

Where is the Law in ‘Unlawful Combatant’?

Resisting the Refrain of the Right-eous

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—HYMNS FOR A HOLY WAR

I need to recruit all the soldiers, all of God’s soldiers. We at war.

Kanye West

A young US soldier with prescription glasses and a southern accent talks painfully freely, direct to camera. He’s thinking about being back home one day and finding a lucky lady to settle down with. Such sweet musings are hard to appreciate given his descriptions, only moments earlier, which range from the inescapable stench of violent conflict to the difference between how people die in the movies and how they die in Baghdad streets: ‘Usually you see in the movie, “Bang”, you’re dead. You fall down’, he says. ‘Here, “Bang”, you’re, you should be dead, yer guts are hangin’ out but you’re still walking around ...’ Briefly pausing, he adds, ‘They don’t ... they don’t die.’

This scene from George Gittoes’s *Soundtrack to War* is one of many jarring insights accompanying the documentary’s stated ambition, to survey the music preferences of soldiers on the front line in Iraq. The fresh-faced troops have been convenient evidence for many critics

seeking to prove the dysfunctionality of a generation brought up on video games and action flicks, and perhaps it is because we are closer to the troops' age than many critics' that we view the situation a little differently.¹ The soldiers' music can be seen to organise a territorial space within the chaos of the battlefield, an example of Gilles Deleuze and Felix Guattari's concept of the 'refrain'. While Deleuze and Guattari write of a child in the dark, here is an example of the soldier-child in the Heart of Darkness.² The rhythms of war and popular culture intermingle, amplify each other and become expressive. Certainly the soldiers' preferred music genres of gang-bangers (Tupac) and cock-rockers (Guns n' Roses) resonate with conventional notions of military machismo, but a focus on the 'textual' ignores the function of the music to produce little islands of reassuring order. At the leading edge of the US military's war machine assemblage, as the nation of Iraq is deterritorialised from the despotic signifier 'Saddam Hussein', the soldiers' music consolidates a milieu of the battlefield. It also consolidates a space-time of the here-now with something less horrific. The popular music refrain produces a home away from home.³

Michael Moore's selective use of Gittoes's footage in *Fahrenheit 9/11* may have encouraged an alarmist reaction to the jocks singing Bloodhound Gang as the tanks roll, but the wider context of *Soundtrack to War* encourages viewers to sympathise with these attempts to find the briefest of homes amidst the horrors of war.⁴ More worrying, we suggest, are the scenes in which troops explain what else gets them through the war experience. While for some it's gore metal, for at least as many it's their God that sustains them. It's 'the blood that Jesus shed' that gives the towering blond Dawson Leary look-alike 'the strength' to go on 'from day to day'. It's 'a mighty God' the gospel singers 'serve' as they seek to share a smile with those they meet. This is the refrain ringing out from rooftops while bombs drop mere miles away.

Why is this worrying? Because in their patriotism, these singer-soldiers see a religious act. When someone is saying 'God is on our side' they are no longer talking about the nation-based context for which, whatever the rules of war might be, such rules are relevant. They're talking about a Holy War. It has different rules. How to hold them to any actual account is the difficulty we seek to explore here.

—THE REFRAIN OF THE RIGHT-EOUS

The righteous refrain in the soldiers' songs reflects the rhythm of patriotic proclamations, announcements and denouncements constantly traversing global media networks.⁵ On a daily basis, voices of the 'worthy' infect the globe with a refrain of US-centric neo-liberal anti-terror fervour ably demonstrated in George W Bush's rhetorical use of the idea of freedom in the recent US presidential election campaign:

[W]e're pursuing a strategy of freedom around the world, because I understand free nations will reject terror. Free nations will answer the hopes and aspirations of their people. Free nations will help us achieve the peace we all want.⁶

Thus speaks the 'coalition of the willing' and its singular Axis of Right-eousness. *God forbid* straying from the path of the worthy, for this would be to reject the only form of 'freedom' proffered by Empire. The refrain of the Right-eous effects a consolidation of milieu (the War on Terror and the neo-liberal economic program) and a consolidation of time-space (the territorialisation of globalisation). Affective in nature, the brand of Empire being peddled by the current reign of the Right-eous is a result of the neo-conservative conjunctive synthesis of religious commitment with politico-economic faith.⁷ Hell hath no fury to compare with those that populate the assemblages produced by post-9/11 reactionary, paranoid-fascist desire.

