Discontent: Essays on Palestine in the Middle East Peace Process* (1996) and *The End of the Peace Process: Oslo and After* (2001). Noam Chomsky has also diligently exposed in detail the imbalances and short as well as long-term implications of the agreement in numerous essays.

[113] Allegra Pacheco, "Flouting Convention: The Oslo Agreements", in Roan Carey (ed), *The New Intifada: Resisting Israel's Apartheid*, London, Verso, 2001, 187.

under occupation and as such its applicability to Palestinians would render illegal the abuses meted out by the Israeli government since 1967. According to Pacheco,

> in a military occupation, civilians are all for all intents and purposes stateless and remain vulnerable to the mercy of the occupier to protect them. The Convention provides a body of rules to protect them. Accordingly, the Convention contains over 100 provisions prohibiting human rights violations like torture, illegal detention, house demolition, deportation, and humiliation and degradation of the civilian population. Another major goal of the Convention is to facilitate an uncomplicated withdrawal of the occupying power at the end of hostilities and avert all claims by the military occupier to the occupied territory and its resources. The Convention proscribes the military occupier from taking any action that makes its temporary presence permanent.[114]

Historically, Israel has refused to acknowledge the applicability of the Convention to Palestinians, arguing in Supreme Court decisions that the areas it occupied or annexed in 1967 cannot claim any prior sovereign status and that "without a prior sovereign, there could not be an occupation. Instead, under the Israeli perspective, these areas were simply administered, a legal status for which the Geneva Convention didn't apply".[115] Pacheco rejects this argument—as indeed do Amnesty International, the International Committee of the Red Cross, the International Commission of Jurists, as well as countless UN resolutions—citing the "official commentary to the Convention [which] makes it clear that the question of the political status of the occupied territory cannot be used to undermine the rights of civilians and their internationally accorded legal protections".[116] In Pacheco's analysis of the peace process and of statements made by the Madrid negotiators, the insistence on the Geneva Convention by Palestinians stalled the negotiations in Madrid, whereas the secret negotiations with the PLO in Oslo produced a

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[114] Ibid., p182.

[115] Ibid., p183.

[116] Ibid., p184.

document that not only failed to commit Israel to abide by the Convention, but in fact went against the letter and spirit of the Convention which rejects any 'peace' agreement that waives the rights mentioned in the Convention.

And yet, despite Pacheco's passionate insistence on the applicability of the Convention to Palestinians, "the question of the political status of the occupied territory" has been used to undermine the status of Palestinians and their right to be protected. The lack of clarity, of precision, about the status of Palestinians *before* the occupation (indeed one could say before the establishment of Israel) contributes to the lack of clarity and precision surrounding their status *after* the occupation.[117] Take UN Resolution 242, the document most cherished and referred to by pro-Palestinian advocates and which supposedly guarantees the Palestinians' 'inalienable' rights. As Jacqueline Rose argues, 'Palestinians' are not mentioned in the text of the Resolution; they are not named, they do not exist as Palestinians in the resolution which is considered to be the internationally recognized and legitimating document for Palestinian statehood. 242 spells out the 'inadmissibility of the acquisition of territory by war and of the need to work for a just and lasting peace in which every State in the area can live in security'; and it urges Israeli withdrawal from occupied territories and affirms the 'territorial integrity and political independence of every State in the area and their right to live in peace'. According to Rose,

> [i]f Palestinian rights are not named, then the phrase "every state in the area" cannot include, not even potentially, a state of Palestine. Since the law against deportation under the Geneva Convention can be invoked only

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[117] Derek Gregory discusses this dilemma, pointing out that '[t]he Israeli government justified its actions by claiming that Gaza and the West Bank were not "occupied" since they had never been part of the sovereign territory of Egypt or Jordan. Israeli was thus an "administered territories whose final status had yet to be determined'. In Derek Gregory, *The Colonial Present*, Oxford, Blackwell, 2004, 90.

by states and not individuals, this has meant, among other things, that no stateless Palestinian can make use of it. "Every" is therefore a totalizer that veils an exclusion. In this case, the term 'just' does cover for injustice; the term "lasting" is there as the gesture towards a possibility which, because it is ruled out by language, cannot even begin.[118]

The dubious status of the Palestinians ensures that they do not make it into the text of UN Resolution 242. And this lack of naming contributes to rendering Palestinians and their claims invisible. The only term used to approach the Palestinians is 'refugee problem' when the Resolution affirms the necessity for 'achieving a just settlement of the refugee problem'. Here is precisely where Agamben's conception of the possible unreadability of that which is not marked by citizenship comes into play. It is not that Palestinians do not exist or have no political vision; it is that a people marked by the lack of citizenship can be misrecognized by the law of the state or by an international law that equates political subjectivity with citizenship.[119] According to Agamben, that which is nothing but the human cannot be recognized by the law; it is the law's abandonment that is deeply depoliticizing as that which is nothing but the human is removed from the political community established by law. Political subjectivity, as understood by Arendt as well as Agamben, is one that marks an active relationship between the subject and the law of the community—this is precisely why Hamas leaders, recognized as such by the Palestinian community whose laws they partly write and are partly created as leaders by, can be deported or executed by Israel with impunity. According to the Israeli state and in large

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[118] Jacqueline Rose, States of Fantasy, Oxford, Oxford University Press, 82.

[119] As Arendt and Agamben have shown, even when international law provides a category for stateless peoples, for example refugees, the category remains apolitical—refugees are addressed not as political actors struggling against an injustice, but as human beings in need suffering from a misfortune. The distance between a political struggle and a humanitarian crisis is often the distance between a subject with the potential to reshape his or her world and a human being with the possibility for or expectation of care and assistance.

part to the international community that Israel is part of, Hamas leaders exist as figures outside the norm, outside the legal and legitimate order of national and international politics, and this is why Israel's continuous policy of assassinating Hamas leaders does not seem to threaten the sanctity of the international order in the way that Hizbullah's capture of Israeli soldiers on Israeli soil apparently does. In the case of Palestinians, their questionable status contributes to the questionability even of UN resolutions pertaining to them.[120]

The Palestinians thus make it into the Resolution as a "problem"; the Palestinians are problematic. They are not citizens of a sovereign state, that is clear enough, which denies them the right to figure as right-bearing individuals to be recognized internationally. However, are they civilians? The civilian status of Palestinians is here in question not as an identification that would distinguish them from military personnel, but rather, as a political act that would guarantee them the protection of the Geneva Convention and relevant international laws. Rose makes the link between the statelessness of Palestinians and their lack of mention in 242; their unmentionability. And Pacheco makes the link between the failure of the Madrid negotiations and the demand for the recognition of Palestinians as the civilians intended by the Geneva Convention, a demand that was not allowed to hold, that failed. The Palestinians thus appear as the *unmentionables* of international law, existing under the "veil of exclusion" and the "cover

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[120] To understand what Arendt and Agamben are gesturing to in their use of "political" one has to look to the experiences of the depoliticized: denaturalized Jews during WWII, Guantánamo Bay prisoners today, even Iraqis after the destruction of the Iraqi State: all in varying degrees, and with varying results, were suddenly thrust outside legal norms establishing a political community in which they could be considered subjects with rights and obligations. The prisoners in Guantánamo Bay, for example, are treated neither as criminals nor as prisoners of war. They are considered by the Bush Administration to be beyond the reach of democratic politics of representation and the law of the United State. The prison camp in Guantánamo Bay is a juridical-political structure outside the political space of the United States and it houses those who are deemed so strange, so dangerous, so ambiguous as to be beyond the reach of the law.

of injustice", to use Rose's words. Thus the clandestine nature of the Oslo Accords appears *appropriate in its very impropriety*, conducted in secret, away from the scrutiny of international observers, and eschewing the problematic of the applicability or inapplicability of the internationally upheld Geneva Convention.

The peace process, which is statist in its logic (attempting to solve the Israeli-Palestinian conflict by establishing a Palestinian state), comes up against the statelessness of Palestinians, and in that respect the public Madrid negotiations posed a challenge to international law. Insisting on the applicability of the Geneva Convention to Palestinians stretches the limits of international law, pointing to what Judith Butler calls the "restrictive" reach of the notion of universality embedded in the Convention itself. Butler analyzes that restrictive reach in terms of the United States' refusal to apply the Geneva Convention to the prisoners at Guantánamo Bay, Cuba, and she argues that

> there is…a problem with the law, since it leaves open the possibility of its retraction, and, in the case of the Geneva Convention, extends universal rights only to those imprisoned combatants who belong to "recognizable" nation-states, but not to all people.[121]

Butler's critique is a continuation of that of Arendt and Agamben whereby rights mentioned and guaranteed in international law, especially those considered "human" rights, tend to apply only to citizens. Thus the relation of human to citizen is actually the opposite of what it is taken to be: it is not the human who is the fundamental nucleus of the citizen but the citizen who in fact identifies the human, at least the human of international Human Rights. In the case of Palestinians, their status as non-citizens, which is threatening in the framework of the demographic problem as well as the framework of the Israeli nation-state, simultaneously grants "legitimacy" to Israel's

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[121] Judith Butler, *Precarious Life: The Powers of Mourning and Violence*, London, Verso, 2004, p86.

sovereign decision to withhold the specific protections of the Geneva Convention. While that legitimacy is contested, Israel's ability to interpret the Geneva Convention in ways that cast doubt on its applicability to Palestinians emphasizes the Convention's selective or restrictive reach, and transfers the problematic of inapplicability to Palestinians themselves: it is not only Israel's refusal to abide by international law that casts Palestinians outside of the protective reach of that law, but also the Palestinians' lack, their ineligibility for recognition as the citizen/human of international law that places them outside it.

The issue of naming Palestinians has, in the text of the Accords, dimensions beyond that of recognition or lack of it. Naming the Palestinians contributes directly to the modalities of their governance, the provisions for their rights and entitlements, and their historical claims for justice. That the link between naming and representation overpowers other considerations that might impinge on the modes of representation and its effects in these accords is itself an affirmation of the vulnerability of Palestinians and their susceptibility to erasure. Naturally enough, it is expected that a conflict which revolves in many respects around the name one gives a territory—Land of Israel or Palestine? Judea and Samaria or the West Bank?—would make of naming a significant issue and pay close attention to it. More pertinently, however, the grave consequences of the use of a name, of the way of naming, for Palestinians poses questions about the issue of representation itself, and what structure of representation could adequately account for the statelessness of those negotiating for a state. As the overview of the context of the Accords showed, the Palestinians' lack of recognizability as the citizens of the Geneva Convention is impossibly circular: it appears "necessitated" by their materiality as non-

citizens and it also contributes to their production as a materiality that is not protected by the Geneva Convention. As the following will show, the very materiality whose reproduction as Israeli citizens is anathema to the logic of the Israeli nation-state, and whose presence within the borders of that nation state is destructive of that logic, is isolated in the text of the Accords in order to produce a Palestinian People as incoherent and unreadable as possible.[122]

The Text of the Accords

The Declaration of Principles signed in 1993 sets up its aim as the following:

> The aim of the Israeli Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim self-Government Authority, the elected Council, (the "Council") for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council Resolutions 242 and 338.

The "Palestinian people", appearing for the first time as such in a document of this magnitude,[123] are really and only in this Declaration the "Palestinian people in the West Bank and Gaza Strip". And the chief aim of the negotiations is not to recognize the rights of Palestinians as such but to provide the "Palestinian People in the West Bank and Gaza Strip" with an interim self-Government. While basically all the historically significant issues in the conflict, both in terms of the past or the future—dispossession, refugees, borders—are shelved for a later discussion, the immediately recognized Palestinians exist in the text of the Declaration mainly as those who happen to live in the West Bank and

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[122] Arendt differentiates between those who lose their rights due to circumstances (e.g. those who lose the right to happiness in times of war) and those who are rightless, who lose, or do not have, the right to have rights. See Hannah Arendt, The Origins of Totalitarianism, New York, Harcourt Brace, 1975. It is as a rightless people that the Palestinians are unmentionable in international law, and as rightless people that they cannot claim to be the civilians of the Fourth Geneva Convention.

[123] Rose, 82.

Gaza Strip. In the entire text of the Declaration the words "Palestinian people" occur on their own only twice: once, in the opening paragraph which sets up the agreement as one between "The Government of the State of Israel and the Palestinian team representing the Palestinian people", thus binding the Palestinians to what the PLO secretly agrees to; and once specifically in the context of the elections to be held by the Palestinian people "in the West Bank and the Gaza Strip" whereby Article III of the agreement stipulates that "in order that the Palestinian People in the West Bank and Gaza Strip may govern themselves", elections will be held, and said elections "will constitute a significant interim preparatory step toward the realization of the legitimate rights of the Palestinian people and their just requirements". In the first instance a more inclusive "Palestinian people" is tethered to a Palestinian team who is considered to speak for it, and in the second instance the immediate interests of a specific segment of the Palestinian people comes to stand for, and in the text of the Declaration efface, that more inclusive Palestinian people.

One could argue that this hour-glass model of representation is customary (is proper to representation), that representation is the provision of the opportunity for a small group to speak for, and in the name of, a larger one. How else could the Palestinian people be represented? However, in the case of the (shadowy, dubious, unmentionable) Palestinians, the act of representation must not only give voice to a large group but must also bring that group into existence. The moment of representing the Palestinian people is simultaneously the moment of *presenting* the Palestinian people, of making them present. As stateless peoples, pseudo-civilians, passport-less refugees, the Palestinians do not exist *a priori*. Thus, their naming in the text of the Declaration is an act of construction,

and the Declaration constructs the Palestinians as the "Palestinian people of the West

Bank and Gaza". As Edward Said has argued in his critique of the agreement,

> [a]fter laboriously constructing the unity of Palestinians everywhere, bringing together the Diaspora and the 800,000 Palestinian citizens of Israel, as well as the residents of the occupied territories, the PLO by a stroke of the pen split the three components apart, accepting the Israeli designation of Palestinians as only the encaged residents of the territories.[124]

If the Palestinians before Oslo did not officially exist for Israel, they now exist only in an

abbreviated, disfigured form. By emphasizing the role of elections within the tight

contours of the West Bank and Gaza Strip, the "self" in "Self-Government" for the

Palestinian people is rewritten as the Palestinian people in the West Bank and Gaza Strip.

This is partly why a number of critics, including Said, saw in the provisions for such

"Self-Government" a gross caricature and simultaneously a denial of the 'inalienable

rights' of the Palestinian people for self-determination.

It is significant to note that the Declaration also mentions refugees only twice, and

like the "Palestinian people", both times in a secondary context, as an aside. The

refugees, who formed the backbone of the PLO for decades and whose problem is *the*

Palestinian Question in all its difficulties, appear in the text as an "issue" in a series of

issues to be discussed in later negotiations (see Article V.3). Their only other appearance

in the text is even more troubling. In Article XII, Liaison and Cooperation with Jordan

and Egypt, and in the interest of promoting cooperation "between the Government of

Israel and the Palestinian representatives on the one hand, and the Governments of Jordan

and Egypt, on the other hand", "arrangements" will be made that "will include the

constitution of a Continuing Committee that will decide by agreement on the modalities

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[124] Edward W. Said, *Peace and its Discontents: Essays on Palestine in the Middle East Peace Process*, New York, Vintage, 1996, 156.

of admissions of persons displaced from the West Bank and Gaza Strip in 1967, together

with necessary measures to prevent disruption and disorder." In fact, the word "refugees"

is not even used here, only the formulation "persons displaced", and not even all persons

displaced, but only those who were displaced from the West Bank and Gaza Strip in

1967: once again, not only is an entire segment of the Palestinian people effaced—the

refugees who were displaced from homes within the Green Line—but also, by focusing

on displacement from the West Bank and Gaza Strip, the Palestine of the past, the

Palestine of return, is reconstituted as only the West Bank and Gaza Strip. No

Palestinians displaced from what is now Israel means no Palestine existed in what is now

Israel; if no Palestine existed outside of the West Bank and Gaza Strip from which

persons were displaced then there are no Palestinians other than the Palestinians of the

West Bank and Gaza Strip.

The linkages between the representation of the Palestinian people, the naming of

the Palestinian people, and the achievements of the Palestinian people are tight,

detrimental, and consequential. They are especially so because negotiating the future

status of the Palestinian people is simultaneously the production of their present status. In

this context the dual negotiations—the public ones in Madrid and the secret ones in

Oslo—could be further problematized as a way to sabotage any attempt to give

substantial form to the unity of the Palestinian people. In Madrid, Israel pre-approved the

Palestinian delegates and stipulated that they cannot be members of the PLO, cannot

come from Jerusalem, and cannot come from the refugee camps; in Oslo, simultaneously,

Israel negotiated with the PLO. If Israel was willing to conduct negotiations with the

PLO, why not allow its members to form part of the Madrid negotiating team? And if

Israel approves of the community leaders sent to Madrid, why not include them in its negotiations with the PLO? In both cases there was a clear attempt to define who is Palestinian by defining who speaks for the Palestinian people: the effect is a dismemberment of the Palestinian national body.[125] From the "swiss cheese" map of the territories as it has come to be known, horribly punctured by settlements and Jewish-only by-pass roads, to the complete effacement of refugees from within the Green Line, the disregard for Palestinians within Israel, and the shelving of the refugee problem, what materializes in the Accords is an insubstantial concept of a people in an unviable territorial entity.[126]

The Peace Process is of course one element, crucial and constitutive, in the confrontation between Israelis and Palestinians. It exists along with other forms of erasure, of address, of communication, of resistance, of oppression, of acknowledgment. And the form the Accords give to Palestinians is by no means totalizing: Palestinians found and do find ways to supplement, manipulate, even reject that form, as do countless NGOs and grassroots organizations, Palestinian, Israeli, and international. And research

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[125] A different and interesting take on this dismemberment is offered by Sari Hanafi, who also reads Agamben's bare life into the Israeli-Palestinian conflict. Hanafi argues that "the Israeli colonial project is 'spacio-cidal' (as opposed to genocidal) in that it targets land for the purpose of rendering inevitable the 'voluntary' transfer of the Palestinian population, primarily by targeting the space upon which the Palestinian people live." And Oslo aids greatly in this project for "this 'spacio-cide' has been rendered easier b the division of the Palestinian Territories into different spaces—A, B, B-, B+, C, H1, H2, refugee camps. The Palestinian people is transformed into populations being purely an objective matter to be administered, rather than potential subjects of historical or social action." See Sari Hanafi, "Spacio-cide and Bio-politics: The Israeli Colonial Project from 1974 to the Wall." Forthcoming in Michael Sorkin, ed. *Against the Wall: Israeli's Barrier to Peace.* New York: The Brecht Forum and the New Press.

[126] Gregory discusses the effects of the Jewish-only bypass roads in the post-Oslo period on Palestinian life and territory, arguing that '[b]y these means over 400,000 illegal settlers enjoyed freedom of movement throughout the occupied territories and into Israel, whereas 3 million Palestinians were confined to isolated enclaves separated by illegal settlements and their land reserves and by a series of Israeli military checkpoints'. According to Gregory, this produces a 'fractured Palestinian landscape, wrenched by brutal spatial torsions, afforded a dizzyingly surreal contrast to the centrifugal space reserved for Israelis, where the labour of representation invested in the bypass road network produced its own symbolic power'. Gregory, 90, 101.

into the historical intimacy, the material collusion of colonizer and colonized brought about by the colonial trauma (what Palestinians call the *Nakba*, the Catastrophe) could begin to outline the radical edge of materiality hinted at in Agamben's story of the 400 Palestinian men. Such work might, just might, generate a political vision that does not excise the non-citizen, the stateless, from the political sphere of representation and rights.

The statelessness of Palestinians is what continually produces Palestinians as that which is merely human and necessitates their lack of materialization as a People who may claim rights enshrined in international law; simultaneously, it is their materiality as people, a materiality not captured and excepted in the form of the citizen, that threatens the nation-state and the system that supports it. The statelessness of Palestinians, a statelessness that I have theorized via Agamben as a material condition, thus cannot be easily deciphered in terms of its political implications. One of those implications is materially felt in the violence of suicide bombers. Suicide bombers are a complicated, controversial, and ultimately tragic phenomenon. Expressive of a contradiction bringing together the helplessness and desperation of the reality of Israeli occupation on the one hand and on the other the organization and strategy of Hamas and Islamic Jihad's militant struggle, suicide bombings complicate Agamben's notion of bare life and the lack of agency he attributes to it. Suicide bombers, in addition to killing others, offer their own bodies in a clearly political gesture (an act of murder), but also in a clearly depoliticizing gesture (a suicidal act, an act of self-erasure). However, in the context of this discussion they are emblematic of an unchecked materiality that explodes the configuration of the Israeli nation-state. Seen primarily as a materiality that must be contained, whether as camp dwellers or as demographic threat, those Palestinians do become nothing but a

threatening materiality: the Palestinian-as-body-as bomb. In the suicide bomber the Palestinian's statelessness and the Palestinian's materiality perfectly coincide and the result is a walking, dying, human weapon or human-as-weapon. For the body of the Palestinian suicide bomber negates the distance between occupier and occupied, settler and refugee: it imposes its very materiality on Israelis and in the face of the various policies that establish difference and distance between the two peoples, and with obviously tragic results.

The Demographic Problem as well as the phenomenon of suicide bombings emphasize the destructive potential of Palestinian materiality: this destructive potential has a specifically material form as bodies that reproduce or explode threaten to spill over into Israeli space, to mix with Israeli bodies, rendering unrecognizable or irrelevant the lines of separation between the two peoples. And the logic of two nation-states, the logic of the Peace Accords, works largely on the assumption of that distinction between two peoples and aims to create that distinction in the face of a much different reality. That reality, born of the colonial episode itself, necessarily places Israeli bodies, towns and settlements among Palestinian bodies and towns, despite the draconian measures of security and separation, visual and physical, taken by Israel to ensure the erasure of Palestinians as the next chapter will show and despite the nationalist rhetoric of both Israelis and Palestinians.

The Palestinians' situation is thus telling of a dilemma whereby they must struggle to prove that they are indeed a separate nation, a Palestinian People deserving of a state named Palestine, and yet must resist the very structure of two nation-states which inevitably finalizes their dispossession. The Israelis too must struggle to protect the

exclusivity of the Jewish state by insisting on a separation from Palestinians either through politics of transfer or fortification, yet they must continue to challenge the idea of the border by building more and more settlements demonstrating what they perceive as their right to the entire territory of historical Palestine. While historical, religious, territorial as well as political considerations contribute to this dilemma, ensuring that the Peace Process as it is conceived will remain stalled, Edward Said's work suggests a way out through a one-state solution that owns up to the materially and historically intimate reality of the Israeli-Palestinian conflict. In what follows I want to construct a framework faithful to this reality across the texts of Edward Said, the texts most concerned with the Peace Process. What I will suggest is that the nationalist struggle of Palestinians, if it does not shy away from the promise of a politics faithful to the material condition of Palestinians, a condition that necessarily implies an entanglement with Israelis that cannot be denied through a discourse of separate nation-states, may in fact generate an alternative political vision. It is through Said's emphasis on memory and its role in the Palestinian struggle that such a vision becomes clear. More significantly, it is through the above focus on the materiality of the Palestinian condition, a materiality that I was able to use as an analytical concept through Agamben, that I am able to link the historical context of the Israeli-Palestinian conflict, the context of a colonial trauma, to Said's vision of a one-state solution. It is thus that Said's vision is no longer simply an ethical or idealistic choice solution to the conflict: as undesirable as it appears to the majority involved in the conflict, it is in fact a politically and historically necessary solution.

