

NO-BODIES

Law, Raciality and Violence

Denise Ferreira da Silva *

When has it become a matter of fact — more than evidence, and yet not a self-evident ‘truth’ — that a (perhaps never to be known) number of young males and females perish as subjects of law’s preserving violence? In this article, this question will guide a consideration of a dimension of contemporary global existence that should become a theme of the theorising of the political. It describes a political scene in which the arms of the state — the police and the military — deploy total violence as a regulating tactic. More specifically, it reads the state’s occupations of Rio de Janeiro’s economically dispossessed neighbourhoods, where drug traffickers compete to institute the ‘law of the land’, as enactments of a different kind of founding contract, racial violence signifies. In this account of the political (ethical-juridical) scene, the dead bodies of black and brown teenagers count not as casualties of urban wars, but as signifiers of the horizon of death. For the racial subaltern’s existence as an effect of the tools of raciality (racial and cultural difference) unfolds in territories in which the state acts only in the name of its own preservation.

We were terrified, all right ...
What happened last night I don’t want
that to happen to nobody.
No one deserves that, you know,
not a human being.¹

Where is that place where what should not ‘happen to nobody’ happens every day? Why is it that, in so many places found in every corner of the global space, so many human beings face that which ‘no one deserves’? What makes possible a mode of existence that spreads beyond the juridical borders of any given state and the ethical borders of every nation? In this article, I describe the context of emergence,

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¹ This statement was made by the cousin of a 24-year-old Aboriginal man, Greg Harrison, killed in Melbourne in May 2005 by ‘a group of Albanians’ who ‘yelled racial taunts’ and attacked them with baseball bats, according to his friends and relatives who survived the attack: ‘Father of Two Killed in “Race Attack”’, *Sunday Age*, 15 May 2005.

conditions of production, and effects of deployment of the political/symbolic tools that design this particular ethical position. It is a position I locate when commenting on Rio de Janeiro state military police's and the Brazilian Army's occupations of the city of Rio de Janeiro's black and brown economically dispossessed neighbourhoods (*favelas*). Each occupation was followed or preceded by confrontations between the military police and drug dealers that lasted from a few hours to a couple of weeks. The law enforcement tactics in these occupations go beyond ostensive patrolling of streets; they also include shooting from low-flying helicopters, deployment of armoured cars, and use of automatic guns. While the state government provides the basic social services — education, health, etc — to these neighbourhoods, its presence is more evident in these military actions, which have become the primary mode of management of the city's economically dispossessed black and brown territories.

During these occupations, *favelas*' residents participate in scenes similar to the war scenes unfolding in Iraq, Afghanistan, Palestine and other corners of the globe. To be sure, the 'kill on site/sight' practice of Rio de Janeiro's police does not make one wonder whether Rio's *favelas* are concentration camps or battlefields, but rather prompts consideration of the question of what exactly is the difference between them. What I do here is situate these occupations of Rio's *favelas* in the recent reconfiguration of the global political (ethical-juridical) stage that places the state at the frontlines of racial subjugation. More specifically, this article introduces a formulation of racial violence that captures how raciality immediately justifies the state's decision to kill certain persons — mostly (but not only) young men and women of colour — in the name of self-preservation. Such killings do not unleash an ethical crisis because these persons' bodies and the territories they inhabit always-already signify violence.

The itinerary that shows how raciality unravels the limits of the regulating (administration or government) suits of the nation-state — in the collapsing of justice that exposes the violent face of the state — includes three steps. My first step is a description of the context of emergence and conditions of production of the notion of difference appropriated in social scientific accounts of human existence. This formulation of difference, I show, is comprehended in raciality, the onto-epistemological arsenal constituted by the concepts of the racial and the cultural, and their signifiers, those which produce persons (ethical-juridical) entities not comprehended by universality, the chosen moral descriptor of post-Enlightenment political configurations. The second step, the analysis of the effects of deployment of the arsenal of raciality, begins with a discussion of how, in the global present, the Brazilian state justifies the deployment of the security architecture that is becoming the primary mode through which it engages its economically dispossessed black and brown populations. My analysis of these occupations of Rio de Janeiro's *favelas* highlights how, because framed as necessary for the reappropriation of these territories, they constitute a mode of racial subjugation, namely racial violence, in which the state occupies the frontlines. Finally, the third step is not quite a conclusion. It simply introduces the case for the consideration of racial violence as a theme of political theorising. For what these occupations exemplify, I argue, is a moment of the political marked by the dis/appearance of the distinction between the law (as legality) and the state (as authority) that sustains the nation-state's claims to

legitimacy. Before the black subject, signified in bodies and territories, the separation of the state's protective and punitive mandates crumbles because there administration of justice (judgment) and law enforcement (punishment) resolve in/to the state's self-preserving force.