Henry Giroux isolates the deceit at the heart of contemporary US democracy when he writes:

Bush's innocent posturing, wrapped as it is in the righteousness of the rhetoric of anti-terrorism, also provides a massive diversion from addressing those political issues at the heart of what it means to measure the *reality* against the *promise* of a substantive democracy.⁸

Yet in *Means Without End*, Giorgio Agamben predicts such a situation when he claims that politics 'seems to be going through a protracted eclipse' and 'appears to be in a subaltern position with respect to religion, economics, and even the law'. To the extent that politics 'has been losing sight of its own ontological status', he argues, 'it has failed to confront the transformations that gradually have emptied out its categories and concepts'.⁹ Part of a strong legacy of Italian political theory, this diagnosis echoes the emphasis Antonio Gramsci placed on assessing the precise and particular form taken by present conditions. Failing to pay attention to the changing features of the political landscape severely weakens potential strategies for challenging its composition. A conjunctural emphasis is therefore integral to an effective politics.¹⁰

The three domains Agamben sees as thwarting our categories and concepts for politics—religion, economics and the law—find convenient coherence in the War on Terror. What is specific and historically different about the post-9/11 environment is that it combines an almost pre-modern religious fervour with the corporate might and sovereign power of a postmodern Empire. This nexus is the unspoken triad currently assuring the hegemonic position of the neo-conservatives. Their continued unspoken conflation and interrelatedness affects a seamlessness such that religious, economic and legal objectives can be simultaneously secured. This articulation might best be described as a discourse of 'Right-eousness', a term that acknowledges the conservative religious conviction underpinning what is also an economic and legal regime. In this paper we want to suggest that, within this otherwise smooth process, the figure variously described as the 'unlawful', 'illegal' or 'enemy' combatant provides a valuable opportunity, because it is a rare slip in the dominant discourse of terrorism. It emerges from the political and legal vacuum of a conjunctural shift—a moment when residues of a previously hegemonic formation continue to influence our perception of what's happening in the present, despite the

new conditions we find ourselves in. Today, these conditions include the highly dubious and reactive legal process made possible when war is waged via religious rather than state-based loyalties. We will venture that the unlawful combatant is a model for interventions that might re-articulate the current conjuncture in more humane and grounded terms, terms that trouble the polemics, abstraction and dubious leap of faith constituting a Holy War. But before we reach this conclusion, some more detail of this new political terrain needs to be sketched.

—US EXCEPTIONALISM IN THE SOVEREIGNTY OF EMPIRE

The constitution of sovereignty is by way not only of a historical document (the Constitution of the United States of America) but also of the specific attributes of the biopolitical sovereignty-machine of Empire that work to produce a politicised human life.¹¹ Antonio Negri and Michael Hardt argue that with the withering of civil society the logics of subjectification once confined to institutions (the school, family, hospital, factory and so on) have been let loose across the social.¹² A singular sovereignty-machine operates across a number of milieus, consolidating populations biopolitically. Politics ceases to be a space of contestation but is concerned with the continual reorganisation of a single biopolitical order: Empire. Not all actualisations of the sovereignty-machine necessarily belong to all milieus, yet every actualisation of the sovereignty-machine *resonates* with other actualisations so that there is a biopolitical consistency across all milieus that it populates. Consistency does not lead to social equivalence, far from it. The production of social life is the reproduction of already existing asymmetrical social relations.

One criticism of Agamben has been for the manner in which ‘he develops the Foucauldian paradigm of biopolitics without focusing on the specific economic rationality of biopolitics’.¹³ He focuses on the limit case of the politicisation of life—bare life—reducing the entire spectrum of less ‘opaque’ examples (biological life, sexuality, and so on) to the status of ‘avatars’.¹⁴ Agamben’s emphasis on the limit case of the concentration camp can be enhanced with a broader focus on how such biopolitical relations are enacted and reproduced within culture, and it is the beginnings of this wider project that we seek to offer in this paper.