Remembering Palestinians

Said's insistence on memory is the necessary corollary of being a dispossessed intellectual or one who belongs to a dispossessed people—the identity you have is partly the memory of having been possessed: possessed of a home, a nation, a culture, a language, a land, etc. Being Palestinian is in many cases a memory, and the memory of having been Palestinian is what recreates one continuously as such. Thus memory appears to contain a fundamental split: it is founded simultaneously in a rebellious act and an impotent one. On the one hand memory brings into existence that which no longer exists; it refuses acquiescence to the status quo established in the negation of the object of memory. One remembers that which was negated in the face of its negation, refusing to accept that negation. On the other hand, memory bears within it the fact of negation: the truth of the negation is attested to in the relationship connecting the memory of the object to the object itself. As such, memory is the confirmation that that which has been negated cannot be, and every memory is nothing but a remembrance not only of the lost object but of loss itself. Marked by dissonance, memory comes to mark its subject, the one who remembers, simultaneously with resistance and loss. Said's insistence on memory as a Palestinian strategy must be seen within the contours of dissonance drawn by memory.

The sense of dissonance that marks memory could explain why Said never explicitly formulates a theory of memory-as-resistance. What appears in his writings is rather a compounded effort to speak of memory in terms of the oppositional character of the intellectual and of memory in terms of the dispossession of Palestinians. However, in his critique of the peace process specifically, Said does advocate a politics of memory even if he does not name it as such. In what follows I will trace the links between

memory and resistance as they appear in three major texts by Said, all written in the 1990s and around the Israeli-Palestinian Peace Accords: *Representations of the Intellectual, Peace and its Discontents,* and *The End of the Peace Process.* Taken together, the three texts outline Said's thinking on the relationship between memory, resistance, and statelessness in ways that shed light not only on these concepts and their relevance to Palestinians, but also on Said's own dilemmas as an exilic intellectual.

Representations of the Intellectual is Said's staunchest argument for the intellectual's oppositional character. "This does not mean opposition for opposition's sake," he argues. "But it does mean asking questions, making distinctions, restoring to memory all those things that tend to be overlooked or walked past in the rush to collective judgement and action".[127] The intellectual's challenge to the hegemonic order entails the intervention in public discourse of unacknowledged facts, narratives, histories, that render problematic the status quo. It is thus that the intellectual's condition is that of exile, for exile for Said is a condition both actual and metaphoric[128]: even an intellectual born and bred in a particular place can choose to be exilic in that very place as he or she refuses to identify with the discourse of the privileged, the discourse of the status quo. There is an implicit connection, then, in Said's arguments between the act of "restoring to memory" and that of choosing to be exilic. The notion of "restoration" invokes a measure of difference, of strangeness, at the same time as it invokes the idea of legitimacy. While restoration assumes the return to an original/authentic state, to restore what rightly belongs, Said's insistence on exile, on the perspective of the outsider who inserts into

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[127] Said, Edward W. *Representations of the Intellectual.* London: Vintage, 1994, 33.

[128] ibid, 52.

public discourse that which is unknown or previously unseen, lends to the notion of restoration a complexity that speaks directly to difference. Difference here is the difference of the other, "the poor, the disadvantaged, the voiceless, the unrepresented, the powerless".[129]

Restoring to memory appears in Said's text as an intellectual exercise and a political one, for restoring to memory is a challenge to the status quo made legitimate in part by the negation of other voices and other narratives. One could say that memory here works in opposition to History, if by History we understand the official and institutional narrativization of the past. The intellectual's task is "to unearth the forgotten, to make connections that were denied, to cite alternative courses of action".[130] However, the opposition between memory and History should not be assumed too readily. Memory as I understand it in Said's work is not only about remembering differently. Memory-as-resistance is not only about offering a competing version of history.

Much has been made of the subversiveness of memory, of the power of other memories and other narratives, the telling of unofficial stories that undermine the authority of History proper. Moreover, whether in a feminist, postcolonialist, or postmodernist context, the proliferation of memories is understood to challenge the dominance of hegemonic narratives such as Patriarchy, Eurocentrism, etc. As Arif Dirlik argues, "[m]emory may be both a beneficiary of loss of faith in abstract, hegemonic history and an element in its dissolution", and it "has become increasingly difficult to sustain history's claims against memory". But Dirlik continues,

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[129] ibid, 113.

[130] ibid, 22.

> [i]ronically, the confrontation of memory and history seems also to promise abolishing the difference between the two. We may view the proliferation of memory as an indication of the impossibility of history. We may also view it as the proliferation of histories: many histories that do not cohere, and have no hope of doing so, which may be the price to be paid for 'the democratization of social memory'.[131]

Dirlik's suspicious analysis of the proliferation of memory stems from his insistence on the importance of systematic and foundational narratives, and he sees the emphasis on the subversive potential of memory to lead to fragmentation and divisiveness among social groups. What emerges for Dirlik is discontinuous narratives that do not cohere and as a result cannot seriously challenge a status quo built around fragmentation: for Dirlik, memory is a more acceptable paradigm for globalization than History, and the proliferation of memory ensures that precisely the connections that Said mentions above are *not* made.

Memory and the agency that it might allow for, or its subversive potential, is thus problematic. The politics of memory in Said's writing, however, does not correspond to an understanding of memory as subjective or discontinuous. There is a clear imperative in Said's essays that facts, numbers, even memories, have to be restored to Memory. Memory, I want to argue, appears in Said's writings as a historical record and a register of realities—it is memory not only as remembrance, the fact or experience remembered, but memory as the faculty that restores to as well as keeps in mind such facts and experiences. This memory is social in-so-far as it is collective, it is public in so far as it intervenes in public discourse, and as such it is political. Memory thus is dynamic, active,

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[131] Dirlik, Arif. *Postmodernity's Histories: The Past as Legacy and Project.* New York: Rowman and Littleflield, 2000, 48, 49.

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and could or must be institutional. It is in its institution that I see memory in Said's

writings to differ from an understanding of memory that sees it as primarily subjective,

relative, or elusive. To restore to memory is to institutionalize countless memories and

accord them the status of historical truths in the hope also that they become national

truths. Memory, then, is the fact remembered, the act of remembering, but above all, the

institution that allows a nation to come into being.[132]

Two related threats anchor Said's insistence on the role of collective memory in

terms of Palestinians. The first is the pressure of Israeli and American official discourse

on Palestinians to "declare the past to be null and void so far as the present and future are

concerned".[133] The second is the threat of "facts on the ground", the Israeli attempt to

recreate the Palestinian landscape and manipulate the demographic makeup of the area in

such a way as to make the land unrecognizable and unavailable to its former inhabitants.

It is memory, galvanized in protest, that Said points to as an act of resistance and a

strategy of political self-realization that could potentially answer such threats.

In the context of discussing British colonialism in India and the historian E.P.

Thompson, Said argues that Thompson

> was one of the first historians to grasp that when great political and

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[132] One could argue that Said's understanding of memory works with and against Maurice Halbwachs well-known thesis that collective memory disintegrates with the disintegration of the group. Halbwachs differentiates between autobiographical memory, which contributes to collective memory, and historical memory. Collective memory is not a given but is socially constructed and there are as many collective memories as there are groups and institutions; groups and institutions provide the context in which individuals remember. Historical memory is a matter of record, and the past is stored and interpreted by institutions. Autobiographical memory, however, is rooted in other people and could fade if the group disintegrates, for "every collective memory...requires the support of a group delimited in space and time". Thus erasure and negation go hand in hand. As will become evident below, however, while Said recognizes that the disintegration of the group results in the negation of its past, he wants to mobilize memory on behalf of the group: for Said, collective memory brings into being, makes recognizable, the group and its claims. See Maurice Halbwachs, *On Collective Memory*. Chicago: University of Chicago Press, 1992.

[133] Said, Edward W. *The End of the Peace Process*. New York: Vintage, 2001, 351.

military power is translated into language that misrepresents the weak and the oppressed—as in 'official' histories or declarations—even so relatively innocuous a thing as language can have a tremendously wounding effect on the object of that description.[134]

Not only has Israeli history for decades denied the existence of Palestinians explicitly as well as implicitly, an act of historical cleansing, but also, as Said points out, the Declaration of Principles and the Israeli-Palestinian Peace Accords deliberately eschew any mention of Palestinian history and dispossession, thereby consolidating an imbalance in power between the two parties to the detriment of the Palestinians. To shift attention away from the history of the Palestinians and at the same time negate their right to bring it to bear on the negotiations, something the incompetent Arafat, knowingly or not, did agree to by signing, is to discount the experiences of millions of Palestinian refugees driven out of their homes and living in mostly appalling conditions throughout the Middle East. It is also to discount the historical, financial, political losses of all Palestinians. In fact, Said suggests that one of the reasons the negotiations between the Israelis and Arafat were secret is specifically so that the great imbalance in the possession and production of knowledge between the two sides, an imbalance that obviously prejudices the integrity of the negotiations, will not be made public.

The possession and production of knowledge here pertains to maps, records, numbers, all of which help to put forward a specific version of reality that has now entered the records of official history. A specific and important example is the Israeli attempt to recreate Palestinians as only the inhabitants of the West Bank and Gaza. Another is the refusal to acknowledge that the establishment of the State of Israel was also the *nakba*, the catastrophic dispossession of the Palestinians, the majority of whom

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[134] ibid, 44/5.

live outside the occupied territories. It is in the face of such negation of a history and reality of dispossession that a collective memory must be mobilized by Palestinians; "[c]ollective memory is a people's heritage and also its energy: it does not merely sit there inertly, but it must be activated as part of a people's identity and sense of its prerogative".[135] Memory as Said is advocating it here is not private, or not fundamentally so; memory in the case of Palestinians is a national project, a fight for justice. One consciously remembers in order to survive as Palestinian and doing so in order to confront the violence of historical language that E.P. Thompson identifies. And because the denial of Palestinian identity, or its insidious diminution, is aided and abetted by settlement policies and expropriation of lands that effectively recreate Palestinian lands and towns as Jewish and Israeli ones, memory as a national project must counter Israeli facts on the ground with other facts, for to "survive as a nation it is not enough to repeat slogans, or only to insist that Palestinian identity will survive".[136]

In facing those most colonialist strategies of Israel, settlements and land expropriation, Said insists on the importance of a Palestinian census and Palestinian archives. A Palestinian census, Said argues, has been opposed by Israel, the United States, as well as Arab States that act as hosts to Palestinian refugees. "Above all, opposition to the census stemmed from the realization that were Palestinians to be counted all together, despite dispersion and dispossession, they would constitute a nation, and not just a collection of people".[137] In the face of such opposition, a Palestinian census

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[135] ibid, 158.

[136] Said, *Peace and its Discontents*, 31.

[137] ibid, 17.

"would compromise an act of historical and political self-realization outside the limitations imposed on them by the absence of self-sovereignty"(*Peace*, 18).[138] Likewise, the need for "accurate numbers" and a "think tank" on issues of land, geography, water, borders, etc., speaks to the need to establish memory as fact, a fact that will then not only counter the erasure of national memories but also create the facts for a new nation.

Memory-as-resistance signifies the relative weakness of those who cannot write History, the ones without the power to control the means of making sense. Said's recourse to a politics of memory must be seen within the broader context of Palestinian weakness. And it is the weak who cannot afford to forget. However, precisely out of that weakness a challenge to the discourse of the nation-state is articulated, a challenge moreover that is not based on the negation of that inherent weakness. What Said is in fact advocating is an archeology of the "colonial trauma", the colonial episode which simultaneously produced the Israeli citizen and the stateless Palestinian. Memory here is very much mobilized in the service of an anti-colonial politics and it retains Dirlik's insistence on the importance of contesting official narratives in the context of exploitative colonial projects. As David Lloyd argues in his essay "Colonial Trauma/Postcolonial Recovery," "the chronically violent condition of colonization is one in which it is not only the control of the technological apparatus of coercion but the control of the means of making sense that perpetually reproduces the symptoms of traumatization".[139] The Palestinian nakba could be read this way, as a colonialist episode of trauma. Lloyd's point is that trauma, and specifically colonialism as trauma, necessitates "not just an

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[138] ibid, 18.

[139] Lloyd, David. "Colonial Trauma/Postcolonial Recovery." In *Interventions* 2.2 (2000): 214/215.

amnesic response but actually denies the very existence of a subject that could remember".[140] Control of the "means of making sense" is the colonizer's attempt to destroy any coherence to alternative narratives that would pose a challenge to the colonialist project. Memory, whether of the pre-colonialist past or of the episode of colonization, creates such narratives, which is why Lloyd argues that colonial trauma demands amnesia. And collective memory is doubly threatening, for not only does it bring forth an alternative interpretation of history (and in the case of Palestinians an alternative interpretation of place), but it also brings forth a collective that colonialism, especially in the case of a settler state such as Israel, must continuously negate.

If there are no Palestinians, then there are no Palestinians who could remember, and if there is no memory of Palestinians (and no Palestinian memory), then Palestinians do not exist—that is the logic of colonial negation. However, even if memory-as-resistance was able to deliver the Palestinians from the logic of colonial negation, Palestinians must still contend with the logic of the nation-state and of international law, and it is not clear how an insistence on either the past presence of Palestinians (archives) or their present absenting (facts on grounds) could be politically generative in terms of Palestinian statelessness. How does one institutionalize Palestinian memories? And how does one accord that institutionalization the political legitimacy it needs to prove effective? And how does Palestinian memory become something more than an alternative story? And how does memory-as-resistance-as-nation-building escape the exclusionary logic of nationalist discourses generally?

However, what if memory as a form of national resistance is simultaneously

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[140] ibid, 214.

understood to be *memory as a form of resistance to the nation, or the idea of the nation?*

Why should the Palestinians remember, or even, *should* the Palestinians remember? One

of the dilemmas that Palestinian statelessness has forced on countries that surround

Israel/Palestine and the countries that act as hosts to Palestinian refugees is whether or

not to grant citizenship to Palestinians within their borders. The naturalization of

Palestinians is often opposed not only by nationalists within those countries but also by

Palestinians themselves who see their *passportless* status as a lack that legitimates their

claim to a homeland of their own, a Palestinian state. One could argue, and Israel has

often argued, that naturalization of Palestinians in countries such as Jordan, Syria, Egypt,

and Lebanon to name a few, would contribute greatly to ending the Middle East crisis.

But, whatever one may think of the nationalist claims of Palestinians, does a Palestinian

memory contain a value beyond nation-building? Could memory-as-resistance break

through the impasse created by the discourse of the nation-state and formulate a political

alternative? In other words, why remember?

In opposing Palestinian memory to History and Israeli historiography specifically,

Said combines a concern for Palestinian survival in the face of colonial negation with the

broader concern of the resistant intellectual that he outlined in *Representations of the*

Intellectual. Said's model intellectual is Walter Benjamin's historian:

> The great German critic and philosopher Walter Benjamin once wrote that
> 'whoever emerged victorious participates to this day in the triumphal
> procession in which the present rulers step over those who are lying
> prostrate.' It is the duty of the historian therefore to provide a reminder of
> that fact, in which the losers who are lying prostrate and forgotten are
> connected to the victors who strut and parade over their bodies before the
> world.[141]

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[141] Said, *Peace and its Discontents*, 76.

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This statement made by Said in *Peace and its Discontents* speaks to his argument in *Representations of the Intellectual* that it is the intellectual's duty to make the connections that are denied, to unearth the forgotten, to cite alternatives. Said takes Benjamin's call to mean in the Palestinian case the identification of a victimizer and a victim unified by the fact of 1948, a fact that must be brought to bear on both people's realities and narratives. This *historical intimacy* of the two peoples is born of trauma, the trauma of the colonialist episode, the Palestinian *nakba*.

To insist on 1948 as a colonial trauma is not only to remember Palestinian dispossession, thus resisting the victimizer's power to forget or negate the victim; 1948 as colonial trauma forces upon the victim the memory of the victimizer. Here is where I think a politics of memory differs from the democratization of memory or the proliferation of other memories. In the post-Oslo period a culture of peace is advocated by the US, Israel, and those countries and bodies that support a peaceful resolution to the Israeli-Palestinian conflict. The culture of peace rejects the logic of colonial negation because it posits that indeed some kind of Palestinian formation is possible and necessary. The culture of peace articulates a logic of two peoples who must somehow behave themselves and learn to coexist peacefully within the bounds of the Accords. As Said writes, "the U.S. and Israeli line has it that all parties to the Palestinian-Zionist struggle must not dwell on the past since, as some liberal Israelis have put it, it has been a struggle between right and right".[142] This culture of peace is then able to accommodate alternative memories, but only up to a point of course as the analysis of the Peace Accords shows, since Palestinians are not allowed to remember that which is not said to

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[142] ibid, 132.

have existed, i.e. a Palestine or Palestinian presence beyond the spatial and temporal borders of the Occupied Territories and Gaza Strip.[143] What an insistence on 1948, the datable fact of Palestinian dispossession, does is to force Palestinian memory upon official History of which the culture of peace is part. For Said this is a passionate rejection of the thesis of "right vs. right", not only substantively but structurally as well: what Said ends up rejecting is not simply the simultaneous rightness of two causes, but also, and more importantly, the very structure of the simultaneous, the binary, of the two narratives which can exist side by side.

To oppose the Israeli attempt to establish facts on the ground is to restore to memory the fact of Palestinian refugees whose chances at return are compromised if not obliterated by the continuous establishment of settlements. To do so, however, is also to link the legitimacy of their right of return to what Said sees as the illegitimate Jewish Right of Return that supplies such settlements with new residents on a regular basis. Said "fail[s] to see how we are supposed to equate the 'right' of a largely European people to come to Palestine, pretend that it was empty of inhabitants, with the right of the native people of Palestine to resist these actions and try to remain on their land".[144] In this context, to insist on remembering the colonial trauma, rather than on some pre-colonial past imagined as nostalgia or tradition or pre-colonial innocence, is to subordinate an ideological divide (which in this case is also a spatial divide) to dateable historical facts. It is to unearth the Arab history of every kibbutz, every settlement, to trace the Palestinian refugees to the places of their possession and subsequent dispossession.

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[143] Dirlik differentiates between *multiculturalism*, which he argues assimilates the pre-colonial past into the status quo, and *multihistoricism* which challenges the existing totality of the status quo.

[144] Said, *Peace and its Discontents*, 132.

Hence the importance of archives. It is above all to argue that "the past has to be uncovered if it has been hidden; responsibility for wrongdoing has to be assigned and volunteered, denied or affirmed; proposals for atonement, reparation or restitution have to be brought forward, analyzed, debated if in the past silence has prevailed".[145] It is to challenge the thesis of "right vs. right" (which is by no means the dominant Israeli thesis but perhaps the most "accommodating" of Palestinians) on the grounds of the dateable historical fact of Palestinian dispossession.

What emerges out of such a challenge is a refusal of the binarism associated with two national claims in the insistence on the intertwining of the Israeli and Palestinian narratives, an intertwining that does not allow one to cohere without the other. For in order to subordinate the ideological and spatial divides that separate Israelis and Palestinians to the historical fact, Palestinians must insert themselves into the memory of Israel proper. They must argue that 1948, the year of Israeli Independence, is also the year of Palestinian *nakba*. In other words, it is not to say that there are two versions of 1948 as history, but to connect the victors and losers through the fact of 1948. One cannot celebrate Israeli Independence therefore without acknowledging its catastrophic effect on Palestinians. It is ultimately by inserting the fact of dispossession into the narrative of Independence that one renders the ideological/spatial divide changeable. To insert oneself into the memory of the other is also to acknowledge that other memory even as one challenges its negation of one's own history. In the case of Palestinians and Israelis it is to insist on the historical intimacy of both memories.

This historical intimacy of the two peoples, specifically as it keeps in memory the

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[145] Said, *End of Peace*, 12.

designation of victim and victimizer, must be mobilized in the struggle for mutual recognition and coexistence—this is where Said's insistence on the need to universalize the crisis facing one's people comes in. For Said, to universalize a crisis, "to give greater human scope to what a particular race or nation suffered, to associate that experience with the sufferings of others" does not mean a loss of specificity:

> rather it guards against the possibility that a lesson learned about oppression in one place will be forgotten or violated in another place or time. And just because you represent the sufferings that your people lived through also, you are not relieved of the duty of revealing that your own people now may be visiting related crimes on *their* victims.[146]

This is obviously an attempt to argue that acknowledging the gravity of Jewish suffering must not preclude the acknowledgment of Palestinian suffering even if the two are not equivalent; the fact that Palestinians have the misfortune of being the victims of victims does not deny them the right to claim their suffering. But the imperative to associate one's suffering with that of others also speaks to the Palestinians' need to acknowledge Jewish suffering and also to acknowledge Israel as in part the state of Holocaust survivors.[147] The historical intimacy of both peoples' memories of suffering and dispossession is an integral part of Said's writings. Over and over in these essays, directed mostly at an Arab/Palestinian audience, Said makes the point that to make a claim for Palestinian suffering must go hand in hand with the acknowledgment of Jewish suffering, and that one makes such an acknowledgment unconditionally: "I attach no conditions to such comprehension and compassion: one feels them for their own sake,

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[146] Said, *Representations of the Intellectual*, 44.

[147] Said, *End of Peace*, 184.

and not for political advantage".[148] This, then, is the necessary result of universalizing the suffering of one's people, of making sure that the historical complexity of memory retains its importance even as one argues for the need to designate right and wrong, victim and victimizer. In fact, it is in the very condemnation of victimization that solidarity is established.

To argue that the establishment of the State of Israel led to the illegitimate dispossession of Palestinians, and to argue as well that Jews came to Palestine not only as conquerors but also as victims, moves Said to call for the establishment of a multicultural, binational state in Palestine. He thereby accepts Israel at the same time as he rejects its racist and exclusionary character that differentiates between Jews and non-Jews. Said's point is that a two-state solution is untenable precisely because of the historical intimacy of two peoples, two national memories, two records of suffering one of which directly created the other. The memory of dispossession therefore engenders a new vision of Palestine as a state of two peoples; this vision acknowledges the national aspirations of both Palestinians and Israelis while at the same time denouncing the Israeli narrative's attempt negate its other by insisting on an exclusionary Jewish state. The ideological divide that says Jews have as much right to the whole of Palestine is *not* maintained. What is maintained is "acknowledgment, not destruction; equality, not subordination".[149] Therefore, as Said calls on Arabs and Palestinians to address independent Israeli constituencies, to "confront the Israeli conscience with the serious

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[148] ibid, 209.

[149] ibid, 198.

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human and political claims of the Palestinians"[150], he also stresses that *one must cross the line but not enforce it.*[151]

The historical intimacy of memories confirms that "the notion that pure cultures, pure identities, and pure nations really exist is supremely arrogant and without merit at all. No culture, no nation, no people is free of an enormous variety of mixes".[152] In tracing the threads of Palestinian memory back to the traumatic episode of dispossession, Said necessarily calls for a one-state solution that clearly negates the possibility of a Palestinian nation-state or a Zionist nation-state. In resisting erasure, memory-as-resistance forces on Palestinians their undeniable connection to a victimizer that they cannot erase. To conceive of Palestinians specifically as a dispossessed people, and to resist their erasure by recourse to the memory of their possession, is a political act that contains within it a challenge to the very nationalism that animates it. Thus, Said could be read to argue, on behalf of Palestinians, that *"if we remember we are/become a nation unto itself"*; this is the logic of Said's insistence on memory-as-resistance. Simultaneously, however, I think Said could also be read to argue that *"if we remember we are never a nation unto itself"*—this is the dissonance I spoke of above, a dissonance that marks memory as well as those who remember.

In the case of Israelis and Palestinians the intimacy generated by the colonial trauma whereby one people's "independence" is simultaneously another people's "nakba" is a binding fact that must never be negated. And it is an intimacy that has the

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[150] ibid, 123.