The refrain of the Right-eous is the term we are giving to the territorialising expression of US exceptionalism within Empire’s sovereignty-machine. The rise of the Christian Right within US politics, the perception of laissez-faire capitalism as representative of a ‘natural state’ of humanity and the colonising function of the US war-machine all signal the multiplicative effect required for producing a stability of biopolitical form that is singularly repeated across different milieus.¹⁵ Further dimensions of this process include the ideal of the free market being upheld with religious fervour, and jingoistic nationalism as the popularist motor cause of imperialist colonising expeditions and government, rather than the administrator of politics, gradually becoming the vehicle for faith-based interests. At the extreme end of such developments, the religious Right can demand that the juridical order be interpreted *according to faith* rather than *in good faith* (with fidelity to the original intention of legislation).¹⁶

The inverse to the radical dehumanisation and politicisation of *life* highlighted by Agamben as belonging to the model of the camp is the reactionary humanisation produced by US exceptionalism within the sovereignty-machine of Empire.¹⁷ The distinction between the ‘normal’ subsumption of bare life to political discourse can be inverted to become a horizon that is continually displaced across the economic, religious and juridical milieus. The indiscernibility of life from politics in the limit example of the concentration camp becomes a qualitative *discernibility* of Right-eousness within the everyday biopolitical reproduction of the social. The reactionary desire of the Right-eous assembles heterogeneous elements across any number of milieus, forming a specific plane of consistency that transforms every contestation into a state of emergency. A return to politics, then, requires that these actualisations of the generalised state of exception be depotentialised.¹⁸ The War on Terror is the limit case for the transformation of a political contestation—legitimate or not—into the depoliticised terrain of the Right-eous biopolitical reproduction of the social.

—NO CAUSE, JUST EFFECTS: VIRTUAL TERRORISM

As Paul Virilio notes, while the Clinton administration downplayed its reaction to the Oklahoma bombing and depotentialised the social efficacy of the terrorist threat, the Bush administration instead chose to promote the event of 9/11, tending a paranoid desire and the ‘evental lacuna’ in the juridical order:

Hence the tragedy is not over, ... hence the war on terror must continue, hence the need to gloss over everything that relates to internal politics, including the prodigious scandals that are part and parcel of the miasma, and that are part of all the hocus-pocus we have to put up with in the media. All this, instead of taking a lesson from Clinton. Instead of jumping on his plane after the first attack in 1993 on one of the towers, Clinton let the thing go, he smothered it. In this instance, he followed McLuhan’s advice: if you don’t want a catastrophe, pull the plug. In other words, prevent the media from dwelling on the event too much.¹⁹

Virilio argues that the Bush administration always had a choice in its response to 9/11. The event offered a chance ‘to care about the world the way it needs to be cared for’. Instead, in a simplistic and brutal reaction, war was waged: ‘the most out-dated way to handle an event of this magnitude’.²⁰ The Bush administration sought not to depotentialise the social efficacy of the terrorist acts, but to use them to promote the alleged efficacy of their own actions, including those that constitute the so-called ‘coalition of the willing’.

Terrorism’s haunting presence has gathered such political usefulness for leaders in the West that we are now suspect to a complete ideological closure over what the term in fact means. As Stuart Hall and others have demonstrated, when a governing bloc successfully achieves ideological closure over a word, there is no way to understand or seek to change the

historical factors behind it (in the manner Gramsci prescribed).²¹ The more a cause-and-effect explanation for terrorism is avoided, the more abstract it becomes and the more 'impossible' any reaction to it can also become.²² A literally senseless cycle develops where *any* potential threat to the state can be co-opted into the same abstract battle. Right now, as leaders clamour to describe their contrasting regional concerns within the vote-pulling vocabulary of terrorism (the only vocabulary, apart from religiosity, that George W Bush appears to have mastered), we lose sight of the fact that 'International terror is not an "ism". It is a criminal tactic of publicity seeking for a cause, one to which the West seems astonishingly vulnerable'.²³ As Judith Butler also recognises, the terror tag is so attractive for political leaders because it evacuates the possibility that an identifiable grievance might underwrite individual acts of dissonance.²⁴

The terror label also fits the political schema Agamben outlines insofar as Western leaders choose to maintain a constant state of emergency.²⁵ This maintenance is their sole remaining purpose and claim to legitimacy, Agamben argues, asking: 'How could we not think that a system that can no longer function at all except on the basis of emergency would not also be interested in preserving such an emergency at any price?'²⁶ Condemned as we are to be alert if not alarmed, the War on Terror exhibits this state of emergency only too well.

In this 'war' the terrorist label domesticates the very real threat to the sovereignty-machine of Empire posed by the multitude. If the power of Agamben's 'whatever singularities' lies in their capacity to evade labelling or recognition by the state, at the moment the various residual state-based actualisations of Empire appear quite content to recognise terror.²⁷ As an explanation for all that's wrong with contemporary politics it is used in the widest of genres and contexts to the point of hyperbole and contradiction. Witness the editorials in Moscow following the Beslan schoolyard killings: 'We have never before had to undergo such a massive wave of terror. These are no longer isolated attacks by terrorists. This is a real terrorist war.'²⁸ Terror, terrorist, terrorism—the refrain of the Right-eous has organised a home in the USA, but it's a home many others seek to inhabit given the 'comfort' it affords. And what this strategy of recognition suggests is that the politics of the 'virtual' summoned by recent Italian theory does not always or even necessarily belong on the Left. What's happening in Iraq or indeed Russia seems not only a theoretical vindication of Agamben and Hardt and Negri but also a clear flipside to the 'desirable' form of radicality sanctioned by their work. The terrorists themselves are not the flipside, but the people of those nations supporting the 'coalition of the willing' (or 'assemblage of the Right-eous'). Instead of the real *ontological* 'common' between a multiplicity of peoples uniting them into the *sociological* realisation of shared antagonisms, they are instead assembled into a nation of shared reactionary desire.²⁹

The 'War on Terror' remains successful because it has found a way to define a politics of the multitude—albeit a particularly vicious and anarchic one—in terms that sustain Empire and expand the territory of the Right-eous.³⁰ It's not in terrorists' interests to have their causes lumped in to one blanket category. Those given the label are denied specific recognition as

radicals supporting an actual cause, no matter how vague or abhorrent the cause may be. Moreover, the very governments and administrative policies that are the source of their violent grievances actually appear to be sustained by their acts (the bombing of the Australian embassy in Jakarta is another instance of this). The word terrorism now has a consequence all of its own, without reference to any actual event or political tactic. As long as this hegemonic articulation continues, as the song goes, we remain condemned to sing along to the 'United States of Whatever'.³¹

—REACTIONARY LAW: THE FACELESSNESS OF FEAR

During the preliminary hearing into the case of Australian and alleged unlawful combatant David Hicks, no pictures or audio from the trial were allowed.³² Few journalists or observers were admitted, and those that were faced tough restrictions. The only visual evidence of the military commission was the traditional court portrait. Yet the artist had particular instructions too. All prisoners had to be drawn generically so that they could not be identified. Military spokesman Colonel David McWilliams explained to journalists the necessity of these procedures to remain in accordance with the Geneva Convention (for example, the identities of prisoners had to be protected to avoid public ridicule). At the time, ABC journalist Leigh Sales asked:

Leigh Sales: The United States Government ignored the Geneva Convention to establish this entire detention facility, so why would you quote the Geneva Convention now?

David McWilliams: The Geneva Convention has always been adhered to at Guantánamo Bay to ensure the humane treatment of people who are detained here.

Leigh Sales: But their actual status as enemy combatants was designated so that they would not be afforded prisoner of war protections under the Geneva Convention.

David McWilliams: Because they're not prisoners of war, they're enemy combatants.

Leigh Sales: Can you see how it may look that the US Government adopts the Geneva Convention or cites the Geneva Convention when it's convenient, but chooses not to do so at other times?

David McWilliams: The United States Government has applied the principles of the Geneva Convention to the detention of people here at Guantánamo Bay.

This exchange is a salutary example not only of a state intellectual in the sense Gramsci described, but of how in the current conjuncture their function is to assert the expectation of law rather than to demonstrate that existing laws are being carried out. In this power configuration religious, economic and legal interests hold equal weight; to question whether the law is carried

out is to question the moral as much as the legal integrity of the US military. McWilliams offers a selective representation of right process as reassurance and evidence *of* right process, signalling the force of law working within the suspended juridical order of the state of exception.³³ Such a move is intended to appeal to our residual desire that justice and a fair trial are worthwhile and still binding *ideals*. Watching the television news feed from the hearing, this becomes all the more clear: commissioners in the portraits are left with blank faces (again for security reasons).

By this stage what exactly is it that the court artist purports to represent? What is it about these pictures, which show a room full of faceless men, that is supposed to demonstrate legitimacy and right process? The commissioners' desire to remain faceless in the depictions when we actually do know their names is really only fitting. To the observing public, it doesn't matter who they are. They are simply the faceless conduits of the force-of-law in the state of exception. In the pictures sanctioned for distribution, the soldiers' uniforms are the only signifiers left, the only signs that don't threaten ambiguity or arbitrary interpretation. They only ever mean the force and sanction of Empire.

In these hearings, the court illustrator has the function of signifying some actual form of right process in the legal vacuum underwriting these military commissions. But what's so objectionable is that generic conventions have now fully replaced the actions earlier intended to be mediated. The expectation of justice continues as a given, but only because 'no one has announced its death'.³⁴ Evidence now amounts to faceless gestures.