[151] ibid, 283.

[152] ibid, 264.

potential on the one hand to deconstruct the narrative of the exclusive nation-state and on the other to repeat the historical trauma. The statelessness of Palestinians renders the mechanisms aimed at their containment and those aimed at their materialization imprecise. The historical intimacy with all its violence must be confronted and not denied. Whether it is able to sustain a one-state solution is unclear but it is clear that a peace process that negates this intimacy and its violent and material manifestations cannot succeed. Thus, perceived as a demographic threat, Palestinians come to fulfill specifically that role as they explode among Israeli bodies.[153] And Israel is currently building a wall to check that threatening materiality, to check the perforation of the Israeli landscape by Palestinian bodies. The building of the Wall is in accord with the logic of the Oslo Accords: both combine the material (and visible) excision of Palestinians with an expansionist deterritorializing logic, aimed at blocking the threat of Palestinian filtration of the Israeli space, a filtration which is simultaneously understood to be a deformation of the political and imaginary space of the Israeli nation-state.

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[153] According to Hanafi, "[b]io-politics renders possible the spacio-cide and spacio-cide creates de-territorized bodies, e.g. Palestinians without place in this territory or refugees literally without land. Spacio-cide leaves body without space. This body then becomes a subject again by exploding him/herself against an enemy that is also classified biologically and ethnically (the concept of Jews as a biological category emerges strongly in the discursive level guiding different modes of action, especially since the beginning of the second Intifada)." Hanafi, 9/10.

Chapter Three: Border Management

The Wall currently under construction in the border zone separating Israel from the Occupied Territories is easily—and not mistakenly—read as a physical manifestation of the logic separating Israelis and Palestinians: not only are the two groups distinct, they are also separate and *separable*. Beyond the legal questions its construction raises, the Wall highlights the function of the border as a physical barrier and not simply a political one. As such, regardless of the legality or illegality of the Wall's geographic marking of territory, its premise of two separate entities retains the logic of a two-state solution. The Wall, in its current form, has developed the added function of visual barrier, reconstructing the other side as a non-space, raising the question of the relationship between visual "cleansing" or visual effacement and effacement of Palestinian claims on the Israeli nation-state. Ostensibly the Wall will prevent Palestinians from infiltrating Israeli space; the Wall will also prevent Israelis from seeing the Palestinians whose bodies they fear so much. As argued in the previous chapter and specifically in the context of the Demographic Problem, it is the existence of the Palestinian body in the land stretching from the Jordan River to the Mediterranean that articulates a threatening claim upon the Israeli nation-state.[154]

The Wall is also a fascinating eccentricity of Israeli political practice. The Wall makes the border visible, stresses the border, gives it a vertical dimension, physical life. And yet the Israel-Palestine border has yet to be decided, in fact Israel has consistently

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[154] In May 2006, the Israeli Supreme Court upheld the constitutionality of the Nationality and Entry into Israel Law, a law which bans marriages between Palestinians in the Occupied Territories and Israeli citizens. The law also bans Palestinians of the Occupied Territories from residing with their Israeli spouses and children in Israel. The law thus effectively does not allow for a family life unifying Palestinians from within and outside Israeli space.

refused to decide upon the border, a fact which renders this physical manifestation of the border in some ways beside the point.[155] The Wall also separates Israelis and Palestinians, cutting one group off from another, drawing a line not in the sand but in concrete. And yet the Wall does not signal an end to the occupation, and the Israelis who now are blocking off and blocking out Palestinians will continue to manage the existence of Palestinians on a daily basis. The management of that outside continues to be the backbone of Israeli security, the very security that the Wall effacing Palestinians is supposed to symbolize. Across the map of Israel/Palestine, it would appear that the geographical border, conceived specifically as a physical barrier, a barrier of separation, does not match the politics of occupation, management, and violent—usually deadly— confrontation.[156] Thus, while the logic behind the Wall establishes that the Israelis and Palestinians are separate entities and separable, spatially and politically, Israeli *space*— which cannot accommodate Palestinians—cannot limit itself by the very borders which it constructs. The result is the construction of a border, physical and political, that casts Palestinians outside of a properly Israeli space where no Palestinian bodies can exist, and yet Israeli space continues to include the non-space of Palestinians as long as Israel retains control of Palestinian territory and of virtually all access points to such territory, refuses to name its borders, and continues building settlements. What is at stake in such

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[155] Derek Gregory in *The Colonial Present* quotes the Israeli Minister of Defence saying that "this is not a border between political entities or sovereign territories", and Gregory argues that "it becomes crystal clear that the only sovereign power to be recognized is the state of Israel. What lies beyond the line is not the (future) semi-state of Palestine—confined to just 42 percent of the West Bank—but what Agamben would call the (present) space of the exception." Derek Gregory. *The Colonial Present*. Oxford: Balckwell, 2004, 125.

[156] Airella Azoulay and Adi Ophir characterize this state of affairs as "suspended violence". They write that "military forces are deployed everywhere, as in a state of war, but there is no war; for war itself is being suspended. [The soldiers'] violence is kept confined to their guns, clubs or tanks, it is insinuated at the checkpoint gate or by the anonymous voice declaring a curfew.... The suspended violence is effective without bursting out because it forbids, deters and delays, complicates simple actions, undermines preferences, undercuts daily schedules drives people crazy and sometimes even kills." Azoulay and Ophir, "The Ruling Apparatus of Control in the Occupied Territories." Bar Illan University/Tel Aviv University, The Van Leer Jerusalem Institute.

an incongruity and what are its implications—that is what underlies the investigations in this chapter.

Chapter One laid out Giorgio Agamben's argument that the production of a purely physical being is simultaneously the destruction of political subjectivity, and that inherent in that process is the threat of physical elimination. Chapter Two nuanced Agamben's position by arguing that in the case of Palestinians it is their materiality as non-citizens which is threatening to the logic of the nation-state, a materiality which cannot be accommodated within Israel's borders. The arguments in both chapters have been anchored by the growing conviction that the spaceless are politically formless and thus politically invisible; the spaceless, deterritorialized body could be traversed, its traversal is unrecognized, a non-act. In this chapter I will trace the relationship between spacelessness and depoliticization in the Israeli-Palestinian conflict by focusing on the ambiguous status of Palestinian difference within the contours of Israeli space. Specifically, I see the fortification of borders—exemplified by the Wall and reproduced at border sites physical and discursive—as an exclusionary and often violent management of Palestinians operating along with policies and discourses that aim at containment rather than exclusion: the Wall is also here exemplary as it effaces Palestinians yet does not challenge Israeli occupation of space beyond the Wall. What emerges is an exclusion that is not really an exclusion and an inclusion that is not really an inclusion. And it is space and the anxiety surrounding it that contextualizes this physical and discursive exclusionary inclusion and inclusionary exclusion of Palestinians.

In *Notes on Politics* Agamben writes that "our time is nothing other than the methodical and implacable attempt to fill the split that divides the people by radically

eliminating the people of the excluded." The split is the one Agamben spoke of in relation to the term "people", a term that signifies the body politic as well as the masses, the poor, the excluded. In *Notes on Politics*, however, Agamben takes this split beyond the borders of the nation-state arguing that developmental discourses within globalization aim also to eliminate this split by effectively eliminating the global masses and the global poor. This chapter in part interrogates a similar problematic whereby attempts to include the excluded or exclude the undesirables lay bare the anxiety that structures the borders, spatial and political, of the Israeli state. In what follows I will track the links between spaceleness and depoliticization through a discursive analysis of a range of Israeli texts that aim to challenge the more openly exclusionary rhetoric of the Israeli state. These texts, covering different genres and different ideological platforms, argue in different ways against violent, dehumanizing practices that render Palestinians and their experiences invisible. It is precisely by looking at such texts and not at discourses or practices that deny or dehumanize Palestinians that the limits to inclusion in the Israeli-Palestinian conflict as they relate to Palestinians can be gleaned.

The discourses at work in such writing raise a number of important questions, especially in the context of constructing commonalities across the borders that divide the bounded nation-state—whose space is closed off to largely space-less undesirables—and the threatening materiality represented by those undesirables. Through an exploration of Israeli calls to humanize Palestinians, to dialogue with them, to lift the occupation, the contours of a larger dilemma regarding the politics of inclusion and coexistence, and the relationship between spatial and political inclusion, are raised. How are border sites recognized, negotiated, denied, in the attempts to speak to and for Palestinians? What

form does the relationship between the spatial and the political take in those attempts and what are its implications? What form of political experience is possible for Palestinians in those attempts and in the context of the specific spatial-political configuration offered in the writings studied below?

Borders.

In a chapter called "Architectures of Enmity", Derek Gregory revitalizes Edward Said's notion of imaginative geographies to discuss how "constructions ... fold distance into difference through a series of spatializations."[157] He elaborates a convincing explication of Said's term, focusing on the way in which what he calls the colonial present produces new categories of "us" and "them". Central to his argument is the trope of rendering the other space a non-space, "the site of an absence". Gregory's study of the colonial present, in a book titled thus, is preoccupied with how geographies of otherness are constructed, arguing that "distance—like difference—is not an absolute, fixed and given, but is set in motion and made meaningful through cultural practices". Analyzing spatialization as a cultural practice, and discourse as a mapping device, Gregory sees "us" and "them" as "split geographies" heralding the "violent return of the colonial past" in the context of the War on Terror.[158] Gregory's analysis of current geopolitical conflicts from Afghanistan to Palestine and Iraq, and his use of Said's imaginative geographies, provide a theoretical framework that encompasses how difference, specifically colonial difference, is produced as a distant spatial imaginary; actual geographical distance

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[157] Gregory. *The Colonial Present*. Oxford: Blackwell, 2004, 18.

[158] *Colonial Present*, 11.

contracts and expands to make sense of a differential cultural imaginary.[159] In this

context, the "border" marks the site where difference is negotiated and as such the border

is not reducible to a geographical one, although as I understand Gregory's use of the

term, the notion of a *spatial* difference remains central to it. Thus, he argues that

"[b]orders are not only lines on maps but spacings dispersed across multiple sites—

embassies, airports, detention centers—that radically contort conventional mappings of

territory."[160]

Therefore, the "border" blurs the political and spatial, where border gestures

toward a difference that must be denied, barred, or managed through techniques of

surveillance and control. In the case of Israelis and Palestinians border sites are multiple,

arbitrary, and violent. They are constructed every time an eviction takes place or a

checkpoint is erected or a settlement planned. Borders tend to establish difference along

often mutually agreed to "conventional mappings of territory," to use Gregory's words.

Border sites as he theorizes them are ones where difference is negotiated, enforced,

asserted, redefined. And one could argue that for Israelis and Palestinians, the border sites

whose construction, evolution and dismantling is exclusively the prerogative of the Israeli

Defence Force, are also methods of construction, evolution and dismantling of the

relationship between Palestinians and space itself. Gregory writes that

> [t]he occupied territories have been turned into twilight zones, caught in a
> frenzied cartography of mobile frontiers rather than fixed boundaries.
> These enforce a violent fragmentation and recombination of time and
> space which is nothing less than a concerted attempt to disturb and
> derange the normal rhythms of everyday Palestinian life.[161]

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[159] A number of travel brochures, especially in North America, often list Israel as a European, rather than Asian, travel destination, attesting to the value of cultural mapping over and above geographical mapping.

[160] *Colonial Present*, 255.

[161] *Colonial Present*, 126.

This attempt to disturb and derange the normal rhythms of everyday Palestinian life functions to a large extent through the disturbance and derangement of Palestinians' relation to the space of Israel/Palestine, and critiques of Zionism as a colonial enterprise have often noted the ways in which Israel renames and recreates Palestinian space in an attempt to make it unrecognizable to Palestinians. And there is more at stake here. To a large extent, and as argued in chapter Two, the contortion and fragmentation of time and space work against the political materialization of Palestinians, destroying the possibility of a Palestinian nation-state.

However, Gregory's use of border sites and imaginative geographies raises the question of Palestinian difference in relation to Israeli space and the capacity of that space to accommodate Palestinian difference. The notion of border sites expands the conceptual limits of the border to allow for a multiplicity of confrontations between an imagined Israeli Jewish presence separate (and separable) from Palestinians and those same Palestinians. A border site exists every time the spatial and political come up against each other in delineating Palestinian difference, and *distance*, from Israelis. If "distance is never an absolute, fixed and frozen," and if "within the colonial present, like the colonial past, the power to transform distance—like the power to represent others as other—is typically arrogated by metropolitan cultures," it remains to be explored how difference and distance are mapped against each other in the attempts to negotiate, overcome or traverse border sites between Israelis and Palestinians. Such attempts have flourished in Israel in the last decade or so, spurred on by a desire to recognize Palestinians and their rights in the hope of constructing relations of peace between the two groups. My analysis of Israeli writing sympathetic to Palestinians and the specific

argument I make in this chapter are not meant to belittle or disregard such writing. I deeply respect attempts made to identify with, to acknowledge the suffering of, to confront and recognize one's enemies and/or one's victims. The Israeli writers I study all seem genuinely interested in a peaceful resolution to the Israeli-Palestinian conflict, all appear angry and remorseful at the extent of damage done by Israeli policy and practice. Moreover, even though I am less interested in the motives of those writers and more focused on the discourses at work in their writing, I do acknowledge that their writing is a courageous political intervention: it introduces into Israeli, Palestinian, and international consciousness an alternative narrative of relations between the two peoples. Thus, my critique of their writing is also an attempt on my part to understand and recognize the limitations of such writing, not out of a desire to prove its shortcomings, but in the hope of understanding the relation between those limitations and the linkage I am making between spatial mappings of difference and political ones.

In *Sleeping on a Wire: Conversations with Palestinians in Israel*, Israeli novelist David Grossman sets out to understand the dilemma of the Arab citizens of Israel,[162] those who remained, or were allowed to stay, in 1948. Working from the premise that the "Jews do not know enough about" them, Grossman travels to Palestinian villages and interviews hundreds of people, and his travels and interviews only confirm his initial premise that a lack of knowledge, and a mutual need to know, characterize his relationship with those people. "I already knew," he writes,

> after about a month of visits and conversations, that I would almost always
> get an unexpected response. That the status of the Arab who lives in Israel

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[162] The use of the name Arab and not Palestinian is itself politically loaded and marks difference in ethnic terms denying the national presence of Palestinians in Israel. It has been a long-standing Zionist argument that Palestinians are merely Arabs who belong to the larger arab nation and do not constitute a political or national community of their own.

is so tangled and twisted that I had to stop trying to anticipate, and only listen, to open myself to the complexity, to try to make room for it. Make room for them within us. How does one do that? It is precisely the thing that we, the majority, forbid them to do with such deft determination.[163]

Grossman's book is an admirable attempt to humanize a large segment of the population—Palestinians make up 20% of Israel's citizenry—who are historically and routinely marginalized, ignored, even "absented". As Grossman himself writes, "if in 1948 the Palestinians in Israel were 'those that are not but actually are,' they have over the years turned into 'those who are but actually are not'".[164] Grossman's book presents a diverse picture of those Palestinians, from conservatives to moderates to assimilationists; men, women, and children; religious and secular; the friendly and the aggressive. His is an attempt to introduce an entire people, definitely no simple feat, and one that is necessarily interventionist.

Not surprisingly, Grossman is not always successful in his attempts to give voice to his subjects and at times his tone is not only paternalistic and patronizing, but his approach verges on a form of psychological profiling that one would think has become, or should become, extinct. Thus, he reflects for example on the indignities suffered by Palestinians at the hands of Israelis and his reflections lead him to meditate "on the extent to which offence is an emotion that—more than any other, perhaps—returns us to childhood.... So permanent indignity is liable to keep a person—or a group—in a kind of petrified childishness." Starting from the premise that this childishness characterizes peoples in situations of indignity, and not specifically Palestinians (offence is an emotion that returns "us" to childhood), Grossman moves to a "recognition" that such childishness

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[163] Grossman, David. *Sleeping on a Wire: Conversations with Palestinians in Israel.* Trans. Haim Waltzman. New York: Picador, 1993, 2003, 20.

[164] *Sleeping on a Wire*, 295.

characterizes the Palestinians that he has met, and ends his reflections by arguing that "they were childish in the negative sense of the word, unable to take responsibility for their personal destiny, obediently adapting themselves to definitions dictated to them from outside, passively accepting grownup obsessions". Here Grossman's approach descends a slippery slope with extremely dangerous consequences. His reading is essentially a sympathetic reading of the helplessness and frustration of his subjects; he argues for example that Palestinians in the occupied territories were also childish until the *Intifada* delivered them into "their chronological age" and linked them up with "adulthood's sources of strength", a kind of "coming of age".[165] Grossman clearly views the Palestinians' attempt at self-determination favourably. Yet his language is frighteningly reminiscent of a most colonial paternalism that at its core affirms the absenting of its subjects from the political as well as historical sphere that is the proper playground of the colonialists alone: the children are outside not only the public sphere of political action, but outside historical time entirely.

Grossman's dilemma is not simply, or not only, that of the settler who must give voice to the native he is sympathetic to and his entanglement in a colonial rhetoric that has now become familiar. Rather, there is something specific to the way in which spatial mapping of the nation comes up against a demographic mapping that confounds its conceptual borders. Consider the title of Grossman's book: *Conversations with Palestinians in Israel*. It is not conversations with Israeli Palestinians, with the Palestinian citizens of Israel, or even with Israeli Arabs. The anxiety surrounding the material presence of something alien to the nation in the nation's territory is conjured up in the rather unusual placing of Palestinians in the title as a group *in* a particular place

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[165] *Sleeping on a Wire*, 281/282.

and not *of* a particular place. In fact, the title could have avoided the conjuring of Israel as a space altogether by including it as a national designation, as in "Israeli Arabs". It is the "in Israel" which emphasizes the term as a spatial designation with a non-organic relationship to Palestinians as inhabitants. This sense of disjunction between space and people is carried through in Grossman's fundamental address to the Palestinians, an address characterized by him as an *invite*, another term that also emphasizes the sense of disjunction between the space of Israel and the Palestinians who figure in this instance as guests, perhaps historical ones. Thus, in the statement quoted above, Grossman begins by trying to "make room for them within us", and he ends his book by trying to "internalize" the Arabs: "To bring you to the place set aside for you with us, the Jews in Israel, the place imposed on all of us forty-four years ago... This, in my eyes, is the reason for this book: it is an invitation, in Hebrew, to enter and begin".[166]

The invitation to enter and begin is of course a Jewish initiative—"in Hebrew"— and entry is coupled with beginning, marking the way in which spatial and temporal borders are in this instance each over-determined by the other, recalling the colonialist rhetoric that places the native not only outside political space but also outside historical time. Here is an invitation to bring that which is already present into the space of the nation-state and into its history: they will now not only enter, but also *begin*, hailed now as members of the polity. Grossman's intent is to argue that Israel must confront and acknowledge what is already there, the "absent presence" in Israel, its Palestinian citizens. Grossman's language, however, affirms not only the alien nature of what is already there, but also, and more importantly, his insistence on the tight overlap of the spatial and temporal borders of the state, as well as the tight conceptual borders of the

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[166] *Sleeping on a Wire*, 325/326.

state as a Jewish one. Rather than allowing his confrontation with this absent presence to rupture the firm continuous hold of the nation-state as a spatial and temporal unit, Grossman attempts to clear a space, generously perhaps, within, for that which is already there. The doubleness of this gesture, inviting what is already in, and hailing an entire people to begin, is on the one hand a generous insistence on the humanity of Palestinians, a courageous recognition of Palestinians in the context of Israeli denial of them. On the other hand, however, the doubleness of this gesture betrays Grossman's anxious insistence on the impermeability of borders, the very borders within which Palestinians figure as an absent presence. Ultimately, Grossman's attempt is one of containment: how to acknowledge Palestinians in ways which will not challenge or threaten the borders— temporal, spatial, and conceptual—of the state.

Thus, the doubleness of the gesture, the invite, works as a means of enclosure. In making this argument I am not invested in proving that Grossman's seemingly generous attempt to acknowledge Palestinians is in fact a sinister strategy aimed at their containment. And in the context of the critique I am making my recognition of the relative merits of his approach may appear at best patronizing. That may well be. But I am interested in understanding the ways in which well-intentioned attempts to address the unacknowledged use a language that insistently conjures up the firmness of borders and thus captures that which it addresses in the very statist discourse that initially rendered them unrecognizable. And considering what is at stake in the differentiation between Palestinians and Israelis I do find the implications of the above dangerous. Grossman, for example, writes often of the differences in the living standards of Palestinians within Israel and those outside. He writes with pride, in defence, noting the more favourable

situation of those inside Israel. In one of his interviews, his Palestinian subject explains that he would not wish to live in a Palestinian state with Palestinians of the occupied territories, and Grossman records the following exchange:

> "It will be a new country in which there will certainly be civil war. And there won't be work. And there will be a government of young people, violent and unbending; even their children have changed, they haven't gone to school for four years, everyone is outside the structure; and I still don't know how they will treat us, because we were in Israel. I've already gotten used to living here."
> "That's a compliment to Israel," I said.
> "That's true," he said.
> "You wouldn't have said things like that forty-three years ago, or even twenty years ago," I said.
> "Life has a power of its own," he said.[167]

In this exchange the non-ironic "compliment to Israel" conceives of the border not as a dialectical power relation that links Israel proper to the occupied territories it controls, but as a line of separation that clearly marks Israel and those within its borders as superior to what is outside. The differentiation between inside and outside is not articulated as an asymmetrical power relation between an occupier and occupied; the differentiation is read only *descriptively*. That the plight of the Palestinians in the occupied territories, their lack of education, their lack of adherence to a structure, their violence might in some way be linked to their status as occupied people, if not directly caused by such occupation, is not mentioned. That Israel's own peace and prosperity might be linked to its occupation of Palestinian land and its exploitation of resources and cheap labour, is also not mentioned. The differentiation is instead explained almost metaphysically—"Life has a power of its own"—as if the "forty-three years, or even twenty years", are simply a matter of time and not of historical developments. Thus Israel remains ensconced in its

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[167] *Sleeping on a Wire*, 66.

borders even when, as an occupying power, its borders link it inextricably with those it occupies.

It is this border of indifference, the border as a mechanism of enclosure marking off Israel from the people it occupies, that is challenged materially by Palestinian violence. In *The Other Israel: Voices of Refusal and Dissent*, Yigal Shochat argues that "[i]f there are no terrorist attacks, we don't even remember the Palestinians exist".[168] Likewise, Adi Ophir writes that the

> Palestinians increased the violence in order to remind the Israelis of the occupation, and the Israelis who had despaired of an agreement and wanted to repress the occupation quickly learned to ignore the intensity of the violence employed by the Israeli government to suppress the Palestinian resistance.[169]

Thus, what is partly at stake in a conceptualization of the border as a mechanism of enclosure separating Israelis and Palestinians or as a relation of power linking inside and outside within the framework of occupation, is the *dialectical nature* of the construction Israeli/Palestinian, or conversely, its negation. Suicide bombers take the negation of the dialectical construction to its extreme: if the Palestinians do not exist, then the Palestinians will commit suicide. Here is another double gesture, and in attempting to negate those who negate them, their act of murder insists on that (colonial) intimacy as bodies of occupier and occupied explode amidst each other.

The border conceived by Grossman as a mechanism of enclosure and separation is repeated countless times around the Israeli settlements of the Occupied Territories; the enclosed and exclusive nation-state becomes the prototype of the settlements, freakishly

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[168] Roane Carey and Jonathan Shainin, eds. *The Other Israel: Voices of Refusal and Dissent*. New York: The New Press, 2002, p. 130.

[169] *Other Israel*, 59.

spawning reproductions and multiplying. In this context settlements may be less an extension of the territorial reach of the state and more an insistent reproduction of its space, especially considering the improbability of geographical continuity between Israel proper and the settlements that spread all over the Palestinian territories. In *A Civilian Occupation: The Politics of Israeli Architecture*, editors and architects Rafi Segal and Eyal Weizman analyze the practice of settlement building as a kind of political ideology with its own slogan: "Settlement throughout the Land of Israel is for security and by right".[170] Their study is an insightful and provocative account of the way the landscape of the West Bank is used not only to extend Israel's territorial reach and powers of control, but also as a means of crushing and negating the Palestinian presence: "The civilian occupation relies on the presence of civilian architecture to demonstrate a Jewish presence across the landscape".[171] For Segal and Weizman, the settlements transform urban planning, architecture, layout of homes, visual design, into mechanisms of domination, surveillance, and negation: "[a]ccording to the regional plans of politicians, suburban homes, industrial zones, infrastructure and roads are designed and built with the self-proclaimed aim of bisecting, disturbing and squeezing out Palestinian communities".[172]

While the effect of settlement-building on a future Palestinian state is obvious, what is interesting about Segal and Weizman's study and those of other contributors to the book, is the way in which settlements try to recreate the exclusivity of the nation-state in specifically spatial form:

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[170] Rafi Segal and Eyal Weizman, eds. *A Civilian Occupation: The Politics of Israeli Architecture*. London: Verso, 2003, 84.

[171] *Civilian Occupation*, 22.

[172] *Civilian Occupation*, 24.

> The community settlements create cul-de-sac envelopes closed off from their surroundings, utopian in their concentric organization, promoting a mythic communal coherence in a shared formal identity. It is the extremely enclosed and internally oriented layout of homes which promotes the inner social vision and facilitates the close managing of daily life.[173]

Segal and Weizmann's thesis links territorial domination to the creation of exclusive communities and then posits that such linkage, while characteristic of the Israeli politics of occupation, might in fact be representative of a more global trend that aims to fortify the privileged against the encroachment of undesirables:

> Settlements are thus nothing but the final gesture in the urbanization of enclaves. Perfecting the politics of separation, seclusion and visual control, they can be seen as the end condition of contemporary urban and architectural formations such as enclaved suburban neighbourhoods and gated communities. The ascent up the West Bank mountains coincided with the flight of the middle classes and their 'forting' up behind protective walls—both formations setting themselves against the poverty and violence of the Third Worlds they have produced.[174]

Segal and Weizman point out crucially that Israeli settlers have a monopoly on visual space in the West Bank because they continuously choose the high hilltops overlooking existing Palestinian villages. The effect is a vertical organization of spatial relations that reproduces the hierarchical organization of economic and political relations. For example, while the positioning of settlements works to effectively destroy any kind of geographical coherence for Palestinians, and provides the Israeli state with prime surveillance real estate, the internal layout of settlements ensures that settlers see only other settlers and other settlements. Across the hilltops of the West Bank, an alternate, higher mapping of the landscape is constructed, taking negation of Palestinians to a higher level. Thus, latitude "literally functions to establish parallel geographies of 'First' and 'Third' Worlds

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[173] *Civilian Occupation*, 84.

[174] *Civilian Occupation*, 25/6.

that inhabit two distinct planar strata in the startling proximity that only the vertical dimension of the mountains could provide".[175]

Segal and Weizman's analysis illustrates the extreme manifestation of the border as a mechanism of separation and enclosure. Grossman's conception of the border solidifies it the moment he must confront the Palestinians of Israel—thus his insistence on the spatiality of Israel within which a space will be cleared for those who are already there; and his conception of the border renders it impenetrable the moment it brings him into confrontation with Palestinians outside Israel—thus his inability to connect conditions within and outside Israel in the framework of the occupation. What Segal and Weizman's analysis does is to emphasize the insidious implications of borders conceived as mechanisms of separation and enclosure, implications which achieve striking clarity in the spatial structuring of settlements. Settlements, perhaps more than other spatial structures, make concrete the ideology and practice of negation which is already present in the exclusionary rhetoric of the secure and bounded nation-state, and in Israel's case the bounded *settler* nation-state.

Just Borders

In an essay called "Competing Universalities", Judith Butler argues that attempts to include the absented or excluded challenge the constitution of the polity.[176] She lays out the problematic in terms of engagement in activist politics whereby to advocate on behalf of excluded groups often does not "subject to critical scrutiny" that constitution of

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[175] *Civilian Occupation*, 93.

[176] Butler, Judith. "Competing Universalities." In Judith Butler, Ernesto Laclau and Slavoj Zizek. *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*. London and New York: Verso, 2000, 159.

the polity. Butler places hegemonic notions of universality at the heart of this problematic, arguing that calls for inclusion or enfranchisement often leave the question of the universal as represented in the polity unchallenged. In this context she asks the following questions:

> Can one embrace a notion of 'rights' even as the discourse tends to localize and obscure the broader workings of power, even as it often involves accepting certain premises of humanism that a critical perspective would question? Can one accept the very postulate of 'universality', so central to the rhetoric of democratic claims to enfranchisement? The demand for 'inclusion' when the very constitution of the polity ought to be brought into question?

As Chapter One argued, Butler, unlike Agamben, retains an interest in and investment in rights and their reformulation as a way to resist the dehumanizing work of Empire as for example in the context of the War on Terror and the increasing disengagement from mechanisms of democratic politics. And she rightly points out that notions of universality or a common humanity are often mobilized in calls for inclusion and the extension of rights to marginalized groups. Butler herself links the withholding of rights from such groups to dehumanizing rhetoric, and her theoretical and political move is not removed from the Agambenian and Arendtian strand in this thesis whereby the rightless are non-recognizable as humans.

In "Competing Universalities", however, Butler lays out the issues in more practical terms, problematizing calls for inclusion in ways that help me reflect on Israeli calls to include Palestinians. It is thus illuminating to consider Butler's specific example of calls for the inclusion of gays and lesbians in US mainstream institutions here in detail. Butler argues that the lesbian and gay movement "has faced a number of questions regarding its own assimilation to existing norms in recent years," and "mainstream

liberal" calls for the extension of equal treatment to lesbian and gay citizens (in relation to the military, marriage, etc.) are accompanied by other calls within the movement to critique institutions such as marriage and the military and "question the value of being included there."[177] Butler's own position is that

> the enstatement of these questionable rights and obligations for some lesbians and gays establishes norms of legitimation that work to remarginalize others and foreclose possibilities for sexual freedom which have also been long-standing goals of the movement. The naturalization of the military-marriage goal for gay politics also marginalizes those for whom one or the other of these institutions is anathema.

In this context, calls for the extension of certain rights to gays and lesbians entails their inclusion in an already existing social structure organized by institutions such as marriage or the military: inclusion appears here literally as the making space within for that which is outside, and that is precisely what some in the lesbian and gay community may reject. In other words, the call for inclusion does not challenge the organization of society, in fact the inclusion of those previously rejected or marginalized does not force a reassessment of that social structure's organization, although one would have to argue that it does to a certain extent necessitate a reformulation of the workings of institutions.

Crucially, however, Butler is arguing that inclusion conceived as the extension of rights particularly conceived and universally imagined (as in the institution of marriage) closes off alternative possibilities for the organization of sexual relations, in fact may foreclose the impossibility of institutional organization of sexual relations. "First of all," she argues, "it seems clear that the political aim is to mobilize against an identification of marriage or military rights with the universalizing promise of the gay movement, the sign that lesbians and gays are becoming human according to universally accepted

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[177] Butler, 160.

postulates."[178] This is not only specific to the lesbian and gay movement and its mobilizing potential: "The open-endedness that is essential to democratization implies that the universal cannot be finally identified with any particular content, and that this incommensurability... is crucial to the futural possibilities of democratic contestation." What emerges thus in Butler's argument is an understanding of inclusion that does not end up reifying the political, cultural, social—in the case of Palestinians one would also have to say territorial—space of the polity; inclusion of that which is different or outside must unhinge the borders of that space in a continuous effort to redefine what is universal. And following up on Butler's arguments regarding humanization in Chapter One, I would also say add "in a continuous effort to redefine what is human", and I see human and universal functioning similarly in the two arguments made by Butler: in both arguments it is the content of the universal and the content of the human that is taken for granted in the particular organization of a society and that often extends the hegemony of that organization when calls for inclusion are not based in a challenge to that organization. For, as Butler writes,

> in those cases where the 'universal' loses its empty status and comes to represent an ethnically restrictive conception of community and citizenship (Israel), or becomes equated with certain organizations of kinship (the nuclear, heterosexual family), or with certain racial identifications, then it is not just in the name of the excluded particulars that politicization occurs, but in the name of a different kind of universality.

Therefore, keeping the "universal"—not only as a theoretical concept but as conceived in the institutions of the nation and the state—in contestation ensures that no particular content assumes a hegemonic, fortified legitimacy capable of denying all that is different.

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[178] Butler, 161.

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In the Israeli scenario, the attempt to include Palestinians takes place against a backdrop of fortification and border enforcement, and it encompasses attempts to include the Palestinians of 1948 in Israeli political and cultural life as well as attempts to "include" the Palestinians in the Occupied Territories and Gaza in dialogue, in a discourse of coexistence. And for Israelis and Palestinians, political inclusion cannot be separated from a physical, spatial reorganization of space—this is partly why the Israeli-Palestinian conflict makes visible the more subtle complexities of inclusion. Inclusion assumes a spatial configuration of political space, whereby those who are cast outside are brought in, or those who are on the margins approach the center, and Grossman's language analyzed above is here exemplary. In the case of Palestinians, both those living within the Green Line and those outside are not only spatially differentiated, but their physical as well as political proximity is destructive of the center. Moreover, if casting outside the political sphere is simultaneously the production of bare life, in the Israeli/Palestinian case that bare life is equally threatening. And as Chapter Two showed, the separation of Israelis and Palestinians into two distinct peoples occupying two political formations whose structure is asymmetrical, exploitative, and generally unworkable for Palestinians, flies in the face of the historical intimacy connecting occupier and occupied. How then to "include" Palestinians if Israeli space is to remain as such? If the basis of political inclusion will retain the sanctity of spatial differentiation separating Israelis and Palestinians, is political coexistence and a politics of coexistence possible? What form does an Israeli discourse of inclusion take when the space of the nation-state must be guarded against the "threatening" perforation of Palestinian bodies?

The anxiety surrounding space is not simply about territory—it is an anxiety above all marking the contested status of the nation-state itself. The spatiality of the nation-state speaks here not only to the capacity of the nation-state to absorb its citizens, not only to geographical and economic self-sufficiency. Spatiality, and the exclusivity and exclusion it configures in this case, is at the center of questions of legitimacy, of justness. Is the nation-state legitimate? Is the establishment of the state of Israel just? This really is the question that not only permeates Grossman's text and haunts his attempts to identify with the Palestinians, but also that drives settlement building in the occupied West Bank and Gaza.[179] In some ways this is also the question that animates mapping of the distance between Israelis and Palestinians, that determines the extent to which Palestinians could be included and the necessary gap of separation protecting the notion of the Israeli citizen. This in part is what Segal and Weizman gesture to in their attempt to link the spatial and visual exclusion of Palestinians to methods of fortification characteristic, in their point of view, of globalization. In this context it is not merely a colonial separatism that manages the distance between Israelis and Palestinians, even though the colonizing aspect of the Zionist enterprise continues to bear weight in that management. And the specificity of Israel as a colonial settler state is entrenched on a regular basis and in countless policy and court decisions as well as land confiscations and military initiatives. Rather, the question of justice bears upon the role of spatiality in the

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[179] The continuous establishment of settlements is condemned internationally and is extremely costly and problematic for Israel, and despite warnings that Israel is creating facts on the grounds and attempting to grab more land, there is a serious possibility that Israel will have to abandon most of these settlements at some point. The building of settlements however might be read not as an attempt to establish Israel's rights to land beyond its borders, but rather Israel's attempt to insist on the legitimacy of its borders: if Israel settles the West Bank and Gaza, even temporarily, then Israel has a right to the land on which Israel is established. The point is to appear to exercise an extraordinary right, a right of entitlement, that would then affirm the right of Israel to exist within its own borders. (Israeli) settlement building challenges the legitimacy of Israel's "borders" by making that border intermittently irrelevant: the border is always in motion and the border is always inadequate. This is one way in which Israel co-opts and redirects challenges not simply to its territorial hold on Israel/Palestine, but also and crucially to its right to this territorial hold on Israel/Palestine.

confrontation between Israelis and Palestinians, not simply in terms of land distribution among the two sides, but, and crucially, in terms of the limits to inclusion.

These questions address the issue of justice which supposedly animates a decade and a half of peace activism and initiatives. They also speak to a global dilemma that centers around that disjunction between the political and the spatial, in terms of the redistribution of political, economic, cultural, and even territorial rights. The fortification of borders is increasingly becoming a global trend with the metropolitan centers that push for the erasure of geographical borders in the face of the movement of capital and labour power simultaneously and increasingly strengthening the borders barring those seeking life in another place.[180]

My attempt to link understanding of spacelessness and political invisibility to discussions of justice in the context of globalization is partly the result of my interest in Israeli writing sympathetic to the plight of Palestinians. This writing is on one level interesting as an instance of identification with an otherness/a humanity across deeply contested borders; on another level, it is writing marked I believe by discourses specific to the same historical moment that necessitates an understanding of the merely human, mainly that of a globalized world order. On the one hand, globalization is employed by

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[180] The possibility of justice on a global scale gains its contemporary salience in part from the pressing globalization of capital and of mobility itself (the transgression of borders by corporations, commodities, and labour). But, more importantly for my purposes here, it is also partly necessitated by the insistent call of discourses that emphasize humanitarian intervention and a duty to address lack on a global scale (economic lack, lack of democracy, lack of justice—most often spoken of interchangeably) by a privileged few. Unlike the terrain of human rights, which makes of state sovereignty its cornerstone and of the citizen the litmus test of the human, the terrain of global justice charts a borderless world where, in the words of Seyla Benhabib, individuals and not states or peoples are the moral agents. (Benhaib, Seyla. *The Rights of Others: Aliens, Residents and Citizens*. Cambridge: Cambridge University Press, 2004. For Benhabib, interdependence between peoples is the norm and it is the bounded nation-state that is the modern anomaly.) Within this terrain attempts are made to determine the levels and forms of recognition possible or necessary, animated by a desire to recognize the humanity of all and to submit global interactions to criteria of justice that in turn affirm the irrelevance of borders.

certain writers discussed in this chapter as a system of gross inequality which also

organizes relations between Israelis and Palestinians: thus, Israeli settlements are seen to

illustrate a global trend towards fortification against undesirables. On the other hand,

globalization is seen by some, chiefly post-zionists, as a historical development that

devalues the role of the nation: according to Ephraim Nimni, editor of *The Challenge of*

Post-Zionism: Alternatives to Israeli Fundamentalist Politics, "the emergence of post-

Zionism results from the impact of globalisation on the parochial Israeli scene". Nimni

goes on to argue that

> [i]f globalising changes subvert the relationship between territory,
> community and membership, then a 'liberal' post-Zionist tendency
> emerges to give voice and expression to these momentous changes. The
> collectivist-voluntarist ethos of Israeli society is transformed by the values
> of post-modern capitalism into a more individualistically oriented,
> hedonist consumer society. According to this view, this process acts as an
> important catalyst for a peaceful resolution of the Israeli-Palestinian
> conflict.[181]

In the writings considered below, the need to offer recognition to Palestinians as

addressees of a discourse of coexistence most often translates itself into a call to

recognize the humanity of Palestinians, a call which entrenches the dehumanizing aspect

of the political topography that brings together Israelis and Palestinians in the first place

and which furnishes the necessary background to such a call. *Thus, the question of*

inclusion is articulated in a universalized language of humanitarian interest in the plight

of Palestinians, a language which redirects the question away from the very border sites

which rendered it necessary. The spatial anxiety discussed above is present here as an

anxiety about the justness of the statist project and the implications of that anxiety are

politically grave. Thinking through the pervious chapter's focus on the materiality of the

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[181] Nimni, Ephraim, ed. *The Challenge of Post-Zionism: Alternatives to Israeli Fundamentalist Politics*. New
York: Zed Books, 2003, 4.

Palestinian condition and the historical intimacy of the colonial relationship between Israelis and Palestinians, the interrogation of Israeli discourses below will carry over that argument along lines provided by Butler and her insistence on the challenge to the polity's constitution and organization. To that end, calls for inclusion must question not only the political organization of Israeli space but the historical and territorial as well, just as the previous chapter argued that Palestinian nationalism must come to terms with its incompleteness, its historical and material entanglement with Israelis if a just solution to the conflict is to be possible.

The fault lines in current debates about justice in the humanities tend to be drawn around, or through, the relation of the particular to the universal. On the one hand there are those who, like Jürgen Habermas, see a corollary relation between the particular and the universal in so far as they presume to advance a normative theory of justice that would have universal application, usually by recourse to universal categories such as reason and/or normative theoretical constructs such as "ideal speech situations" (again, Habermas). On the other hand are those who are opposed to a normative theory of justice and instead argue that justice can only be particular in its conception even if it is to be advanced as universal in practice—thus Richard Rorty argues that justice is really only a "larger loyalty" and a conception of justice cannot be supported by reference to universal categories such as a Kantian moral obligation, nor does it develop out of an independent rationality. Rather, for Rorty, what is irrational is simply that which does not share enough with "our" traditions of justice to the point where dialogue is impossible. At stake then is the relation between the particular and the universal: for Rorty, an emphasis on the embeddedness of practices in social and cultural norms ensures that theories of justice are

always particular and a concern for justice at a global level, though desirable, is in fact unnatural. For Habermas, on the other hand, recourse to a "human nature" in the context of a theory of justice is necessary; Habermas relies on the universal faculty of reason in developing his theory of communicative ethics and then turns towards developmental human psychology and speech patterns to underscore the universal reach of his theory of justice.

Habermas and Rorty are at two extremes when it comes to the relationship between the particular and the universal on the one hand and the implication of that relationship for a theory of justice on the other. What is problematic is the significance of the designation of insiders and outsiders. Globalization, it has been argued, makes it difficult to maintain a distinction between domestic and international when it comes to obligations that usually characterize our understanding of justice.[182] Communication technologies, economic interdependence, shifts in migration, etc. all ensure that a concern for others beyond one's borders is now more than ever inescapable. In *Justice, Nature and the Geography of Difference*, David Harvey argues that the language of "globalization" and "community" is itself misleading and diverts attention from the issues at stake in a theorization of justice.[183] Harvey's meditations on justice proceed from an attempt to reconcile what Raymond Williams calls "militant particularisms" with anti-capitalist politics that would cut across time and space in articulating a more just

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[182] Cf. Chris Brown. *Sovereignty, Rights, Justice: International Political Theory*. Malden, MA: Blackwell Publishers, 2002.

[183] Harvey, David. *Justice, Nature, and the Geography of Difference*. Oxford: Blackwell Publishers, 1996.

spatio-temporal mapping of the globe.[184] Considering that global capitalism works precisely through fragmentation and dissolution of solidarities even as it homogenizes, the relation between what is just at a local level and what is just at a global one cannot be assumed to be analogous. The task for theoreticians of justice who are concerned with its global reach is partly then to define the "cogredients"—Harvey's term—which might link struggles for justice at a local and global levels.

Harvey's argument is useful in two ways. One, it posits that "situatedness" or particularity is not to be understood in terms of a separate identity or absolute difference. Rather, situatedness is a "dialectical power relation" between oppressor and oppressed (or occupier and occupied), which leads Harvey to argue that identities forged under oppressive conditions cannot survive intact the transformation of such conditions. This means the local cannot be privileged as a site of resistance—the local could in fact be extremely oppressive and exclusionary and its contours of inclusion and exclusion are not stable but contingent. Two, the global and the local are understood to be spatio-temporal constructs that are defined within a given social formation or order.

Thinking through Habermas, Rorty and Harvey, it is in determining the relationship between and the value of a "given social formation" and a condition of universal humanity that a notion of justice is worked out. What Harvey emphasizes however, and what makes his argument especially useful, is that both the local and the global could be privileged to the point of excluding various particularities and to the point of excluding the spatio-temporality of the given social formation itself. It is here that this

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[184] Though Harvey's terminology is different from that employed by Rorty or Habermas, its concern is specifically with understanding the move between localized struggles for justice and a global resistance to the march of global capitalism: Harvey's point is that this move cannot be assumed to follow smoothly from a socialist politics and indeed socialist politics has yet to actively deal with its problematics.

discussion of justice comes to bear on my reading of Israeli calls for inclusion of Palestinians. As the discussion of Grossman showed, the specificity of the given social formation or order—that of a colonial settler enterprise—could only be ignored in order to entrench and fortify its topography. And it is primarily the spatial configuration of that enterprise that anchors this fortification. However, in what follows I want to explore what political implications an emphasis on a common humanity, humanity as a universal condition, permeating Israeli rhetoric of inclusion of and identification with Palestinians, has for a notion of justice in the Israeli-Palestinian conflict. I will argue that it is the same spatial anxiety that works against a reassessment of the given social formation or order that confronts Israelis and Palestinians with each other.

A significant number of dissenting Israeli writers and journalists have been involved in recent years in initiatives to tell the truth of Israeli repression of Palestinians in the hope of achieving a reconciliation between the two peoples. These writers present the truth in the form of testimony on behalf of the voiceless victims, the Palestinians. Such writing has emerged recently in Israel on various platforms, that of historians, ex-army servicemen, peace activists, as well as writers and journalists. What characterizes all these platforms is the awareness on the part of participants that they are in fact testifying in the face of general Israeli denial, or wilful ignorance, of the truth. As such, the truth they tell is presented always in the context of a desire for reconciliation and a mobilization against the unjust treatment of Palestinians. I choose two texts as fairly representative in intention and method. The first, *The Other Israel: Voices of Refusal and Dissent*, is a collection of essays and articles by academics, journalists, historians, activists, politicians, military personnel, and poets that focus on the plight of the

Palestinians in the occupied territories. The second, again, is David Grossman's *Sleeping on a Wire: Conversations with Palestinians in Israel.* According to Tom Segev, in the Foreword to *The Other Israel,* the contributors "believe in the power of words, at least to a certain extent, because most of us write mainly for ourselves"; they work under "the need to at least leave behind a testimony that we were against it".[185] Each writer in the collection believes that Israel must acknowledge its repressive and destructive policy and practice when it comes to Palestinians if there is to be peace. Grossman, for example, argues that to ignore the plight of the Palestinians within Israel is to ensure that no reconciliation is possible between Arab and Jewish citizens of the State of Israel, and that Israeli Jews ignore this plight at their peril.