—BEYOND BARE LIFE, BEYOND HELP

At its limit, Agamben argues, the politicisation of bare life is exemplified by the concentration camp. The *tendency* towards this limit does not equal the horror of the concentration camp, but presents a clear qualitative expression of the political conditions of life. For Agamben, 'the camp is the fourth and inseparable element that has been added to and has broken up the old trinity of nation (birth), state, and territory'.³⁵ Tracing this development to the state of exception introduced by Adolf Hitler during the Third Reich, which led Germany into a paradoxical state of 'legal civil war', Agamben draws a parallel between the status of persons held in Guantánamo Bay's Camp X-Ray and the Jews held in the Nazi camps 'who, along with their citizenship, had lost every legal identity, but at least retained their identity as Jews'.³⁶ The two camps share this suspended juridical order: the 'military order' issued by George W Bush on 13 November 2001 authorised the 'indefinite detention' of non-citizens suspected of being involved in terrorist activities.³⁷ The ambivalent legal status of Camp X-Ray placed detainees in a juridical limbo '[i]nasmuch as its inhabitants have been stripped of every political status and reduced completely to naked life'.³⁸ In the figure of the 'unlawful combatant', 'bare life reaches its maximum indeterminacy'.³⁹

For those concerned about human rights, Agamben urges a particular response to this form of incarceration:

The correct question regarding the horrors committed in the camps ... is not the question that asks hypocritically how it could have been possible to commit such atrocious horrors against other human beings; it would be more honest, and above all more useful, to investigate carefully how—that is, thanks to what juridical procedures and political devices—human beings could have been so completely deprived of their rights and prerogatives to the point that committing any act toward them would no longer appear as a crime (at this point, in fact, truly anything had become possible).⁴⁰

A consideration of the juridical measures that allow the camps to ‘legally’ emerge must therefore be separated from the question of the biopolitical constitution of bare life that reaches its apotheosis in the figure of the camp detainee. As the footage from Hicks’s preliminary hearing makes clear, however, there is something troubling in Agamben’s directive when juridical procedures *can* be investigated and revealed, but with little effect. In the case of Camp X-Ray, it is the nostalgic ideal of ‘due’ or right process that allows these proceedings to take place with any legitimacy, when what we are actually witnessing is the inauguration of Right-eous process. And as cultural studies scholars we suggest that it is not enough to pay heed to the exemplary model of the camp and the legal innovations it gives rise to, that this must be accompanied by rigorous analysis of examples from popular culture that reinforce and act as support mechanisms for hegemonic articulations.

Camp X-Ray articulates the religious, economic and legal interests of neo-conservatives in the sense that the freedoms once enshrined in global initiatives such as the Geneva Convention become the building blocks from which the legal non-status of the unlawful combatant can be produced. These enemies are not considered human so much as further opportunities to justify US exceptionalism. They are empty vessels for evil, irredeemably under the sway of satanic forces, for no other human subject is permissible except the neo- (liberal) Christian subject.⁴¹ The Right-eous Manichean frame for this battle (‘you are either with us or against us’) absolves the need to consider the circumstances of each prisoner’s case or the rehabilitation that a more confident society could afford. Representations of the juridical procedures inaugurated in the Guantánamo Bay military commissions bear witness to the ‘force-of-law’ in action, not on the bodies of detainees themselves, but as a Right-eous exercise that gathers momentum through global media circulation. Any injustice at the core of the military commissions is hidden in plain sight of the flaccid, if not complicit, global media lens.

—LAW: WHAT IS IT GOOD FOR?

Law isn’t created through declarations of human rights. Creation, in law, is jurisprudence, and that’s the only thing there is. So: fighting for jurisprudence. That’s what being on the left is about. It’s creating the right.

While defenders of the military commissions claim that those under trial shouldn't be rewarded because they have violated 'the laws of war', their fabricated status as 'illegal combatants' is an opening in the otherwise overdetermined interests of the Right-eous. Just how the laws of war are relevant in circumstances where a war has been declared illegally is the essence of a contradiction. There is little recourse to the idea of an illegal combatant when, no matter whose side God is on, war itself is conducted without sanction. In our efforts to resist the refrain of the Right-eous it's important to seize these opportunities that do not buy into the same exceptionalist abstraction and legal vacuum crucial to its success. The very contradictions smoothed over by hegemonic articulations offer tactics to confront those powers in the service of Empire.