Such writing is characterized by its concern for the plight of the Palestinians, most often characterizing their situation as a tragedy. The authors focus again and again on the human rights abuses, the humiliation, the psychological traumas, of a people under occupation on one side and entirely marginalized on another. The difference in setting, inside and outside the Green Line, reveals itself obviously in the difference in the gravity of the plight of Palestinians, and the nature of abuses inflicted upon them. However, I believe the two approaches, to the Palestinians inside and outside the Green Line, share in the recreation of the Palestinians as victims outside the sphere of politics. On the one hand the attempts made in both texts challenge dominant Israeli narratives that would either deny the existence of Palestinians or would apprehend them only as demonized enemies: the humanization or rehumanization of Palestinians here appears a necessary step to create conditions favourable to the discussion of their plight. On the other hand, I

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[185] Carey, Roane and Jonathan Shainin. *The Other Israel: Voices of Refusal and Dissent.* New York: The New Press, 2002, xiii

do believe that there are troubling consequences to the humanitarian impulses and the specifically humanitarian rhetoric that organize such writings. As will become clear, sympathizing with the Palestinians by linking their truth to the testimony of the writers, a testimony justified by its humanitarian concerns, is essentially also a mechanism that circumvents a linking of that truth to justice as Palestinians would understand it; the Palestinians are reproduced as victims who may not demand or intervene.[186]

In *The Other Israel*, a book pointedly subtitled "Voices of Refusal and Dissent", Tom Segev introduces the collection by inviting its readers to recognize that "its contributors are bolstered by a long tradition: Voices of dissent and Jewish humanism have accompanied the Zionist movement since its inception".[187] The word "humanism" shows up again in the articles that follow as the writers call for an identification with Palestinians on such humanist grounds, and more importantly, because refusing to do so is a betrayal of Israel's allegiance to the spirit of (Jewish) humanism. I cannot speak to what is meant by the spirit of Jewish humanism. However, in this text, the word is used to describe a particular way of identifying with Palestinians: humanism appears as the antidote to a Zionist denial of the existence of Palestinians and of their humanity. In other words, humanism becomes a shorthand for the inclusion of Palestinians in a community of humans. For example, Segev points to Ahad Ha'am, as one of the prominent voices of Jewish humanism, who in 1891 published an article entitled "Truth from the Land of Israel". The article condemns the behaviour of the Jewish pioneering settlers and their ill

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[186] Debates surrounding South Africa's Truth and Reconciliation Commission also shed light on this issue, stressing the links in that context between amnesty granted to perpetrators and the "benefit" to subjects of expressing their pain and anger, a pain and anger that does not however lead to the indictment of the perpetrator.

[187] *Other Israel*, viii.

and violent treatment of Arab farmers. Ahad Ha'am then goes on to argue the following:

> Overseas, we are accustomed to thinking of the Arabs as desert savages, as a donkey-like people that neither sees nor comprehends what is going on around it. But...if a time should come when the life of our people in the Land of Israel develops until it encroaches upon the natives to a smaller or greater extent, they will not easily yield their position....[188]

Segev's use of Ahad Ha'am and his article is performative of the very humanism he is arguing for, bringing the Palestinians into proximity. In this collection, therefore, humanism is channelled not only as a discourse of generosity towards Palestinians, but also as a discursive strategy that acknowledges their humanity, a humanity that is denied or rendered irrelevant by a Zionism unwilling to consider their claims. Segev opposes this humanism to nationalism, drawing on the distinction in Zionist history between those who, like Judas Magnes, argued for a binational state of Jews and Arabs in Palestine and against partition of the land, and those who, like David Ben-Gurion, believed in the "justness" of Zionism and were committed to an exclusively Jewish state. Interestingly, Segev then couples this strand of humanism to that of "justice" broadly defined to posit the term "humanistic justice". This humanistic justice is an elastic phenomenon: before the establishment of the state, humanistic justice argued against partition; after the establishment of the state, humanistic justice demands partition.[189] And now, it is the "human duty" of these writers to advance the agenda of this humanistic justice.[190]

It is fair to say that this elasticity marks the majority of talk about justice as it relates to the Palestinians in these texts. While there is an attempt to recognize the

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[188] *Other Israel*, ix.

[189] *Other Israel*, xi-xii.

[190] *Other Israel*, 136.

injustices meted out to the Palestinians in the establishment of the state, the elasticity of the concept of humanistic justice ensures that an interrogation of the "justness" of the statist project is avoidable, and indeed unnecessary. The lack of this interrogation is politically unforgivable if one were to address the Palestinians as political beings or potential political partners. Grossman, for example, writes about a number of villages within the Green Line whose inhabitants were asked by the Israeli army to leave their homes for a short term with the understanding they were to return. Indeed the villagers left in an orderly fashion, in military trucks, and would come periodically to inquire about the possibility of return. Eventually, the military blew up these villages, reducing the houses to rubble as the villagers watched from the outside. Grossman makes a compelling case for these villagers, for the pain they have suffered; indeed he speaks of the "evil of history". Yet, he is never willing to question the justness of the statist project which was possible only at the expense of hundreds of thousands of such villagers, the majority of whom fared much worse than the ones he describes.

For Grossman, recognizing the pain of such villagers, indeed the injustice of what happened to them, does not in any way contradict the justness of the establishment of the state. For, as he himself says countless times in this book, that was "then", and "then" is now over. In the transformative magic of this "then" I locate that same elasticity of "humanistic justice" advanced by Segev. The focus on Palestinians as suffering human beings, as human beings in pain, entails an *identification with* Palestinians which is simultaneously an *identification of* Palestinians as politically non-threatening subjects. The difference is between, on the one hand, the recognition of Palestinians as victims whose plight calls for understanding and even change in their situation, and on the other

hand, as a people whose claims for justice might force a reassessment of the legitimacy of the Zionist enterprise. An alternative conception of justice might point towards a one-state solution, the return of refugees, the prosecution of war criminals, a halt to the Jewish Law of Return, etc. But in *The Other Israel*, and in the words of Uri Avnery, the point is to "end the tragedy of the refugees without damage to Israel".[191] Over and over, the emphasis is on the human rights abuses facing the Palestinians, the demoralizing tactics of Israeli policy and practice, the plight of the refugees; and always the assurance that acknowledging the pain of Palestinians, even intervening to improve their situation, will not in any way pose a challenge to the status quo. Thus, Ami Ayalon says:

> We do not want the return of the refugees. But we can refuse only if Israel acknowledges unambiguously its role in the suffering of the Palestinians and its obligation to help solve the problem. Israel must accept the principle of the right of return and the PLO must commit itself to not question the Jewish identity of our state.[192]

This acknowledgment of the pain of being a refugee, and of the responsibility of Israel for Palestinian dispossession, is coupled with the decriminalization of this dispossession—the refugees will not return, the establishment of the state for one people by dispossessing another is just.

What then of the victims? How does one reconcile the injustices they suffered with their inability to claim that injustice actively, by claiming a right of return? The focus on the Palestinians as victims in pain renders them also politically ineffective. It is precisely their "innocence", as victims of Israeli nationalism, that renders them outside the sphere of politics where they might threaten that nationalism. Not their anger, not their vengefulness, but their pain is the focus, a paralysing pain that reproduces them as

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[191] *Other Israel*, 42.

[192] *Other Israel*, 200.

victims. Grossman writes of the simplicity of the Palestinian villagers unable to comprehend the complexity of the Zionist project in all its justness:

> 'Beyond their comprehension,' as Shakur said, was this cruel awakening into a morning that was not theirs, the morning of a nation that was at the pinnacle of its new ascent, which had given birth to itself out of cataclysm and had vigorously suckled all the future that was then to be had in the region. They slowly awaken to find themselves bound in the strong cords of ingenious laws, unintelligible to them, and arguments that could not be challenged—historical justice, ancestral right, security needs—yes, who could possibly doubt the right of adversity we had then, but 'then' (have I said this already?) is over.[193]

The awakening villagers—one assumes they were blissfully asleep—are unable to comprehend the "historical justice", "ancestral right", "security needs", "right of adversity", which necessitated their tragedy. The reading imposed by Grossman, whose insistence on the obviousness of the justice of his cause is almost paranoid, is one whereby the villagers' pain is equivalent to their innocence, to their simplicity, limited as they are to the contours of their village, blending into its very nature, and unaware of what is overtaking them. This, however, is not the only reading possible. One could in fact argue that the uprooting of the villagers is beyond their comprehension because it does not make sense, is not morally justifiable, is politically illegitimate, etc., etc. Grossman, however, can weave their incomprehension-as-simplicity into his narrative because it is a narrative not premised on a political challenge to the statist project. The particularity of the Zionist enterprise blends smoothly and unchallenged into the notion of "historical justice" just as the Palestinians can only be addressed as suffering humans lacking any particular political vision or experience. Within these attempts to understand Palestinians, to find commonality, to include them in a community of humans who suffer and feel pain, the more the Israeli statist project is left unchallenged the more the

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[193] *Sleeping on a Wire*, 217.

Palestinians approach a non-political, non-threatening humanity.

Unsettled Borders

The political clumsiness of articulating a just response to the plight of Palestinians on the part of the well-meaning Israeli writers discussed above points to a problematic much larger than the Israeli-Palestinian conflict. What conception of commonality, of humanity, is possible when investment in a particular spatial configuration of political space remains the basis for a state-centered political experience? The concept of a common humanity, often and convincingly critiqued and debunked by postmodernist, post-colonial academics and anti-colonial activists and groups, retains a mobilizing power that cannot be dismissed. In part that mobilizing power targets precisely those humanitarian impulses that are politically suspect and potentially disabling. At the same time, and as the brief discussion of Habermas and Rorty showed, it is often precisely in the relation between the local and the global, the particular and universal, that a conception of justice is negotiated and so the question of the universal, more specifically of humanity as a universal condition and experience that entails often ethical obligations, presents itself emphatically.

My emphasis on borders and their reproduction spatially as well as politically stems from the conviction that a just resolution to the Israeli Palestinian conflict must first tackle the spatial configuration of the political sphere. If the merely human are those whose space, physical and political, is gravely reduced (at times to nothing but their bodily space), then attempts to reify the space of the nation-state at the expense of its enemies or victims must be looked at with grave suspicion. The Israeli-Palestinian case illustrates the problem with a striking clarity due to the fact that Israel itself is a settler

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state spawning hundreds of settlements, thus multiplying, insisting on, the sites of exclusion. Contrary to discourses which would stress the demise of the nation-state and would herald the necessary porousness of borders in the new global village, borders are now more relevant and more severe than ever—the border reproduces itself continuously marking off the privileged (territorially, economically, politically) from the unprivileged. Attempts to see the border as merely a mechanism of separation are unjust not simply because that would fly in the face of interdependence, but because that would deny the way the border is constructive of a specific formulation of power relations that are in the case of Israelis and Palestinians highly asymmetrical and exploitative. What I have also tried to do in this chapter is to explore the ways in which depoliticization functions according to border constructs that preclude some from challenging the legitimacy of the nation-state.

The use of a common humanity as a trope of identification with Palestinians, though openly motivated by the conditions on the ground, the suffering of Palestinians, does in part shift focus away from the configuration of political and territorial space that creates the possibility for those conditions. That is a significant danger of the term's use. However, the crucial point here is the link between spacelessness and depoliticization that the chapter opened with. Spacelessness in the Israeli-Palestinian conflict does not only mean lack of space; it also means the loss of territorial links, and Chapter Two emphasized the extent to which the Peace Accords work to destroy those links with implications directly related to questions of justice as Palestinians would see it. This chapter has carried that argument further, arguing that border sites, the sites where the most violent confrontations with Palestinians are negotiated, are themselves reified in

such a way as to make it impossible for Palestinians to inhabit the political and territorial space of Israel. Above all, it is by distancing Palestinians from Israeli space that the Israeli statist project is safeguarded and that distancing is only possible if those same border sites are not seen to be dialectical constructs that bring together occupier and occupied and challenge the political and territorial configuration of space in Israel/Palestine.

I am not sure how one articulates an argument, a position, a theory of justice for others, not sure how *just* an argument of justice ever is. According to Jacqueline Rose, there is "no word which threatens so dramatically to empty itself of content at the very moment when it is declared. Whenever the word justice is spoken you always have to look again. Justice always makes us suspicious. Whoever speaks it, chances are someone else is being conned".[194] However, in the Israeli-Palestinian conflict, spatial configurations cannot be thought anterior to whatever articulation of justice is attempted. Which is why border sites must be investigated not as sites of separation but confrontation. It is then that a theory of justice could begin to be articulated not as a relation between the particular and the universal, but between the particulars in relation to whatever conception of the universal could accommodate both.

To work through this suggestion I want to consider the case of Israeli refuseniks who articulate one of the clearest and strongest Israeli indictments of the occupation in terms of justice. Refuseniks are Israeli soldiers who choose to serve prison sentences "rather than take part in what they regard as an unjust occupation in defence of illegal

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[194] Rose, Jacqueline. *States of Fantasy*, 78/9.

Jewish settlements."[195] In one of the most comprehensive collections of refusenik literature, *Refusenik! Israel's Soldiers of Conscience*, Peretz Peron introduces various genres of the literature, from manifestos to letters to the editor to pamphlets, etc., covering writings by individuals as well as refusenik collectives. The collection is introduced by Susan Sontag who places the refusenik political act precisely at that intersection of the particular and the universal, an articulation of a call for justice that transcends the time and space of Israel/Palestine. For Sontag "[t]hese soldiers, who are Jews, take seriously the principle put forward at the Nuremberg trials in 1946: namely, that a soldier is not obliged to obey unjust orders, orders which contravene the laws of war—indeed, one has an obligation to disobey them."[196] Applying such a principle is presented by Sontag as one of the identifying concerns of a modern community, for "what is in the interests of a modern community is justice." Moreover, she draws parallels between Israel's oppressive policy towards the Palestinians and the United States' global behaviour as a hyper-power and argues that even if a political act, such as that of refusal, will not alter conditions of injustice, the act itself remains meaningful precisely because it performs an act of resistance that is ultimately in the best interests of one's community: thus, the refuseniks "are defending the true interests of Israel. Those of us who are opposed to the plans of the present government of the United States for global hegemony are patriots speaking for the best interests of the United States."

To Sontag's credit, she does attempt to complicate the notion of right, resistance, and justice and argues at one point that

[a]ll our claims for the righteousness of resistance rest on the rightness of

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[195] Peretz Kidron, ed. *Refusenik! Israel's Soldiers of Conscience*. London: Zed Books, 2004.

[196] *Refusenik!*, xiv.

the claim that the resisters are acting in the name of justice. And the justice of the cause does not depend on, and is not enhanced by, the virtue of those who make the assertion. It depends first and last on the truth of a description of a state of affairs which is, truly, unjust and unnecessary.

However, in tracking the political and rhetorical moves of Sontag's address, two things are problematic. First, she conceives of space, the spatial configuration of Palestine/Israel, as anterior to the justice that is called for in the refuseniks' act and which she presents as a universal gesture. Thus, she argues that

> [t]he Israeli soldiers who are resisting service in the Occupied territories are not refusing a particular order. They are refusing to enter the space where illegitimate orders are bound to be given—that is where it is more than probable that they will be ordered to perform actions that continue the oppression and humiliation of Palestinian civilians.

Sontag conceives of unjust acts as ones that take place in a particular space, thus leaving the configuration of space out of the reflection on the justice of the act. She is thus able to urge for the "unconditional withdrawal from the Occupied Territories", giving priority to an immediate intervention that does not challenge the status quo of 1967. In fact, almost every soldier in the book repeats Sontag's gesture, as the Green Line becomes the ethical line that determines the justice or injustice of action. The editor presents those soldiers as "courageous conscripts who believe in their country, but not in its actions beyond its borders". As one soldier writes, "[T]his is my green line. I refuse to dehumanize the Arabs".[197] Another refusenik argues that "[a]ny thoughtful person sets out—or should set out—lines he will not cross",[198] and almost all uniformly insist that their refusal is selective: it is only outside the green line that they refuse to serve. Here the humanitarian refusal of the plight of Palestinians substitutes for resisting the injustice of the statist

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[197] *Refusenik!*, 32.

[198] *Refusenik!*, 83.

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project. This is perfectly represented in Sontag's characterization of the occupation as "a catastrophe—moral, human, and political—for both peoples." Here, the Catastrophe, the *Nakba*, as Palestinians are well-known to call the establishment of the State of Israel that resulted in their dispersal, morphs into the catastrophe-as-occupation, and for both peoples.

Sontag's conception of the spatiality of the status-quo as a given anterior to the justice that is to be done is not merely philosophical. Her conceptualization here is either intentional, which would articulate a strong political position that legitimates Israel's management of the space of Israel/Palestine, or her focus reflects a lack of attentiveness to spatiality which in the context of a colonial settler state, or even merely a settlement-prone state, is politically unforgivable. It is precisely in the particulars, and here specifically in the distribution and management of space, that a call for justice could be articulated even when that call must be advanced in universal terms. The humanitarian focus allows the universal to obliterate the particulars of the case, and the chance to contribute to a re-articulation of universal understandings of justice is thus lost. This is the second problematic aspect of Sontag's rhetoric. In her attempt to bring attention to the suffering of Palestinians, she mobilizes a discourse of physical vulnerability that brings "us" all together: "[w]e are flesh. We can be punctured by a bayonet, torn apart by a suicide bomber." And to legitimize the act of refusal, she mobilizes a patriotic discourse that equates the interests of the state with that of the community and with humanity broadly: "it is not in the best interests of Israel to be an oppressor" and "it is not in the best interests of the United States to be a hyper-power", and ultimately "what is in the

interests of a modern community is justice." [199]

My reading of Sontag is ungenerous and meant to be. The recognition of and
insistence on the humanity of Palestinians is necessary and a political gesture when made
in the face of mainstream denial of that humanity. Humanity, however, as Arendt,
Agamben, and Butler have made clear in different ways, does not exist apart from or
prior to politicization even when the reduction to nothing but the human is extremely
depoliticizing. In fact it is because humanity does not exist prior to politicization that the
capture of mere humanity can have devastating political consequences. Thus in their
attempts to humanize Palestinians, Israelis must contest the historical, political,
economic, demographic, spatial constitution of their state, the constitution capable of
denying a humanity they are now fighting to recognize. This is where Sontag's position is
politically unsatisfying: Israel is a colonial settler state and settling that state cannot be
separated from the dehumanization of Palestinians or the vulnerability to which they are
reduced.

Articulating a call for justice does not need to proceed from an identification with
the suffering of others and it does not need to end in an identification with the interests of
the state. The universal, whether in terms of a common vulnerability or the community-

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[199] A number of the soldiers speak of justice for Palestinians as an Israeli dilemma. Specifically, the
occupation is represented as a humanitarian tragedy for Palestinians and an ethical one for Israelis, a
construction which inadvertently creates another level of differentiation between Israelis and Palestinians in
terms of a fully developed subjectivity on the one hand and beings with physical needs and dilemmas on
the other. For example, the soldiers are said to "lose their humanity, their moral freedom, as they rob
another people of its physical freedom" (46), and a refusenik ad announces that "upon the Palestinians, the
occupation inflicts oppression, humiliation, poverty, suffocation and despair. On us, it incurs erosion of
moral values, collapse of the economy, misery for the needy" (97). And this appears to characterize other
Israeli writings on Palestinians. According to Jacqueline Rose, who analyzes the work of Israeli novelist
Amos Oz who "writes in judgment of his nation", Oz's characters are often tortured ones whose "pathos is
Israel's saving grace." But "justice on these terms", argues Rose, " is partial; it can never go across fully to
the other side. Solipsistic, non-exchangable, the very agony of justice means that it cannot fully be shared.
Only the Israelis have the privilege of justice as an object of mourning; as if for the Arabs justice is never
desire or dilemma, only pure need or demand." Rose, 80.

as-state, must not contain, or devour, the particular, and in this case particularly spatial mappings of difference. If the universal always already speaks to a particular conception of universality, then what must be unpacked is precisely that assumed linkage between the universal and whatever configuration of power relations gives it substance. In this chapter, it is through the exploration of border sites that I have questioned that linkage, thereby questioning also the possibility of articulating a call for justice where those border sites, those space sites, are not questioned.

Thus, the question that forces itself is not how one could best identify with Palestinians to ensure a just resolution. Rather, the question that must be asked is this: How does one unsettle the nation-state? Not in terms of more porous borders, but in terms of delinking politicization and the bounded nation-state? This question has practical as well as theoretical implications but it certainly is not an abstract one. In the context of gaining rights and access to the institution of marriage, Butler argues that such access leaves unchallenged the hegemonic power of the institution of marriage, foreclosing the possibility of dismantling that hegemonic power:

> the bid to gain access to certain kinds of rights and entitlements that are secured by marriage by petitioning for entrance into the institution does not consider the alternative: to ask for a delinking of precisely those rights and entitlements from the institution of marriage.

In the Israeli-Palestinian conflict it would be productively and politically unsettling to ask what alternatives are possible, what scenarios could be imagined, if attempts to identify with non-citizens were to proceed not from an affirmation of sovereignty but from a confrontation with lack of sovereignty that would not attempt to contain or negate it? And keeping the conclusions of the previous chapter in mind, perhaps the point is not to make Palestinians "whole" (in a state of their own or as full Israeli citizens), but for

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Israelis to embrace Palestinian lack by casting doubt on the legitimacy of the nation-state itself. This is not a purely philosophical thought-experiment. It has direct and felt implications in terms of redistribution of land, of resources, of political agency itself. As Butler argues,

> the task will not be to assimilate there, within the existing norms of dominance, but to shatter the confidence of dominance, to show how equivocal its claims to universality are, and, from that equivocation, track the break-up of its regime, an opening towards alternative versions of universality that are wrought from the work of translation [among competing kinds of universality] itself.[200]

In the case of Israel/Palestine, what would a politics of humility look like, of incompleteness, one that would acknowledge not the right of the citizen but the illegitimacy of the borders (as markers not only of separation but enclosure and inclusion, markers of territorial as well as political rights) that would bestow citizenship? Maybe this is what Agamben meant by the perforation and topographic deformation of states, a politics that would make of the stateless person, and not the citizen, its agent. A politics of statelssness that is not based in sovereignty, one that would shatter the dominance of the statist project and its particular and spatial configuration of political space. The gesture of identification would then not be that of an invite, for the invite affirms the sovereign status of the host and the spatiality of political experience. In the case of Israelis specifically, is the *unsettling* of Israel, possible?

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[200] "Competing Universalities", 179.

Chapter Four: Suffering Men of Empire[201]

The previous three chapters have sustained a tension between a critique of human rights, and international law generally, as exclusionary of a humanity not determined by citizenship, and a critique of a sovereign power not bound by the same international law and its emphasis on human rights. This tension is not only related to Agamben's own tense understanding of the law and rights as mechanisms that capture bare life as well as mechanisms whose dissolution produce the bare life of the camps. This tension is related to a dissatisfaction with the consistently selective reach of international law, a selective reach that produces dangerous spaces of ambiguity (ex. Palestinians) and in some cases even invisibility. It is also related to a contemporary fear of global developments in sovereign power which allow that power to function extra-legally (ex. War on Terror). Humanity, the human, is caught in this tension and it is not clear yet what form the relationship between the human and the legal, and the human and Empire, will take.

While this thesis does not foresee a resolution to this tension, this chapter will sketch out ways this tension is discursively and politically tackled. One is the attempt to bring the legal to bear more strongly on the way the human is conceived and addressed in international politics. Thus the emphasis will be on work that emphasizes the potential of reformulating international law and specifically the Human Rights regime as a form of resistance to an unbound, aggressive sovereignty. And the second is the attempt to supplement the regime of Human Rights with a humanitarian focus that also addresses the current inadequacies of international law. Finally, this chapter will consider some of the implications of this tension for humans caught in it, most specifically the Iraqis now

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[201] A version of this chapter is to be published by *Cultural Dynamics*, 2008.

captured powerfully and tragically in its grip. The reading I offer places those Iraqis

where Agamben's argument regarding the merely human and depoliticization stops short,

in the space linking depoliticization to global structures that manage the relationship

between the merely human and the human.

Normalcy and the Exception

In tracing recent changes to the global order, Walter C. Opello and Stephen J.