At the moment the residues of what we expect from our legal and political system work in combination with those actual state powers that continue to exist. And while reactionary laws are enacted with speed and flexibility, their consequences—stasis, confinement, deferred and ambiguous process, inflexibility, torture—remain the same. Mamdouh Habib, the other Australian that was held in Guantánamo Bay, could only speak to his family on speaker phone and in English. When Terry Hicks wrote to his son in prison, the words 'All our love' were always censored.⁴³ The significance of this is that no matter how exceptional the case for war, the concrete legal statutes accompanying it (the Homeland Security Bill or Australia's anti-terrorism legislation, for instance) mean that any of us who stand in the way risk the consequences of the 'enemy combatant' label. Any resistance to Empire and US exceptionalism becomes territorialised by the refrain of the Right-eous.

In light of present circumstances, Deleuze's call for creationism in law appears somewhat utopian. An emphasis on jurisprudential axiomatics seems difficult in the context of a deliberately suspended juridical order and the self-legitimizing grip of the refrain of the Right-eous. Political directives currently available, including those shaped by recent Italian theory, struggle to cope with the religiosity underpinning justifications for the War on Terror. When the reactionary desires of the multitude were resuscitated by neo-conservatives post-9/11, the population was mobilised to accept extra-judicial motives. The paranoid 'reactionary' justice of the Right-eous manipulated the deterritorialised molecular components of the law milieu, reassembling them to reflect Right-eous imperatives within the state of exception. It is the neo-conservatives that are following Deleuze's prescription to the letter, for they are surely creating the rights of the prisoners held in the prison camp of Guantánamo Bay. Such a course of action is 'justified' in the feedback loop that creates the 'unlawful' status of alleged combatants. The moral authority of the Right-eous voice speaks the paradox of US exceptionalism: the legitimating of illegitimate acts that produce the 'lawfulness' of the 'unlawful' status of enemy combatants.

To answer the question, then: law—what is it good for? It has been good for the neo-conservatives in so far as it offers attributes of intensity that can be amplified through the mass media and punctuated with the affectivity of terror. But having understood some of the procedures leading to the point where human beings are stripped of their rights, we hope to encourage a revolutionary diversity of hymns, anthems, riffs and rhymes to unsettle the refrains so comforting for the Right-eous. A politics of law must confront the current climate in the USA where “liberal” is, if anything, a taboo category and where “secular humanism” is routinely treated as a marginal religious sect, while a vast majority of the population claims to engage in direct intercourse with multiple invisible entities such as angels, Satan, and God’.⁴⁴ Hegemonic rule wins support by consensus. We don’t consent when the laws we *do* believe in are sold out in the name of a God, an economic program and a war in which we may or may not. For as long as this conjuncture stays defined in the abstract fundamentalist terms of the Right-eous, we hope you’ll join with us in asking, where is the law in ‘unlawful combatant’?

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—NOTES

¹ A writer on one academic email list offered an analogy between the music in Gittoes’s documentary and the ‘Flight of the Valkyries’ sequence in *Apocalypse Now*. <http://www.drifline.org/cgi-bin/archive/archive_msg.cgi?file=spoon-archives/lyotard.archive/lyotard_2004/lyotard.0407&msgnum=12&start=517&end=573>. On ABC television, *The 7.30 Report* ran a story in anticipation of the documentary’s screening (on the same network’s *Big Picture* program, 1 September 2004) with the following introduction: ‘What happens when those who have grown up on everything from *Rambo* to *Saving Private Ryan* are sent to the frontline? Throw into the mix a constant diet of graphic video games plus heavy metal and rap music and what sort of soldiers do they become?’ <<http://www.abc.net.au/7.30/content/2004/s1163292.htm>>

² Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, University of Minnesota Press, Minneapolis, 1987, pp. 311–50. See also Gary Genosko, ‘A Bestiary of Territoriality and Expression: Poster Fish, Bower Birds, and Spiny Lobsters’, in Brian Massumi (ed.), *A Shock to Thought: Expression After Deleuze and Guattari*, Routledge, London, 2002, pp. 47–59.

³ On the concept of ‘home’ in Deleuze and Guattari’s work see Meaghan Morris, ‘Crazy Talk is not Enough’, *Environment and Planning D: Society and Space*, vol. 14, 1996, pp. 384–94; also J Macgregor Wise, ‘Home: Territory and Identity’, *Cultural Studies*, vol. 14, no. 2, 2000, pp. 295–310.