Rosow write that the dominant thesis in international politics since Westphalia has been

> that progressive, democratic possibilities can only be entertained under the
> watchful eye of the sovereign territorial state: that a prosperous, valuable
> human life is only possible if people first and foremost form communities
> based on allegiances to a secular nation-state. This way of organizing
> politico-military rule has not yet been rejected by most, but is being
> challenged by many.[202]

In assessing the challenges posed by globalization to this dominant thesis, Opello and

Rosow consider deterritorialization and economic and technological mobility as well as

the transnational work of non-governmental organizations. Ultimately, they do not see

the challenges to territorial sovereignty to be eroding sovereignty itself. Rather, they

argue that sovereign power is gradually being detached from mechanisms of democratic

politics characteristic of the sovereign nation-state. [203] Hence, it is not that the processes

of globalization are making sovereignty obsolete; rather, it is that these processes are

creating the context in which a sovereignty unbound by the territorial nation-state and the

concomitant duality of sovereign and citizen is being produced:

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[202] Walter C. Opello and Stephen J. Rosow. *Nation-State and Global Order: A Historical Introduction to Contemporary Politics*. London: Lynn Rienner, 2004, 278.

[203] See also discussion of Sovereign Lives in Chapter 1.

> The organs of the state have become less subject to popular input and accountability. Having lost a relatively secure relation to territory, the state has ceased to be able to secure itself as the representation of a distinct people. The globalist and neoliberal ideologies that inform the international organization and modes of cooperation states enter into in order to manage global capitalism have freed the bureaucratic and managerial powers of the state from their anchors in the idea of "the people" or the "body politic." Hence, state power has grown and politics has become increasingly trivial. [204]

This reading of recent challenges to state sovereignty, though using a different terminology and invested in different political questions than Agamben's, could be read alongside Agamben's analysis of the opening up of the space of exception. Agamben's analysis also points to the dissolution of mechanisms of democratic politics simultaneously with the production of a pure sovereignty no longer filtered through those mechanisms. Essentially, both readings mark an increase in sovereign power—and not the opposite—the more sovereign power is able to function unmediated. Thus, Opello and Rosow, who unlike Agamben are less interested in the theoretical implications of changes in the nature of sovereignty and more directly concerned with the workings of international politics, posit that

> [t]he emerging model of global managerial politics organized through international organizations does not eliminate the power of bureaucracies, as those neoliberals who fulminate against "big government" would like, but rather privatizes bureaucratic power. It does this internationally, by externalizing power to a network of international organizations; this *insulates power from any form of popular sovereignty* and generates the space for economic liberalism to emerge and appear as legitimate. People, regardless of nationality or political identity, are subject to the discipline imposed by the World Trade Organization, International Monetary Fund, World Bank, transnational corporations, and global financial markets, but they have only very restricted recourse through the political (i.e., electoral) process to hold these entities accountable (emphasis in original).[205]

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[204] Ibid., p. 264.

[205] Ibid., p. 272.

Here the insulation of power from any form of popular sovereignty, in essence the dissolution of mechanisms of democratic politics, at the national level, is not replaced by the institution of mechanisms of democratic politics at the global level. What is being normalized according to Opello and Rosow's narrative is precisely the dissolution of democratic politics (the law) that in the Agambenian narrative signalled the state of exception. This dissolution is marked by Hardt and Negri and other theorists of Empire as a direct relationship of power between a powerful decentered sovereign and humanity as raw material. Despite the significant differences among these theorists they project a similar anxiety regarding a political gap produced by the increase in sovereign power at a global level and the decrease in democratic politics at a national level. Significantly, they see this as causally related and not just coincident.

I emphasize this political gap for three reasons. First, the dissolution of the mechanisms of democratic politics at the national level and the separation of sovereignty from the state has implications for the functioning of international law as it now stands. If states are traditionally the legal subjects of international law but states are no longer constitutive of sovereign power, international law becomes less relevant and incapable of regulating sovereign power at a global level. In fact, the term "international" threatens to become irrelevant if nation-states are no longer the legal subjects of international law. Some argue that the law itself is becoming irrelevant, pointing specifically to the American government's disregard for the Geneva Convention in its dealings with the Taliban as well as to its anti-terrorism measures in its dealings with American citizens at home. For Judith Butler, "[i]t is as if the entire conflict takes place in an extra-legal sphere or, rather, that the extra legal domain in which these detentions and expected trials

take place produces an experience of the 'as if' that deals a blow to the common understanding of law"[206]. More pertinently, it is not clear yet who or what will substitute for nation-states as the legal subjects of international law.[207] The political gap identified at the national level can also be identified at the international level, and the emphasis on human security for example, to be discussed below, addresses precisely this anxiety surrounding the form of international politics possible in the context of globalization.

It is in this gap that military humanitarianism finds its voice. The gap symbolizes the failure of international norms to regulate interactions not among states but among various supranational actors and the vaguely defined groups and individuals and institutions they act on. Into this gap steps the "human rights hawks" of American foreign policy, contributing further to the weakening of international law. As Amy Bartholomew puts it in the context of the War on Iraq, "[e]spousing their humanitarian concern and their sense of cosmopolitan moral solidarity, the human rights hawks also gave sustenance to the project of undermining international and emerging cosmopolitan legality as a mode of regulation. They have thereby encouraged the development of empire's law...".[208] Jürgen Habermas goes even further, arguing that "the neo-conservatives make a revolutionary claim: if the regime of international law fails, then the hegemonic imposition of a global liberal order is justified, even by means that are

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[206] Judith Butler. *Precarious Life: The Powers of Mourning and Violence.* London: Verso, 2004, 85.

[207] For some theorists, such as Rosow and Opello, the role played traditionally by state sovereignty is now being gradually replaced at the international level by that of transnational bodies such as the International Monetary Fund. For others, such as Jayan Nayar, who advances a postcolonial critique of Empire, "[u]nder the rule of empire's law, in stark contrast to the world as envisaged by the UN conception of international law's order, the state increasingly serves not to mediate some collective 'national interest' at the international level, but to mediate the transnational interest at the national level" (See Jayan Nayar, "Taking Empire Seriously: Empire's Law, People's Law and the World Tribunal on Iraq" in *Empire's Law: The American Imperial Project and the 'War to Remake the World'*, 317.)

[208] Amy Bartholomew, ed. *Empire's Law: The American Imperial Project and the 'War to Remake the World'.* London : Pluto Press and Toronto: Between the Lines, 2006, 163.

hostile to international law".[209] It is the exceptional, the space created by the failure of the norm, that allows for such "revolutionary" claims; it is the suspension of the legal means of international politics.

Second, this political gap is in turn producing a resurgent enthusiasm for human rights and for normative legal means of ensuring a more cosmopolitan world order and genuinely multilateral political space globally. Habermas, for example, is unequivocal that "[t]here is no alternative to the ongoing development of international law into a cosmopolitan order that offers an equal and reciprocal hearing for the voices of all those affected".[210] Equally unequivocal, Butler returns to a regime of human rights in order to counter what she sees as the dehumanizing work of a sovereign power unbound by law. Butler goes back to Foucault to analyze what she sees a resurgence of state sovereignty unbound by the law and she argues that "[s]overeignty's aim is to continue to exercise and augment its power to exercise itself; in the present circumstance, however, it can only achieve this aim through managing populations outside the law". And she continues that

> [i]t may seem that the normative implication of my analysis is that I wish the state were bound to law in a way that does not treat the law merely as instrumental or dispensable. This is true, But I am not interested in the rule of law per se, however, but rather in the place of law in the articulation of an international conception of rights and obligations that limit and condition claims of state sovereignty.[211]

In the face of unilateral military extralegal acts of empire that create an exceptional space legitimated largely by a "revolutionary" humanitarianism, the problematic regime of Human Rights is seen to at least establish a normative space of multilateral

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[209] Ibid., 45.

[210] Ibid., 51.

[211] Butler, 98.

international politics. In Empire's Law[212], a collection focused on charting and critiquing the political implications of revolutionary humanitarianism, Amy Bartholomew understands the regime of human rights to establish an international legal space, a "law's empire" as opposed to "empire's law". She argues that

> [i]n respect to international relations, law's empire may be viewed as the post-World War II development of regimes of human rights and international law that foreshadowed (however imperfectly) a future order of democratic cosmopolitan law. Empire's law aims to derail that project and seeks to do so unilaterally, brutally and by the projection of military as well as economic, cultural, political and even legal power across the globe.[213]

Thus, while the critiques of human rights persist—that they are individualistic, that they are statist, that there are no clear means of enforcement, that they represent a Western liberal understanding of the human, that they cover over the legacy of colonialism—it is the potential of a "transnational legal order" within the regime of human rights that is seen as significant today.[214] Hence Bartholomew's admission that "*[b]oth* law's empire *and* empire's law have been and are to some great extent determined by American power" as well as her insistence that "[w]hile we must expect imperial power (and not just the Bush Doctrine) to seek to subvert and to colonize legal initiatives, resisting American Empire does not require a rejection of the dualistic project of legalization".[215]

Finally, this political gap questions the extent to which a global political constituency is possible. Taking Arendt's critique of human rights into consideration, as

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[212] Amy Bartholomew, who edits the collection, defines Empire's Law as follows: "an attempt unilaterally to constitute and impose an illegitimate and unaccountable form of rule by a global power that seeks to arrogate to itself the role of global sovereignty by declaring itself to be the exception" (163).

[213] Bartholomew, 164.

[214] Ibid., 172.

[215] Ibid., 180.

well as her insistence on the politicization of humanity through *legal* institutions independent of states, what must be thought is the possibility of legal frameworks capable of creating a political space for the human at a global level—not the human as an object of care or the human as citizen or the human worthy of human rights; rather, the human as a political subject with legal recourse to challenge not only state oppression but stateless vulnerability. In this context I think it is Judith Butler and not Giorgio Agamben that takes over from Arendt in sensing not only the dangers of a depoliticizing humanitarianism but also the urgency of a legal framework for political subjectivity. For Butler, the human vulnerability that is universal, the bare life Agamben argues we are all reducible too, could potentially give substance to a common humanity. She asks whether "there [is] a way in which the place of the body, and the way it in which it disposes us outside ourselves or sets up beside ourselves, opens up another kind of normative aspiration within the field of politics?".[216] "Mindfulness of this vulnerability", she argues, "can become the basis of claims for non-military political solutions, just as the denial of this vulnerability through a fantasy of mastery (an institutionalized fantasy of mastery) can fuel the instruments of war. We cannot, however, will away this vulnerability".[217] As discussed in Chapter One, Butler suggests that an important political task today is the formulation of cultural as well as legal discourses that would institutionalize this vulnerability as commonality as subjectivity.

Crucially, Butler does not suggest that this common vulnerability is enough to establish a community, nor to give substance to the human, since she correctly and ably shows that recognition of the human is always dependent on cultural as well as legal

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[216] Butler, 26.

[217] Ibid., 29.

discourses just as dehumanization and the production of extralegal spaces are dependent on such discourses. Thus she insists that "if vulnerability is one precondition for humanization, and humanization takes place differently through variable norms of recognition, then it follows that vulnerability is fundamentally dependent on existing norms of recognition if it is to be attributed to any human subject." Moreover, she argues that "[b]y insisting on a 'common' corporeal vulnerability, I may seem to be positing a new basis for humanism. That might be true, but I am prone to consider this differently. A vulnerability must be perceived and recognized in order to come into play in an ethical encounter, and there is no guarantee that this will happen".[218] Like Arendt, Butler stresses the means by which a political subjectivity comes into being. At the same time, she does see a common vulnerability as a basis for an inescapable relationality that could create a category of humanity as a political community, asking if "the insistence on the subject as a precondition of political agency [does] not erase the more fundamental modes of dependency that do bind us and out of which emerge our thinking and affiliation, the basis of our vulnerability, affiliation, and collective resistance". Therefore, it is through and not prior to politics, as space and act, that one becomes a subject and she makes a claim that is in many ways Arendtian: "Individuation is an accomplishment, not a presupposition, and certainly no guarantee".[219]

Butler's critique of America's post-911 politics and the implications of those politics specifically for understandings of the human and for the position of the human in

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[218] Ibid., 42-43.

[219] Ibid., 27. Another important Arendtian point in this debate: the differentiation between the political and the moral which is quite significant in narratives of Empire. As Bartholomew puts it, "continuing the long tradition of American exceptionalism, the human rights hawks have combined the potentially cosmopolitan aim of securing universal rights (or is it America's particular understanding of them?) with the agency of a self-appointed imperial power", and she sees in such attempts the "moralization of politics at the expense of the defence and further development of international and cosmopolitan legality" (171).

international law stress the necessity of establishing a global political space where human vulnerability furnishes a common ground whose recognition, through cultural as well as legal discourses, allows for the production of the human as a political subject. And it is the continuous work of a democratic politics to challenge understanding of the human every time that human vulnerability and the relationality it signifies is denied:

> To come up against what functions, for some, as a limit case of the human is a challenge to rethink the human. And the task to rethink the human is part of the democratic trajectory of an evolving human rights jurisprudence....One critical operation of any democratic culture is to contest these frames, to allow a set of dissonant and overlapping frames to come into view, to take up the challenges of cultural translation .[220]

What is exceptionally dangerous about the current operation of global politics as managed by the US is not only the escalation of military action at the expense of diplomatic initiatives. As many have pointed out, the disregard by the powerful for the lives and livelihoods of millions of the world's underprivileged is not uncommon. And it is not only that some, such as the prisoners of Guantánamo, have been dehumanized and placed outside the legal and political spaces opened up by international law. Rather, the specific problematic is that the contours of the space confronting an obscenely aggressive American power with individuals, humans, peoples in places far away and to much lesser degree even at home, are not clear and not regulated. The various writings taking up this problematic must stress therefore the reformulation not only of Human Rights, but of the concept of the human identified in those rights.

The Human of Human Rights

The last few years have made it harder to place the concept of human rights and

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[220] Ibid., 90.

its critiques on the political spectrum. The concept appears on the one hand threatened in as much as international law itself appears threatened; American disregard for the mechanisms of international law in the case of Iraq is simultaneous with the undercutting of the legitimacy and enforceability of the Geneva Convention, one of the most fundamental Human Rights documents. On the other hand, the discourse of human rights appears to mobilize the very imperial unilateralism that could be said to threaten international law; the invasion of Iraq was justified in part, and especially after the invasion, as necessary to protect and enforce the human rights of Iraqis suffering under a brutal dictator. What seems most significant in such an environment is not so much the content of human rights; rather, it is their normative reach and the political space they create or negate internationally that appears to confuse previously held assumptions about the role and efficacy of international law. As Anthony Woodiwiss argues in a recent treatise on Human Rights, in the context of recent developments in international politics

> an anti-globalisation movement that was formerly guided by the imperialism thesis has become a staunch defender of multilateral global governance, whilst some pro-globalisation states, notably the United States and Britain, appear to have given up their erstwhile multilateralism and acknowledged what they regard as the necessity of imperialism.[221]

That "necessity of imperialism" proceeds in large part from a conviction held by some that the advancement of human rights previously entrenched in international law is now, in the context of global terrorism and rogue states, curtailed by the mechanisms of international law (Michael Ignatieff is perhaps the most cited in this respect[222]).

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[221] Anthony Woodiwiss. *Human Rights*. London and New York: Routledge, 2005, 143.

[222] Ignatieff's arguments tend to acknowledge imperialist interventions in the name of human rights as a necessary evil or the lesser of two evils in the context of global terrorism as well as UN inadequacy. In his essay "The Burden" in the January 5, 2003 issue of the *New York Times Magazine*, he writes: "On the one

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In turn, and broadly speaking, this militant liberal imperialism seems to rally others in support of international law and cosmopolitan legalism. From Judith Butler in her reflections on human grievability post-9/11 to the multitude of plainly anti-empire books published in the last four years or so, there is an urgent insistence on the importance of the regime of Human Rights and its extension or reformulation as an antidote to the unilateralism of the United States and its military humanitarianism. In what follows I will consider the current problematic of human rights as an attempt to understand changes in the way the human is conceived and addressed in the context of a humanitarianism outlined by the unilateral militarism of empire as well as the multilateral obligations generated by globalization discourses. What is at stake in the current problematic is the extent to which changes in the concept of sovereignty, as they relate to the role of the state as well as the power to affect and determine the life or death status of humans globally, are in the process of reordering or destroying international law. In turn, what I hope to show is that a detrimental question today must be the extent to which a framework for the human as a legal subject, in which humanity can figure as a political subject, is possible.

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hand, the semiofficial ideology of the Western world—human rights—sustains the principle of self-determination, the right of each people to rule themselves free of outside interference. This was the ethical principle that inspired the decolonization of Asia and Africa after World War II. Now we are living through the collapse of many of these former colonial states. Into the resulting vacuum of chaos and massacre a new imperialism has reluctantly stepped....But, gradually, this reluctance has been replaced by an understanding of why order needs to be brought to these places." And in a June 23, 2003 McLean's article he berates Canadians for their continued faith in the UN: "Touring Canada, what bothered me most was that the only legitimacy that mattered to most of the audiences was the legal legitimacy of the UN....Well, the UN screwed up in Rwanda, it screwed up in Bosnia—it screws up most of the time." Regarding Iraq specifically, Ignatieff sees the UN as "a messy, wasteful, log-rolling organization." Thus, terrorism and the UN record legitimize regime change in the name of the human rights cherished by Ignatieff and trashed by Saddam Hussein, and also according to Ignatieff in "The Burden", they empower a no-nonsense action hero American president: "Now an expansionist rights violator held [Iraq] together with terror. The United Nations lay dozing like a dog before the fire, happy to ignore Saddam, until an American president seized it by the scruff of the neck and made it bark."

The various critiques of Human Rights considered in this thesis (Arendt, Butler, Agamben) have proceeded from the selective reach of the regime. This is partly in response to Human Rights aspiration to the norm rather than the exception: Human Rights gain their efficacy and depend for their enforcement on their normative applicability across time and space. Human Rights law, and despite all the well-known doubts and well-justified critiques of its enforceability, is stronger the closer it approaches the legal certainty and durability of the law in establishing the normal order. In fact, most critiques of human rights have proceeded from this, arguing that human rights fail in their selective applicability and enforcement. In other words, human rights must apply at all times and in all places for the regime to realize itself.[223]

It could be argued of course that human rights were never meant to apply in all places and at all times for reasons not only political but philosophical and conceptual as well. In retracing the development of human rights, Anthony Woodiwiss differentiates between legal positivists who understand rights as "extrinsic to individuals and groups in that they are created and attached to legal persons by external forces, notably by legislative acts or judicial decisions" and supporters of natural law theory according to which "certain rights exist independently of, or prior to, the law and are therefore

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[223] Despite the linguistic affinity between humanitarianism and human rights and the apparent causality that links them, human rights and humanitarianism could be said to establish and function according to different norms. Humanitarianism is often mobilized by the exceptional and necessitates exceptional acts. "Humanitarian Crisis" and "Humanitarian Catastrophe" are two similar codes used to establish the parameters of an emergency, an exceptional scenario, and the media is often an active participant in managing this scenario (and Hardt and Negri as well as Agamben would argue that NGOs are another active participant). As John Tirman has noted in the Boston Review, a "fabricated sense of urgency" and "manipulation of images", along with neglect of underlying causes often attends the presentation of humanitarian crises in media. This is not of course to argue that humanitarian crises are themselves a fabrication. Rather, and as the failure to recognize many such crises attests, the recognition of a humanitarian crisis necessitates the production of an immediate and exceptional scenario that not only fails to analyze the underlying causes of a crisis but may in fact posit the irrelevance of such causes. A humanitarian crisis concerns the effects of a certain scenario not the causes: it is thus that a natural disaster such as a hurricane generates a humanitarian crisis.

intrinsic to human beings, whether as individuals or members of groups, in the sense that humans are born with them".[224] In addition, the Universal Declaration of Human Rights "does not speak of the inherent equality of individual human beings but of their 'inherent dignity'" which leads Woodiwiss to conclude that

> the UDHR in no way reduces the inequality of power between the state and the citizen but instead, in the name of the limited form of reciprocity summarised by the term human dignity, imposes some limits on the possible consequences of such inequality by insisting that the state as well as the citizenry should be subject to the rule of law.[225]

Thus, it could be said not only that the UDHR does not establish as a matter of international law the *inherent right of every human being to Human Rights*, but that it also inscribes the power relations between state and citizen into the workings of human rights law, a critique that has been passionately and perspicaciously made by Arendt in relation to stateless peoples. And the critique applies to the Geneva Convention as the analysis of the Israeli-Palestinian Peace Accords has shown and as Butler has argued in terms of the inmates at Guantanamo; the major documents of the Human Rights allow interpretations that abandon many outside their protective reach .

Historically, the 1948 Declaration was that of the winners of WWII and it reflected the horror over the concentration camps and extermination chambers of the Nazis. As many have pointed out, the definition of genocide, one of the key components of the Declaration, did not include political groups and social classes at a time when Stalin's regime was clearly involved in the harassment and extermination of such entities. The power of definition thus determines the reach of protective rights and the limits of naming their subjects. Martin Shaw in *War and Genocide* argues specifically that the

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[224] Woodiwiss, xi.

[225] Ibid., 6.

Genocide Convention of 1948 was intended to apply to Nazi crimes and not to those committed by the Allies and it thus separated genocide, as the deliberate destruction of social groups as such, from "strategic annihilation of civilian populations" which is what the Allies engaged in during WWII, and one would add in various colonies.[226] Shaw rightly insists that all killing of others on mass scale is the same but the naming is politically invested, a point that Arendt also makes in her critique of the definition of genocide.

Two further critiques of human rights must also be considered. The first is a content-based critique focusing on the specific rights universalized in what is essentially a Western liberal discourse; and the second is an Arendtian critique of human rights which links the conceptual specificity of human rights to the possibility of their enforcement. In terms of the content of human rights, three arguments have been influential. A socialist critique of human rights questions the extent to which political and civil rights are privileged at the expense of social and economic rights, positing that in so far as human rights are seen to inhere in individuals, they reflect the philosophical underpinnings of liberal democratic states.[227] Socialist critics of human rights would argue that rights inhere in states and societies, and rather than protecting individual freedom from state intervention, socialists posit that the state is an expression of the community and freedom facilitates the integration between the individual and the community.[228] This critique survives today in anti-globalization and anti-imperialism

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[226] See Martin Shaw, *War and Genocide: Organized Killing in Modern Society*. Cambridge: Polity, 2003.

[227] See for example, Chris Brown's *Sovereignty, Rights and Justice: International Political Theory*. Malden, MA: Blackwell, 2002.

[228] See Antonio Cassesse, "Are Human Rights Truly Universal?" in Obrad Savić, ed., *The Politics of Human Rights*, London and New York: Verso, 1999, 149-165.

critiques of international law where the emphasis on political and civil rights at the expense of economic and social rights is seen to cover up economic inequality and appears as "postcolonial interventionism".[229]

Like the socialist critique of human rights, the feminist critique rejects the conception of the individual in human rights as the active member of the public sphere and argues that women rarely have the opportunity to be the rights-bearer. Rights tend to emphasize freedom in public life and the public/private split means that rights rarely address women and the problems they face since rights seem a particularly appropriate response to the kinds of oppression faced by active citizens in public. Likewise, the cultural critique of human rights rejects the primacy of the human-as-individual in the evolution of human rights law and stresses that rights must be understood in the context of complex social relations such as those of the family unit and the community (Brown).

Thus, despite the fact that human rights incorporated a link between the state and the citizen in so far as the enforceability of human rights was left to individual states, the natural law theory according to which rights inhere in individuals, the individuals of liberal democracies, continues to determine the subject of human rights discourse. At the same time, the challenge to state sovereignty posed by human rights law is offset by the statism of international law which decrees that states police themselves. Therefore, while the critique has been made that human rights are too individualistic, they have also been critiqued as too statist in the sense that states themselves figure as the subjects, the rights-bearers of international law—the state is the legal subject of international law as long as the principle of state sovereignty remains the sacred principle of international law.

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[229] Obrad Savic in Obrad Savic, ed., *The Politics of Human Rights*, 7.

However, this seeming contradiction proves no contradiction at all if one takes into account Hannah Arendt's argument that it is the citizen of the nation state, a figure who encapsulates the relationship between individual and state according to a liberal conception of both, that is meant by the human of human rights. As mentioned in chapter one, and as the discussion of the Israeli-Palestinian Peace Accords shows, international law, human rights specifically, often fails the non-citizen, and it is the citizen who constitutes the human and not the other way around. While Arendt laid out her critique of human rights and the political vulnerability of non-citizens most forcefully in *The Origins of Totalitarianism*, it is in *Eichmann in Jerusalem* that she comes closer to articulating a vision of international law more capable of recognizing the non-citizen human. Covering the trial of Nazi bureaucrat Adolph Eichmann (kidnapped by Israeli agents in Argentina and tried in an Israeli court for his role in the extermination of Jews during WWII) Arendt argues that the Jerusalem court's ultimate mistake was its failure to rise up to the challenge of "crimes against humanity." According to Arendt, while there is no doubt that Jews were sent to their death by the Nazis (and Eichmann) because they were Jews, Eichmann should have been tried for "crimes against humanity, perpetrated upon the body of the Jewish people" and not for crimes against the Jewish people (Arendt, 268-269). That Jews were killed as Jews was not new, Arendt argues. What was new was a program of systematic destruction of an entire group—in essence, there was an attack on the diversity of humankind, an attack on a characteristic of the human status, thus of humanity.

Arendt's insistence on this point is not eccentric; she is interested in the form of the law, the law that recognizes and prosecutes attacks on a humanity not circumscribed

by the contours of citizenship. Central to Arendt's argument is a concern that the law gains its legitimacy not through its content but in many ways through its normalcy, the degree to which it acts as the law. Thus, Nazi Germany normalized the isolation of Jews and the discrimination against them to the point where their extermination did not seem inconsistent, especially to a bureaucrat like Eichmann. The law's normalcy depends on the extent to which acts appear to be the rule rather than the exception: for the SS it was the rule to kill and one had to fight the temptation not to kill (Arendt, 148-150). In the face of the law's reliance on normalcy, Arendt argues that Eichmann should have been judged by an international tribunal, not because the Israeli court was incompetent or not objective enough, but because of the "nature" of Eichmann's crimes. In other words, since procedural justice is predicated on the assumption that a criminal is punished because the communal order is violated and not to exact personal revenge for the victim or the victim's family, the law works to satisfy its community and not the victim. And since genocide by definition violates the order of humanity, Eichmann should have been judged by an international tribunal for crimes against humanity.

What Arendt is trying to articulate in *Eichmann in Jerusalem* is twofold: one that in prosecuting the crimes committed on Jews as crimes against humanity the statelessness of those Jews gains a legal form; Jews gain a legal subjectivity whose lack was at once produced and exploited by the Nazis and facilitated partly by the statism of international law and its focus on the individual/citizen. And two, and more importantly in the long term, that the law, in enacting an international prosecution of crimes against the human status, creates humanity as a constituency, an international constituency no longer circumscribed by the relationship between state and citizen. This would explain Arendt's

suggestion in the postscript to the book that the term genocide be replaced by that of

"administrative massacres":

> For the concept of genocide, introduced explicitly to cover a crime unknown before, although applicable up to a point is not fully adequate, for the simple reason that massacres of whole peoples are not unprecedented. They were the order of the day in antiquity, and the centuries of colonization and imperialism provide plenty of examples of more or less successful attempts of that sort. The expression "administrative massacres" seems better to fill the bill. The term arose in connection with British imperialism; the English deliberately rejected such procedures as a means of maintaining their rule over India. The phrase has the virtue of dispelling the prejudice that such monstrous acts can be committed only against a foreign nation or a different race. There is the well-known fact that Hitler began his mass murders by granting "mercy deaths" to the "incurably ill," and that he intended to wind up his extermination program by doing away with "genetically damaged" Germans (heart and lung patients)....It is quite conceivable that in the automated economy of a not-too-distant future men may be tempted to exterminate all those whose intelligence quotient is below a certain level (Arendt, 288-289).

Arendt's point, written as a postscript, is significant in its implications. The differentiation between genocide and administrative massacres that delinks systematic mass killings from conventional differentiation based on religion, race, ethnicity, or nationality, introduces into the concept of systematic mass killings as well as into international law the category of the human, not as individual and not through a traditionally defined and definable group: the human here is not the individual citizen, and not Jews or Germans or women or Black people. To link Jews exterminated by the Nazis to terminally ill Germans and to imagined victims of future automation/productivity supremacists is an attempt to give form to a formless humanity as a potential victim of human rights abuses and thus a should-be-bearer of those human-rights. The human here is not the sum of its parts; humanity is not a mass of individuals. On the other hand, it is not a social group or a recognizable race. Arendt's call for an

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international criminal court challenges the extent to which the construction of a global constituency is possible, not through the inclusion of the marginalized but through reconceiving the human of human rights by positing humanity as a possible legal subject.

Human Rights vs. Human Security

The current problems and anxieties surrounding Human Rights cause on the one hand grave violations of human rights as in extra-legal entities like Camp X-ray at Guantanamo and resistance to such violations from activists and theorists concerned with extending the protection of the law to those captured in such entities. On the other hand, these problems and anxieties have also prompted the United Nations and some of its powerful members to address current challenges to the Human Rights regime in ways that focus less on the language of Human Rights and more on the interdependence and vulnerabilities of people in developing or underdeveloped countries. While I do not attempt to survey or systematically analyze the current turns of UN discourse on human vulnerability, I do think that the turn to discourses that supplement that of human rights is potentially revealing of alternative conceptions of the human in international politics. Specifically, I want to analyze two texts that employ a relatively new discourse of "human security" as something other than but supplementary to that of human rights. The linguistic turns of this discourse chart the parameters within which human vulnerability, or the human as vulnerability, is recognized. I would suggest that the Agambenian analysis of mere humanity must now contend not only with sovereign power's capture of human vulnerability or with the humanitarianism that often facilitates the work of Empire, but also with the development of new discourses that offer alternative

conceptions of this human vulnerability. As my reading of the discourse of human security in these two texts will show, the inclusive reach of this discourse hinges on the identification of this human vulnerability as simultaneously risky and at risk. As such, the discourse of human security also creates a global community of sorts, one based on the vulnerability and interdependence that binds humans to each other. To what extent this inclusive reach may counter the sometimes exclusive or selective reach of human rights is not clear. What is apparent at this stage, however, is that this discourse may be reconfiguring the traditional binaries of developed and underdeveloped, of politicization and depoliticization, and perhaps ultimately of human and non-human in ways eerily reminiscent of Agamben's understanding of bare life.

As a term, security circulates on the current scene of international discourse with some highly charged characteristics. Linguistically, the term "security" encompasses the sense of "freedom from", "precaution against", and "protection against"; the different meanings exist simultaneously and not just distinctly. Thus, even linguistically, the term gestures towards a protectionist interventionism that is much more pronounced than in the concept of "right" which conventionally invests an agent, the right-bearing citizen, with a relatively stable and enabling status; the rights-bearer, by virtue of being such, demands and is owed his/her rights. Historically, the term "security" today carries with it the specifically modern prototypes of the security firm—privatized security—and of the security guard—the quasi-policeperson who is entitled to powers usually reserved for the police, such as apprehending, restraining, even killing suspected transgressors. Security as a term is in no way reducible to these cultural formations, but it certainly has come to encompass in recent decades a form of privatized precautionary and preventative

measures existing simultaneously with the official institutional form of guaranteeing law and order, the police. From the security gates marking off and marking out the dangerous outside of privileged communities, to the financial security which also designates a privileged minority apart from and against an underprivileged majority, security often circulates globally as a highly divisive and isolationist concept.

On the international scene, security has also come to mark off developed countries from developing ones. In Mathew Hannah's convincing reading of terrorism as in part a threat against the specifically biopolitical form of state power, he points out that developments in international terrorism, especially as they relate to indiscriminate killing rather than the targeting of powerful individuals, acknowledge and "feed [sic] off" the "modern biopolitical responsibility of states to protect the well-being of whole national populations."[230] Hannah identifies insurance, an important marker of security, as

> the quintessential government technology, the clearest illustration of how freedom and security can be cultivated simultaneously.... Insurance programs serve the maintenance of social order not only by protecting financial investments of individuals and organizations, but also often through subtle incentives to promote 'responsible' activity.

In this context, terrorist acts disrupt the entire system of "expectations" that insurance companies depend upon to calculate risk and value.[231] In Hannah's reading, security is what enables the biopolitical social order animated by the Foucauldian concepts of biopower, discipline, and governmentality, which exist simultaneously and to varying degrees in liberal social formations:

> The condition of possibility of responsibly used freedom is security, a concept understood very broadly in the governmentality literature to

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[230] Hannah, 627.

[231] Hannah, 628.

encompass everything from the physical and material security provided by police forces to the psychological security provided by self-help programs.

But in the context of developments in international terrorism, the role played by security, whether in the exercise of sovereignty or as the target of terrorism, marks changes in the nature of sovereignty. Thus, security is not only a necessary condition for the exercise of sovereignty, but it also enacts the biopolitical power relations governing societies in the developed world; security operates to determine risk and value, differentiate and isolate, guarantee and render dispensable.[232]

So has the term security gone global? How is security conceived in discourses that stress its global importance? What is the significance of the formulation "human security"? And what words or phrases map its historical coordinates? An analysis of two major international and recent reports which advance this notion of human security begins to outline what is at stake in its use. The striking discursive similarities between the two reports, despite their different agendas and mediums, begins to highlight the contours of security as an international discourse.

The Final Report of the Commission on Human Security: Survival, Livelihood and Dignity, published in 2003, also alternatively referred to as *Human Security Now*,[233] owes its inception to UN Secretary General Kofi Annan. Speaking at the UN Millennium Summit, a forum inevitably concerned with global insecurities, Annan "called upon the

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[232] Here the various cultural incarnations of security are telling: financial security does not merely signify wealth but also the tradability of that wealth (wealth offered as security in procuring more wealth). Likewise, the world of insurance works to assign value or render worthless not only objects but lives (think of the different value assigned to the lives of children vs that of adults, educated adults vs. uneducated, etc...). And in the context of global terrorism specifically, security works to place value on and to differentiate between spaces as well as humans (think of lists of names published by Homeland Security and distributed at airports all over the world).

[233] http://www.humansecurity-chs.org/finalreport/index.html

world community to advance the twin goals of 'freedom from want' and 'freedom from fear'"; he envisioned this advancement as a direct response to the challenges of "globalization". In response to Annan's call, a Commission on Human Security was established with the initiative of the Government of Japan, and was co-chaired by former UN High Commissioner for Refugees Sadako Ogata, and Amartya Sen, prolific economist and Nobel Laureate. The Commission identified two areas of research: one, human insecurities resulting from conflict and violence, and two, links between human security and development. The Commission was from the start explicitly aware of introducing into UN and international discourse the term human security: the Commission states that its goals do not only include promoting understanding of human security and developing strategies and policies to advance it, but also "to develop the concept of human security as an operational tool for policy formulation and implementation." Thus, the Commission attests to what it sees as the need for a new term in UN discourse on global challenges today. According to the January 14, 2001 press release of the Commission,

> there is a growing awareness in the international community that collective efforts are needed to reduce significantly the level of human suffering and insecurity where it is most acute and prevalent. Such concerns, increasingly expressed by the term "human security," have become a central focus of policy imperatives of many nations in recent years.

The term human security thus appears to present itself on the global stage as historically necessary and representative of global concerns. In turn, the *Final Report* of the Commission produces the concept of human security as historically necessary and representative of global concerns: the most crucial point stressed in the *Report* is that, because of globalization, people's security the world over is interlinked; because of

"today's global flows", the "security of one person, one community, one nation rests on the decisions of many others—sometimes fortuitously, sometimes precariously."[234]

The term human security is thus heavily contextualized as historically necessary. The emphasis on globalization in fact appears to direct the formulation of the concept of human security: "today's global flows" engender the interdependency characteristic of human security. Likewise, insecurity itself is presented as an issue of development—or lack thereof. Thus, the Report stresses over and over that violence and deprivation are interconnected. The twinning of protection and empowerment, two traditional UN mandates, is mirrored in the report in the twinning of security and development. In fact, human security is formulated "in response to the threats of development reversed, to the threats of violence inflicted."

This emphasis on the causal and constitutive links between security and development is echoed by *The Human Security Report* which identifies war as "development in reverse". *The Human Security Report* (hereafter known as the *HS Report*) is a much more academic venture than the Commission's *Final Report*, and it envisions its role as a yearly survey and analysis of human security around the world—it is the 2005 report, however, that focuses on developments in violence and war. Funded by the governments of Canada, Switzerland, Sweden, Norway and the UK, the *HS Report* brings together researchers from universities and research institutions all over the world. The *HS Report* also seeks to advance "human security" as a new approach in international political discourse. Archbishop Desmond Tutu, in his Foreword, argues that this approach "privileges people over states, reconciliation over revenge, diplomacy over

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[234] *Final Report of the Commission on Human Security*, chapter 1.

deterrence, and multilateral engagement over coercive unilateralism."[235] Thus, like the *Final Report*, the *HS Report* seeks to address a defect or an inadequacy in international political discourse which it considers dominated by the concept of state security. Just as the *Final Report* argued that "human security complements state security...by being people-centered and addressing insecurities that have not been considered as state security threats," the *HS Report* argues that while national security defends the state against external threats, human security defends individuals, and in fact, "human security and national security should be—and often are—mutually reinforcing."[236] The concurrent role human security plays here alongside what has officially and conventionally been considered the governing discourse of international politics (that of state sovereignty) mirrors the concurrent role security firms play alongside the official institution regulating use of violence within states, the police.[237] This mirroring raises questions regarding the extent to which human security as an approach in international relations will come under a more "public" or official control or will more likely lend itself to the logic of privatization. (And that in turn raises questions regarding the trend to privatize which is a huge part of the American war on Iraq and of imperial adventures as understood by Hardt and Negri.)

Crucially, the *HS Report* also sees "international terrorism...[as] a development issue for the global south, as well as being a vital security issue for both the North and

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[235] *HS Report*, "Foreword."

[236] *HS Report*, "What is Human Security?"

[237] According to the *HS Report*, "The most obvious parallel to military outsourcing is found in domestic security services. In some countries, the number o personnel working in private security forces, and the size of their budgets, now greatly exceed those of public law-enforcement agencies." See Part I.

South."[238] In fact, both reports explicitly link violence to economic regression, but economic regression specifically in the context of "development". The stress on development allows the term to encapsulate totally the notion of economic well-being which is then seen to guard against violence and war, a common practice now across the board of UN and major Western aid agencies.[239] The phrase "development in reverse", however, formulates development not as a narrative of progress whereby developing or underdeveloped nations could one day be developed. Rather, the phrase structures development as a way of life constantly at risk; development is susceptible to reversal and as such whatever is necessary to reverse this reversal must be equally chronic, especially since development in reverse is seen to equal war and violent conflict—and this in turn produces war and violent conflict as chronic.[240] The emphasis on war or violent conflict as development in reverse makes of both chronic conditions; chronic conditions, by nature, require constant monitoring and ministering, and the rhetorical

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[238] *HS Report*, "Overview".

[239] See Mark Duffield, Joanna Macrae and Devon Curtis in *Disasters*, 2001, 25(4): 269-274. These editors write that "underdevelopment is…considered a threat to international security since, the argument goes, it fuels drug-trafficking, the spread of terrorism and increased refugee flows." They survey a number of articles arguing that "the 'repackaging' of security as a development concern mans that enhancing security involves changing the behaviour of populations within countries. Domestic practices are increasingly seen as potential security threats, and consequently some aspects of these practices, such as domestic economic policy, human rights, the status of women, poverty and psycho-social well-being, are open to monitoring by Western donor states." Mark Duffield in an essay called "Governing the Borderlands: Decoding the Power of Aid", goes even further arguing that the "security paradigm is not based upon the accumulation of arms and external political alliances between states, but on changing the conduct of populations within them. Within this new public-private security framework, stability is achieved by activities designed to reduce poverty, satisfy basic needs, strengthen economic sustainability, create representative civil institutions, protect the vulnerable and promote human rights: the name of this largely privatised form of security is *developmen*." (emphasis in original). In *Disasters*, 310.

[240] Speaking of "globalization", a term which in many respects is utilized as a short hand for the hegemony of neo-liberalism, American Security Advisor Thomas Barnett once noted that "a country's potential to warrant a U.S. military response is inversely related to its globalization connectivity…[I]t is always possible to fall off this bandwagon called globalization. And when you do, bloodshed will follow. If you are lucky so will American troops." Quoted in John Saul's "Globalization, Imperialism, Development: False Binaries and Radical Resolutions", p. 231. In Leo Panitch and Colin Leys, eds. *The New Imperial Challenge: Socialist Register 2004*. London: Merlin Press, 2003, 220-244.

steps are here not far from the discourse of surveillance and care. Thus, in the text of both reports, the emphasis on development, reversal, and violence form the coordinates according to which human security globally would necessitate constant policing and constant intervention.

Iraq in Reverse

The relationship between development and violence is especially detrimental in the case of Iraq. One of the more striking instances of discursive amnesia regarding the American war on Iraq is the almost total disregard for the ten years of sanctions imposed on the country by the international community at the behest of the United States. Since the American invasion of Iraq in 2003, comparisons have proliferated, both in official American discourse as well as in media analysis or popular discourse opposed to the war, regarding Iraq before and after the war, or more concisely, before and after Saddam Hussein. In the majority of discourse on the Iraq war—whether by the US administration and its supporters who paint a rosier picture of the "after" Iraq or by opponents of the war who point to the deterioration of the living standards and living chances of Iraqis after the invasion—the ten years of sanctions are rarely mentioned. It seems as if those ten years which mark the distance between the first war on Iraq and the second are collapsed into the image frame of the fall of Saddam Hussein, most iconically captured in the destruction of one of his more prominent statues in a Baghdad square. It is to that moment, and that image, that most reporters and writers and politicians return when they evaluate the American invasion as a decisive moment branded by this now iconic before-and-after shot.

Unfolding those ten years, however, re-presents the severe and systematic destruction of Iraq's infrastructure in every area of social and economic life, from public services such as healthcare and education to public as well as private initiatives in civil services, the arts, and the economy. An entire nation and economy were effectively de-developed: development in reverse. In an effort to pressure Saddam Hussein, an entire country was brought to its bare essentials. In ten years of some of the harshest sanctions ever imposed in the history of the United Nations, pencils became a rarity in Iraq and basic antibiotics a luxury.[241] In ten years, Iraqis as a nation and as individuals were daily and systematically stripped of goods, of services, of a standard of living.[242] By the time the United States invaded, Iraqis were to varying degrees a people in need, in need of goods, of services, of a standard of living, as much as—if not more—of a regime change. Here two points must be stressed. The first is that the huge under-representation, the undermining of the significance and legacy of this period of sanctions in the discourse on Iraq is politically irresponsible and ethically unforgivable: according to UNICEF surveys, at least half a million Iraqi children lost their lives in those ten years due to malnutrition

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[241] Of course the merciless paradox at the heart of sanctions is that heartless dictators who crush democratic initiatives, and hold on to power illegitimately while they savagely exploit their people—as the United States portrayed Saddam and as he certainly was—will escape sanctions relatively unscathed while the people they are already said to neglect suffer; sanctions, thus, are more often than not ethically suspect if not criminal—the case could be different were sanctions to be imposed on democratic regimes.

[242] Former co-ordinator of the UN oil-for-food program in Iraq, Denis Halliday, who resigned his post in protest at what he called the "totally bankrupt concept" of sanctions, argued that the effects of sanctions did not only include death and suffering among the population. According to a BBC article which announced Halliday's surprise resignation, Halliday stressed that sanctions "were biting into the fabric of Iraqi society in other, less visible ways. He cited the disruption of family life…., increased divorces…, a new level of crime." Moreover, he cautioned of the "alienation and isolation of the younger Iraqi generation of leadership" as well as the reactionary turn of a previously secular society to more extreme forms of religion as people try to deal with the new hardships and deterioration of their standards of living. "Middle East UN Official Blasts Iraq Sanctions." *BBC News Online* 30 September 1998. 13 October 2006. http://news.bbc.co.uk/2/hi/middle_east/183499.stm

and the deterioration of medical services and lack of medical supplies.[243] And second, and more pertinently in the context of this paper, the production of those Iraqis in need— as a direct result of American-led sanctions—and the posited need of Iraqis for a regime change cannot be considered unrelated. Remembering Agamben as well as Hardt and Negri, one could view ten years of sanctions as ten years of de-development aimed precisely at the production of human beings in need of intervention. Despite the fact that the official discourse of the American administration chose to focus its earlier energies on "weapons of mass destruction" before switching to the horrors of Saddam's regime, it remains true that the "rebuilding" of Iraq (and the outsourcing and contract deals meted out to foreign corporations) remains perhaps the only legitimating ground for continued American involvement in Iraq.

In order for the US to justify its removal of Saddam Hussein it was never enough to argue that he possessed weapons of mass destruction aimed at the American Heartland. From the beginning, the idea of "winning hearts and minds" focused on delivering basic supplies like bottled water to the beleaguered Iraqi population; the phrase "winning hearts and minds" attests to the importance of establishing the US as a guardian, socially, economically and politically, over Iraqis rendered non-citizens by the invasion. The imperial plan was and is to change a regime by force and install a replacement that will then be representative of the Iraqi population: the recreation of Iraqis as citizens after they were temporarily left without a state in the wake of Saddam's removal. To ensure the cooperation of said non-citizens, who are already said to be desirous of Saddam's removal anyway, the US gambled on the notion that Iraqis would be grateful not only to

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[243] "Iraq Surveys Show 'Humanitarian Emergency'." *UNICEF Information Newsline* 12 August 1999. 2 October 2006. http://www.unicef.org/newsline/99pr29.htm

be rid of a tyrant like Saddam but for basic supplies and services, from water and electricity to privatized television stations and satellite channels: the reversal of de-development which would accompany the re-instalment of Iraqis as citizens of a nation-state.

Humanitarian-intervention-as-regime-change was necessitated and facilitated in a huge part by the production of Iraqis as a people in need, and simultaneously produced Iraqis as political minors who are in need of a regime change and/or are unable to carry one out. It is as suffering human beings, as human beings reduced to a basic struggle for survival, that Iraqis could be remade in the US's own image of whatever it deems an Iraqi nation-state proper to its interests and security needs. The Agambenian argument whereby bare life is essentially the non-rights-bearing, apolitical, non-agentive victim who is the proper subject of a state of exception and of the humanitarianism outlining the American invasion, illustrates the extent to which Iraqis were conceived as the raw material to which America's acts were addressed and out of which America's new Iraqis would be formed. That America's expectations may or may not have turned out to be ill-conceived is another matter, and the bloody situation in Iraq now appears beyond attempts to comprehend the present or predict the future.