⁴ Bloodhound Gang’s ‘Fire Water Burn’ was a popular anthem among troops with its chorus: ‘The roof, the roof, the roof is on fire ... We don’t need no water let the mother-fucker burn, burn motherfucker, burn’. *One Fierce Beer Coaster*, Geffen Records, 1996. In response to the apparent popularity of their song amongst troops the band wrote on their fan site: ‘As long as our troops weren’t illegally downloading our songs, we couldn’t care less if we’re killing

machine bed music', thus speaking a popular hierarchy of contemporary attitudes towards criminal law in the USA. *The Weekend Australian*, View, 28–9 August, p. 34.

⁵ Manifest in the extended version of Kanye West's Grammy-award winning rap anthem 'Jesus Walks', quoted in the above epigraph. *College Dropout*, Roc-a-Fella Records, 2004.

⁶ From the first US Presidential debate between George W Bush and John Kerry broadcast on CNN, 30 September 2004.

⁷ As one response to this paper pointed out, the Greenback inscription 'In God We Trust' demonstrates the economic-religious nexus in the United States is nothing new. But what is new, we suggest, is the current administration's willingness to abandon the nation's legal process in the service of these interests.

⁸ Henry A Giroux, 'The Politics of Emergency Versus Public Time: Terrorism and the Culture of Fear', *Culture Machine*, April 2002. <<http://culturemachine.tees.ac.uk/InterZone/giroux.htm>>

⁹ Giorgio Agamben, *Means Without End: Notes on Politics*, trans. Vincenzo Binetti and Cesare Casarino, University of Minnesota Press, Minneapolis, 2000, p. i.

¹⁰ Melissa Gregg uses this to describe John Howard's political success in Australia in 'Toolbox for Electric Fences', *Cultural Studies Review*, vol. 10, no. 1, 2004, pp. 149–60.

¹¹ Michael Hardt and Antonio Negri, *Empire*, Harvard University Press, 2000, p. xiv.

¹² Hardt and Negri, *Empire*, pp. 328–32. See also Giorgio Agamben, *State of Exception*, University of Chicago Press, Chicago, 2005, pp. 87–8.

¹³ Brett Neilson, 'Potenza Nuda? Sovereignty, Biopolitics, Capitalism', *Contretemps* 5, December 2004, pp. 76; 78, fn 24. <<http://www.usyd.edu.au/contretemps>>

¹⁴ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, Stanford University Press, Stanford, 1998, p. 120.

¹⁵ On the waves of evangelical Christianity in the USA and the rise of the 'New Christian Right' in US politics see William C Martin, *With God on Our Side: The Rise of the Religious Right in America*, Broadway Books, New York, 1996. On the affective congruence of evangelical Christianity with the military and economic imperatives of Empire in the figure of the 'Christian soldier' see Linda Kintz, *Between Jesus and the Market: The Emotions That Matter in Right-Wing America*, Duke University Press, Durham, 1997, pp. 141–215, 237–56.

¹⁶ Hence the recent case of Terry Schiavo could be described by President Bush as a threat to the nation's 'culture of life'. <<http://www.cnn.com/2005/US/03/31/schiavo/>>

¹⁷ On dehumanisation see Agamben's discussion of the 'anthropological machine' in *The Open: Man and Animal*, Stanford University Press, Stanford, 2004.

¹⁸ As Agamben writes, 'It is the task of democratic politics to prevent the development of conditions which lead to hatred, terror, and destruction—and not to reduce itself to attempts to control them once they occur'. 'Security and Terror', *Theory & Event*, vol. 5, no. 4, 2002. <http://muse.uq.edu.au/journals/theory_and_event/v005/5.4agamben.html>

¹⁹ 'Conflicts: A Conversation Between Paul Virilio and Derrick de Kerckhove'

<http://www.aec.at/de/archiv_files/20021/2002_206.pdf>. On the evental and exception see Agamben's brief discussion of Alain Badiou's conception of the event in *Homo Sacer*, pp. 24–5.

²⁰ The event of 9/11 was likened to the plot of a Hollywood movie from the outset. For instance, Jock Given notes that the Trade Center's demise *looked* like a movie, while the sound-bites of Bush's reaction *sounded* like a Western. *America's Pie: Trade and Culture after 9/11*, Sydney, UNSW Press, 2003, p. 11. For alternate ways the administration might have handled the impact of repeated broadcasting of the 9/11 attacks see Jessica Hamblen, 'How Communities May Be Affected by Media Coverage of Terrorist Attacks', National Center for Post-Traumatic Stress Disorder, Department of Veterans Affairs, 2004. <http://www.ncptsd.org/facts/disasters/fs_media_disaster.html>

²¹ Stuart Hall, Charles Critcher, Tony Jefferson, John Clarke and Brian Roberts, *Policing The Crisis: Mugging, the State and Law and Order*, Macmillan, London, 1978.