In the midst of this deadly mess that is the aftermath of the American invasion, a constant image of suffering Iraqis is paramount. As government after government fails the test of daily control in Iraq, and as the vision of a stable and secure Iraqi nation-state appears more and more far-fetched, the image of Iraqis in pain has become a daily sign of the disorder in Iraq, a routinely-seen cipher of a disastrous political and humanitarian and economic and social quagmire. However, the pictures of suffering Iraqis, screaming to

the camera on a daily basis, do illustrate that vague frontier between life and death, the frontier that appears increasingly difficult to mark in the "after" Iraq. Iraqis are killed, burnt, amputated, mutilated, tortured every day, randomly and routinely; risk is the governing "order" and security is impossible to calculate, plan, or guarantee. Those pictures in many ways are a powerful indictment of the invasion, of humanitarian interventions generally. But they are not simply pictures of a suffering nation, a nation under attack. They also illustrate this "being at risk" as a way of life and in this sense they reconfigure the frontier between life and death not as a line drawn in green (in reference to the "secure" area of Baghdad now famously known as the Green Zone), but as a rupture, an opening into which any Iraqi at any moment can be violently pulled in. It is not an overstatement to say that today to be an Iraqi is to be constantly rotating around this rupture, this reformulation of the frontier of life and death. The screams in those pictures are thus a visceral reaction to this "being-at-risk", this being Iraqi today.

What also sets those pictures apart from other representations of suffering in war is that the majority of Iraqis pictured in pain are men. Conventionally, it is mostly women who are seen to scream and wail and express anguish unadulterated. In the daily pictures of life in Iraq, however, men are predominantly represented as the suffering subjects. Men in pain, suffering men, are not a new phenomenon but the daily representation of men in pain, men who give voice in their screams to the fatality and helplessness and hopelessness of violent conflict is striking. A historical study of war photography and of media representation of suffering men would be useful to put in context this noteworthy focus on the pain of Iraqi males. And it is also noteworthy that the screams of those Iraqi men in pain seen on TV screens on a daily basis reproduce the screams of other Iraqi men

in pain tortured in secret jails and venturing into the light of international cameras only at scandalous intervals.[244]

However, seen in the context of "development in reverse", the pictures of suffering Iraqi men could also be read as an archive of aberrant de-development, the same aberrant de-development that the American invasion addressed itself to. Here I turn again to the issue of human security. According to the *Human Security Report*,

> one major epidemiological survey following the first gulf war found that while men made up 51% of the Iraqi population they suffered an estimated 62% of the civilian deaths. And a 2004 study of civilians who had been killed in the current Iraq conflict found that males were even more likely to be killed than in the first Gulf War.[245]

The *HS Report* cites those studies to argue, against convention and acquired wisdom, that

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[244] The most discussed are of course the photos of tortured Iraqi prisoners at Abu Ghraib prison, now controlled by the US. In her well-known New York Times article, "Regarding the Torture of Others", on those particular photos, Susan Sontag situates the photographs within the framework of contemporary obsession with photographic recording of everyday events in a world where digital cameras make it inevitable to stage and photograph any event. And while she points to the normalization of violence and pornography in the US, especially in photo and video images, she argues that the Abu Ghraib photos are closer in nature to pictures of black victims of lynching in late nineteenth and early twentieth century America: "The lynching photographs were souvenirs of a collective action whose participants felt perfectly justified in what they had done. So are the pictures at Abu Ghraib." The justification is understood by Sontag to come from an American sense of superiority and absolute power over their Iraqi victims, arguing that Americans are capable of such acts of torture and humiliation "when they are led to believe that the people they are torturing belong to an inferior race or religion. For the meaning of these pictures is not just that these acts were performed, but that their perpetrators apparently had no sense that there was anything wrong in what the pictures show." While Sontag's reading is convincing in many respects, I am struck by a different aspect of the photographs, the fact that they depict what are presumed to be American civilians along with the American soldiers and tortured Iraqis. While the presence of civilian contractors and mercenaries has been widely noted since the invasion, in the photos of abuse they complicate the reading of an American sense of superiority or racism directed at Iraqis. What should be analyzed is not only the unregulated power that American soldiers have over the Iraqis in their charge, but also that these Iraqis were/are completely at the mercy of Americans broadly defined: not only soldiers.This humanitarian war/regime change/invasion has by definition brought with it not only military occupiers but also business contractors, educators, medical personnel, law makers, etc... And while a lot of emphasis is placed on the fact that the US does not consider prisoners in its War on Terror to be covered by the Geneva Convention for example, more emphasis should be placed on what regulates the relationship between American civilians and Iraqis in their power since this war, and as those photos certainly show, places not only American soldiers but American non-soldiers in a position of absolute power over Iraqis and their bodies. International law, which attempts to regulate the actions of occupying armies against the occupied population—an admittedly weak attempt as the US disregard for international law shows--has a lot of catching up to do.

[245] *HS Report*, Part III "Assault on the Vulnerable."

far more men (civilian men) globally are killed, wounded and tortured than women and "[f]ar more men have died of war-induced malnutrition." The *HS Report* argues that "the 'gender lens' has been inconsistently applied, creating a distorted picture of reality", and cites as representative of that a December 2004 Amnesty report on the vulnerabilities of women in armed conflict. According to the *HS Report*, "Amnesty's claim that women 'bear the brunt' of collateral damage—civilians who get caught in the crossfire—is unsupported by any global data".

The role of gender in the depiction of suffering is historically and politically complex. However, in terms of the pictures of Iraqi men, the political complexity I would suggest is quite contemporary. It is possible of course to read the focus on Iraqi men in pain as part of an emasculating discourse, inflected with racism, serving the testosterone-ridden military initiative of the US in its bid to demoralize and destroy its enemies and raise the morale of its soldiers overseas as well as its supporters at home. The pictures of Iraqi men in pain could be read to say "look at those weaklings who need us, whose men cry and scream and pull their hair out." There is enough cultural evidence in songs, diaries, and jokes both among American soldiers in Iraq and so-called "ordinary" Americans at home to lend credibility to this reading, especially as it contributes to the growing over-masculinization of America post 9/11.

However, much more is going on here if we consider that a shift has occurred from the racist depictions of colonial rhetoric, which focused on the screaming other male as an irrational masculinity at once threatening and inferior, to a post-colonial imperialism, to an age of Empire, where the screaming other male is supposed to mobilize foreign armies who bring in their wake bottled water and privatized security.

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Indeed, along with the colonial rhetoric of a threatening other masculinity, and even more significant than such rhetoric, is a more ambivalent depiction of masculinity, one that is less concerned with binaries of male/female and self/other than with the gradations attending value, risk, and political agency. Here the language of the *HS Report* is telling. Despite its effort to undermine the "gender lens" which privileges the pain of women over that of men, the terminology used in the *HS Report* maintains that suffering men are a political aberration. The report calls its section on gender and vulnerability "Assault on the Vulnerable", and introduces this section as one that examines the impact of war on those generally considered to be the most vulnerable—refugees, women and children." The inclusion of "refugees", who one would assume include men as well as women and children, in the category of women and children defined as "the vulnerable", posits vulnerability as a politically inflected category. In other words, refugees are vulnerable because, like women and children, refugees are political minors. In fact the phrase "women and children", aside from its highly problematic infantalization of women, is itself often unexplainably discriminatory: it belittles the suffering of men for no apparent reason, unless one were to accept its infantalization of women. In other words, unless one were to concede that despite the fact that men are no longer by nature or socio-political givens fighters—i.e. the split between military and civilian in the context of the modern nation-state—and that women have also now entered the realm of armed combat, women are still, like children, less-able political agents. Thus, women are still seen as the victims of armed conflict and not as participants and men are still seen to bear more responsibility for political acts than women. This would appear to be the only explanation for why most news reporters and most politicians still feel that the phrase "most of them

women and children" is an effective one with an obvious and accessible frame of reference.

In this context, the war on Iraq could not be sustained as an attack on a sovereign state. Saddam Hussein's removal was simultaneously the production of Iraqis as non-citizens, the final step in a long process of de-development. If in Hardt and Negri's understanding of Empire war is police action taken against an Enemy depicted as Sin (or "Evil" in Bush's rhetoric) and not as political adversary, the focus of Empire's humanitarian war is the a-political non-agentive suffering victim. The inclusion of refugees in the phrase used by the *HS Report* illustrates what Agamben and Arendt have long argued about the political vulnerability of refugees who are stripped of their political rights, who are stripped of their political identity, stripped of the context in which they can be political beings. Like Arendt's and Agamben's refugees, I would suggest, Iraqi men in pain, in the context of the new model of armed conflict, represent political regression. In other words, in the quagmire that is not a nation-state and that is the space of the exceptional and the interventionist, Iraqi men in pain figure as the pre-political.[246] It is this pre-political humanity that is owed protection not guaranteed in international Human Rights, and it is this humanity-as-the-pre-political which animates the current changes in international politics.

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[246] And perhaps also in their screams the pre-linguistic. The relationship between the linguistic and the political proceeds obviously from the consideration of man as a political animal with the capacity for language. But it also proceeds culturally from the identification of racial and colonial others with a lack of reason; to reason, in language, is a marker that differentiates the "civilized" from the uncivilized seen as excessively emotional, illogical, and thus unreadable. In the case of Iraq, remnants of colonial rhetoric and racist images persist along with the developing narrative of humanitarianism and reversal of development. But that is the object of another analysis.

Suffering Men of Empire

According to the *Final Report of the Commission on Human Security*, "people throughout the world, in developing and developed countries alike, live under varied conditions of insecurity." Focus on human security, unlike the focus on human rights which traditionally is circumscribed by the borders of the nation-state (one reason refugees are so vulnerable), allows for the formulation of a more inclusive international obligation to protect. Security, or rather insecurity, brings people in developing and developed countries together in assessing and facing worries and needs and risks. More specifically, and according to the *Final Report*, because of today's global flows "[t]he security of one person, one community, one nation rests on the decisions of many others—sometimes fortuitously, sometimes precariously."[247] This interdependency characteristic of human security is itself a matter of risk: interdependency itself is a risk. Security is thus, like development, a continuum on which developed and developing countries, people in developed countries and people in developing countries exist. Or more precisely, *people all over the world now exist on, and move along, a continuum governed by the twin factors of security and development.* The figure of the suffering Iraqi deprived of goods, of services, of a standard of living, of a political status, of life itself, moves also along this continuum. This figure could be seen to justify or discredit the American invasion—that is no longer what is most significant. What is most significant is that the production of this figure could no longer be blamed solely on an imperialist ideology, a hateful racism, or exploitative policies. Security and insecurity are grave global concerns today and the obligation to intervene cannot be rejected as mere cover-up for "real" imperialistic designs (think Rwanda). What must be an object of

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[247] *Final Report*, Chapter 1.

analysis today is that biopolitical sovereignty seems to be evolving a global brand fuelled by humanitarian rhetoric which nonetheless is producing in practice the very human vulnerability it is animated by. Thus, when a Commission initiated at the request of the UN and an academic report that aims in part to discredit US unilateralism appear to use a discourse and address human vulnerability in ways too much in tune with those of the world's superpower, we must admit that a serious change in the way humanity is understood and addressed is underway. Since I do not doubt the sincerity of Amartya Sen and Co. in their concern for those at risk as much as I do not doubt the lack of sincerity of the American administration in its rhetoric on Iraq, the focus on human security cannot be written off as an effect of humanitarianism. The discursive turns must be traced to their historical implications. What animates this focus on security is still unclear. What is clear, however, is that a new developmental narrative is taking over international politics. However, if in the age of colonialism the developmental narrative was progressive with the colonizers at the top of a global hierarchy, the emerging developmental narrative is fluid, demanding not another civilizing project but chronic intervention.

Conclusion

On September 29, 2005, Sudanese refugees and asylum seekers in the Egyptian capital of Cairo launched a historic sit-in in a public garden close to the headquarters of the United Nations High Commissioner for Refugees, in the fashionable and affluent neighbourhood of Mohandiseen. The protest was historic because long-term refugee protests are rare everywhere and unprecedented in Egypt. Almost 3000 men, women, and children gathered in that garden for three months: they ate, slept, washed their clothes, and spent their days sharing stories, thoughts, and worries under the watchful eyes of Egyptian security forces and curious or offended Egyptians who skirted the garden. The protesters cited the impossibility of their local integration in Egyptian society, their desire for resettlement, and their fears of forced repatriation to Sudan. They expressed their frustration and lack of trust in UNHCR officials and staff and articulated a loss of hope in UNHCR policies to effectively change their situation for the better. Chief among their demands were UNHCR's resumption of Refugee Status Determination—halted in the context of the "peace process" in Sudan—and resettlement to a third, mainly Western, country. The Egyptian government, for its part, showed incredible restraint by allowing the protest to go on for three months, something it was not legally obligated to do and which governments do not usually do.

Throughout that time, tense negotiations between UNHCR, the protest leaders, the Sudanese Embassy and the Egyptian government were taking place but were not necessarily proving fruitful. Suddenly, and around midnight on the night of December 30, about four thousand Egyptian security forces surrounded the park, and asked the

protestors to board buses to unknown "camps". When the protestors refused, the security forces closed all entries to the park and went in from all sides to forcibly remove the protestors using water cannons, pepper spray, and sticks, beating up the protestors indiscriminately and loading them onto buses. The park was completely surrounded leaving no escape route or exit for those who may have wished to leave peacefully at the last minute. By dawn, 27 protestors had been killed, many of them children—most were trampled or suffocated—and two more were to die later as a result of injuries sustained during the removal. The protestors were taken to various holding centers across Cairo and Egypt. Families were torn apart. Children were left looking for parents and people had no idea if their relatives were in the hospital, at another holding center, or in the morgue. The protestors' meagre belongings, including suitcases, pictures and documents, were strewn all over the park and days later loaded up in trucks by the Egyptian security forces.

The park was later cleaned up and no one was held responsible for what happened, though a number of prominent international officials and local opposition and human rights groups condemned the disproportionate and sudden use of force by the Egyptian government in its removal of the protestors. The Egyptian government denied that any force was used and blamed the refugees for the violence that ensued. UNHCR for its part wavered: while it expressed its sorrow and disappointment at the deaths, it also acknowledged Egypt's right to remove the protestors and praised the government's efforts to intervene and end the protest.[248]

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[248] "UNHCR noted that the Egyptian government reserved the privilege of ending the protest for the sake of Egyptian society." In regard to UNHCR's own role in the tragedy, Astrid Stort, UNHCR spokeswoman in Cairo, "said that UNHCR understood the problems refugees face and that UNHCR tries to assist them to its fullest capacity. Yet she also stressed that UNHCR needed to prioritize its assistance to refugees,

Much could be said about the vulnerability of those refugees and of the political and physical helplessness of their last moments in that park. UNHCR's role in particular has been at best ambivalent about conditions afflicting refugees whose protection is UNHCR's mandate. And regardless of the position of the Egyptian government or the legitimacy of the refugees' demands, it remains an unequivocal point that disproportionate and obscenely extreme violence was used to end the refugees' protest. The fact that no one was ultimately held responsible for the deaths of the refugees and that the plight of Sudanese refugees in Egypt generally is now worse than it was before the protest is also telling of the political invisibility of an extremely vulnerable group.

About a month into the protest a fellow researcher and I were assigned the task of going into that public garden and meeting with the protesting refugees. The task was part of a fact-finding mission commissioned by the Forced Migration and Refugee Studies Center at the American University in Cairo. It provided me with a rare opportunity to break with my disciplinary norms and physically face conditions of vulnerability I had engaged with theoretically and discursively throughout the period I worked on this thesis. We were asked to approach the refugees and very politely ask about their experiences in Egypt and about the protest itself, its organization and objectives. And the refugees, also very politely, refused to talk to us. Our first assumption was that the refugees were afraid to talk, a legitimate assumption to make given that such subjects have sound reason to mistrust strangers. Sudanese refugees in Egypt certainly have a conflicted relationship with UNHCR's staff, the Egyptian government, as well as Egyptian society generally; any feelings of mistrust on their part would certainly be justifiable. As we came to

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alleging that many of the protestors were not refugees but economic migrants." See FMRS Report.

observe the flow of information and the distribution of tasks in the garden, however, we came to agree that fear is not necessarily the only explanation for why most of the refugees refused to answer our questions and referred us to their leaders. Referring us to designated persons could in fact reflect a sophisticated political organization, a form of political discipline that is admirable in the workings of a collective. It became imperative to think about why we assume that refugees are afraid first and organized second, or last, or never. What subjectivity did we as researchers attribute to these refugees when confronted with their vulnerability in the most material of ways?

As the evening progressed it also became clear that the questions I posed to the protest leaders seemed straining, unproductive, and unwelcome despite my best intentions. Due to the same interests charted throughout this thesis, my questions focused on the protest as an explicitly political act. I wanted to know how people got together, what discourses recruited them, what discourses organized them and sustained their efforts. How and what constituency of protestors was produced in that garden? Did the mother with three children sleeping under a tree have the same understanding of her actions as the organizer who was talking to me? What sort of an intervention into the political issues surrounding the plight of Sudanese refugees in Egypt was the protest? The leaders wanted, perhaps rightly, to highlight the suffering of the refugees, the inadequacies and inefficiencies of UNHCR's response to their plight, the conditions they were forced to endure. They wanted to speak of their daily hardships, sleeping in a public garden without access to food or washrooms or clean water, etc.... Again and again, their answers refused the trajectory of my questions and referred back to the humanitarian crisis the organizers flagged not only in relation to conditions in the park, but more

importantly to conditions of Sudanese refugees in Egypt generally. The problems they faced and face are not political problems, they insisted, but ones that speak to basic human need for food and shelter and dignity. All of which, in my mind, did not take away from the fact that the protest was a thought-out political initiative; regarding the protest as a planned and collective political act did not belittle or sideline the extent of suffering.

As my thesis concludes and I reflect back on that episode, a number of questions become pressing. For the refugees I spoke to, overtly political questions were suspicious: it was as if any talk of the protest as a political act would cast doubt on the authenticity of suffering, as if the subjectivity that acts politically to change its reality and the subjectivity that deserves the humanitarian attention not only of UNHCR but of the media and the general public are not reconcilable. On the one hand, their insistent disavowal of political action confirms the depoliticizing trappings of vulnerability, the way vulnerability produces a humanity that is seen to preclude political life. It also confirms the power of humanitarian discourses generally and the dissociation they often perform between a humanity deserving of assistance and a humanity capable of political action: the refugees self-consciously carved their way out of the political sphere, an ultimately political strategy aimed at the recognition and relief of the group's suffering. And that vulnerability was tragically affirmed in their forced removal, when the refugees were literally captured as beings with no protection—not that of UNHCR or the Sudanese government and certainly not of the Egyptian host government. With impunity, the Egyptian government could beat, remove, murder, and detain the protestors and confiscate their belongings.

On the other hand, while political vulnerability (in this case the condition of

refugee status or asylum seeker) begets physical vulnerability—killings, beatings, detention—disadvantage and deprivation do not command political recognition. But they should. It was my assumption and not only that of the refugees that "political" questions regarded organization and objectives rather than human need for food and shelter. In the focus on the depoliticizing effects of vulnerability we run the risk of depoliticizing vulnerability itself, reproducing the same untenable divide between the physical and the political that Agamben so brilliantly analyzes.

The problem, in part, is that Agamben's analysis is silent in the face of human need for food and shelter; the analysis stops, like the political rights of the refugees, at the camp's (or park's) gate. Agamben is diligent in understanding and explaining the processes that produce mere humanity and the political consequences that attach to such processes. He is also able to trace with passionate clarity the structural links between this vulnerability and those consequences and to place those links squarely within the operation of sovereignty. However, what we also need is new ways of extending the political into the most intimate arenas of biopower, to ask how human need could be recognized in ways that do not necessitate the depoliticization Agamben brilliantly describes.

This is what must be tackled now: regardless of the dangers attending a humanitarian focus on the plight of vulnerable human beings, the humanitarian crisis does exist and a link must be made between politicization and need, a link that Human Rights fail to make, as the argument has shown. Human Rights often fail to recognize the human in need as the Human of Human Rights; the rights encoded in the regime of Human Rights do not precede the politicization of the human as this politicization occurs

in the operation of sovereignty. In fact, the oft lamented "selective reach" of important human rights documents (like the Geneva Convention) is a testament that Human Rights do fail to give political form, to grant a recognizable political subjectivity, to the humans most in need of the regime's protection.

It is here that the subjectivity of the vulnerable may be crucial to the creation of a link between politicization and need. The questions asked throughout this thesis have sharpened my focus on those moments in time and space when human vulnerability is captured by (and increasingly outside) political norms. The bodies of Palestinians moving across the geographical and imaginary boundaries of the State of Israel and the bodies of Iraqi men chasing American water bottles; the ambiguous status of Palestinians before and after Oslo and the ambiguous status of Iraqis during the American invasion; random border sites and insecurity zones: all trace the link between depoliticization and the management of the materiality of human beings. The preceding chapters have argued that the production of humanity as a materiality to be managed in those spaces of ambiguity must be seen as a differentiating operation of sovereign power aimed at the containment of this materiality's political potential—its potential to effect changes in the social, spatial, economic, even territorial organization of power relations. Always the understanding and status of the human enacted in and through discourses and rights has been crucial to the production of that link between depoliticization and the management of materiality.

What discourses and subjectivities, however, do the vulnerable produce? And what understanding of and implications for the human would such discourses and subjectivities have? This is where I think the research in this thesis should continue:

tracking the formation of a political subjectivity that acknowledges its vulnerability and its needs and is able also to express its anger and its vision. The violent removal of the protesting Sudanese refugees in Cairo did not only demonstrate the political vulnerability of defenceless refugees. It did not only highlight the unwillingness or inability of the United Nations to protect refugees in the face of a sovereign government's right to manage its space. And it did not only confirm the tragic consequences and the human cost of the refugees' vulnerability. The removal was also the denial (by the Egyptian government) of *the politicization of human vulnerability*; it was the denial of the attempt by the refugees to make of their vulnerability no more a condition or a state of being but an organizational framework for community building. The removal dispersed that community and blanked out that vulnerability, removing it from the spatial and political memory of the Cairo neighbourhood that housed the protest. If political life, what it means to be political—the broadest overarching question guiding the questions and concerns and explorations of this thesis—is not to be encapsulated in the experience of citizenship, and if the depoliticizing effects of statelessness and lack of status, and sometimes lack of space, are to be recognized, then our understanding of political action must not only think our vulnerability with all its historical differentiations into politics (as Agamben and Butler do in different ways). And it must not only delink the enabling and protective structure of rights and the dominant institutions that organize spaces of exclusion and inclusion. Specifically, it must also link the discourse and subjectivity of the vulnerable to the formation of political identity, the formation of a political subject.

At this juncture, this mutating time of Empire, what must be challenged is not only the incessant production of human vulnerability on a global scale. We must also

challenge our understanding of political identity; what is at stake is the ability of human beings in need to form a community determined not only by its conditions of deprivation or vulnerability, but by its discursive power to link its conditions of deprivation to the differentiating operation of biopower. This will not only necessitate a rejection of the divide between the physical and the political. It will also force an understanding of community and belonging not spatially modeled, where community does not exhibit the exclusionary inclusion of the nation-state. Such community will never exist absolutely: it will continuously seek to unravel, to eradicate the conditions of its creation. What would such a community look like? Is it a new understanding of the human that is needed or a new conception of the ways in which humans are related, not through sameness and difference but through the differentiating operation of power relations? Would it not be less significant to determine who is human than to determine what relation of power brings various beings into proximity and distance, interdependence and exploitation, intimacy and erasure? This is what I see as the challenge of political action in the time of Empire, imagining communities not determined by a spatial organization of relations or essential markers of identity but by their ability to channel their conditions of being vulnerable or deprived into acts, discursive and material, that make visible sovereign power's production of mere humanity.

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