²² Michael Hardt and Antonio Negri suggest that '[t]he passage from the virtual through the possible to the real is the fundamental act of creation'. *Empire*, p. 357. Their use of 'possible' describes power as potentiality operating within a contingent intersection of 'events' constituting a political reality. In this context, we use 'impossible' to refer to the powerlessness which results from the exhaustion of potential through the rearticulation of the (non)contingent through a singular 'determined' Right-eous narrative of Terror.

²³ Simon Jenkins, 'Terrorism Feasts on Repression', *The Weekend Australian*, 4–5 September, 2004, p. 12.

²⁴ Judith Butler, 'Guantánamo Limbo', *The Nation*, April, 2002.

²⁵ Agamben, *State of Exception*, pp. 1–31.

²⁶ Agamben, *Means Without End*, p. 6.

²⁷ Giorgio Agamben, *The Coming Community*, trans. Michael Hardt, University of Minnesota Press, Minneapolis, 1993, p. 86.

- ²⁸ Quoted in *The Weekend Australian*, 4–5 September, 2004, p. 25. We include this example as another discursive manifestation of a reactionary and nationalist exceptionalism.
- ²⁹ Hardt and Negri's almost utopian faith in the multitude shifting from a 'common' ontological to sociological relation to antagonisms deserves much more critical attention than we can give it here. See *Multitude: War and Democracy in the Age of Empire*, The Penguin Press, New York, 2004, pp. 348–50.
- ³⁰ The 'Terror' label captures and embodies what Deleuze and Guattari call the 'l'ennemi quelconque', which in *ATP* is translated as the 'unspecified enemy', but in *Empire* is translated as 'the whatever enemy'. Deleuze and Guattari, *ATP*, p. 422; Hardt and Negri, *Empire*, p. 444, fn. 11. It is the exact element of the contemporary state of exception that is internalised into the sovereignty of Empire. See Agamben, *Homo Sacer*, p. 18.
- ³¹ Liam Lynch, 'United States of Whatever', *Fake Songs*, S-Curve Records, 2004.
- ³² ABC North American Correspondent Leigh Sales listed some of the restrictions imposed on journalists in her report 'Military Limits Hicks Trial Coverage', *AM*, ABC Radio National, 24 August 2004.
- ³³ See Agamben, *State of Exception*, pp. 32–40.
- ³⁴ This phrase is taken from Ian Buchanan's succinct account of Agamben's usefulness in a local context, 'August 26, 2001: Two or Three Things Australians Don't Seem to Want to Know About "Asylum Seekers" ...' *Australian Humanities Review*, May 2003 <<http://www.lib.latrobe.edu.au/AHR/archive/Issue-May-2003/buchanan.html>>.
- ³⁵ Agamben, *Means Without End*, p. 44.
- ³⁶ Agamben, *State of Exception*, pp. 2–4.
- ³⁷ 'Military Order No.1: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terror', appendix to Michael Ratner and Ellen Ray, *Guantánamo: What the World Should Know*, Scribe Publications, Melbourne, 2004, pp. 106–112. Of particular interest is Section 7 of the order, accurately titled "Relationship to *Other Law and Forums*" (italics added), which sets out the relationship between persons held under the order and the global juridical order: the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.
- ³⁸ Agamben, *Means Without End*, p. 44. Italics in original. Agamben, *Homo Sacer*, p. 159.
- ³⁹ Agamben, *State of Exception*, pp 3–4.
- ⁴⁰ Agamben, *Means Without End*, p. 44.
- ⁴¹ Recent moves to disenfranchise same-sex couples in the USA and Australia show the many other possible outcomes of this religious hold on contemporary politics.
- ⁴² Gilles Deleuze, 'On Human Rights', Transcript at <<http://www.generationonline.org/p/fpdeleuze10.htm>>.
- ⁴³ 'Emotional Reunion for Terry and David Hicks', *7.30 Report*, ABC TV, 26 September 2004. Transcript at <<http://www.abc.net.au/7.30/content/2004/s1186075.htm>>.
- ⁴⁴ Eve Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity*, Duke University Press, Durham, 2003, pp. 139–40.