Necessitas

Necessity as a figuring of violence, a signifier of determination, preponderates in the assemblages of the theatre of reason found in seventeenth century writings of scientific and juridical universality. In both, reason signifies a universal power that operates from without, and in both the mind (the rational thing) retains self-determination, alone occupying the seat of decision (judgment) in knowledge and political existence. That is, the mind alone *determines* (resolves, judges, adjudges) the rules and motives through which universal reason governs, respectively, the motions of things and actions of human beings. When discussing the notion of power, John Locke rehearses the fundamental gesture that protects the mind in self-determination, the displacement of exteriority, even before the unavoidable elevation of necessity under the aegis of universal reason. Power, that which ensures the beginning of action, he concedes, 'includes relation' — 'a relation to action or change', to be more precise. Nevertheless, the unevenness of this relation should be acknowledged because 'sensible things' and their 'sensible qualities' afford us just a notion of 'passive power'² — that is, reaction or affectability. With the distinction between 'active' and 'passive power', he disavows the body to assert that true power, determination — which is the 'beginning of action' — resides in the mind alone. The mind, the sole exemplar of 'active power' (that which commands, orders, rules), according to Locke, has two powers — namely 'will and understanding': will affords the ability 'to begin or forebear, continue or end several actions of our minds, and motions of our bodies, barely by a thought or preference of the mind ordering or as it were commanding, the doing or not doing such or such a particular'; while understanding, perception, refers to the abilities to know 'ideas in our minds'.³

Early and later writings of determination, of necessity as a signifier of power, assert the mind's privilege of self-determination. Everywhere else, in the stage of exteriority, the one occupied by the body and other external things, universal reason governs as *necessitas*; in the shapes of force and order, it constrains, regulates or limits. It acts as the exterior power (as law or form) that composes and destroys the things of the universe.⁴

² Locke (1894), pp 311–12.

³ Locke (1894), pp 313–14.

⁴ Newton (1846), p lxxviii: 'rational mechanics [as] the science of motions resulting from any forces whatsoever, and of forces required to produce any motion accurately proposed and demonstrated'. That is, the universality of laws — of motion, gravitation, etc — is only accessible to the mind because the later also participates in the attributes of reason.

'Decisive Power'

Locating law and the state in *necessitas*, as framings of universal reason as violence (force, power), seems to have been the main task before the early writers of juridical universality. Law and the state consistently refigure *determination*, but without undermining the rational thing's (the mind's) self-determination. Though both referents of juridical-political power have the dual task of protecting and punishing their subjects, the state (the sovereign) also has the obligation to preserve itself. In his classical statement on the modern sovereign, Thomas Hobbes acknowledges the artificial origin of the state, but insists that its creation results from the rational thing's recognition of its necessity. 'The final cause, end, or design of men (who naturally love liberty, and dominion over others) in the introduction of that restraint upon the selves,' he postulates, 'is the foresight of their own preservation ... that is to say, of getting themselves out from that miserable condition of war which is necessarily consequent, as hath been shown, to the natural passions of men when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants, and observation of [the] Laws of Nature.'⁵

In the name of 'peace and security', according to the early writers of the 'social contract', the rational thing creates the political society, thus relinquishing the liberty enjoyed in the 'state of nature'. For Hobbes, the need for individual protection and collective self-preservation defines the sovereign, 'the essence of the Commonwealth', which he defines as 'one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all as he shall think expedient for their peace and common defence'.⁶ When they do institute this protective political body, Locke would later postulate, the:

authori[se] the society ... to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due. And this puts men out of a state of Nature into that of a commonwealth, by setting up a judge on earth with authority to determine all the controversies and redress the injuries that may happen to any member of the commonwealth, which judge is the legislative or magistrates appointed by it.⁷

Exactly what does this 'decisive power' mean? This formal power, the artificial authority, instituted in obedience of the divine mandate for self-preservation, inhabits the moment of violence; it is a regulating, constraining and punishing force. 'Political power', as Locke defines it, is 'a right of making laws, with penalties of death, and consequently all less penalties for the regulating and preserving of property, and of employing the force of the community in the

⁵ Hobbes (1904), p 115.

⁶ Hobbes (1904), p 119.

⁷ Locke (1887), p 236.

execution of such laws, and in the defence of the commonwealth from foreign injury, and all this only for the public good'.⁸

What both articulations of juridico-political power accomplish, I think, is to write law and the state in violence — the mode through which reason operates in necessity — when describing the 'state of nature' as the scene of violence. Both the state and law comprehend violence, in the authority to check individuals' threats to one another and external threats to the collective (political society) and in the authority to decide when to deploy its protective and punitive instruments. Emerging from a rational decision, the law and the state also refigure self-determination. For these are artefacts of the rational mind, the only existing thing capable of comprehending necessity because it is the only one that knows that these bodies that constraint/regulation would maintain, in political society, the sole rule of 'divine nature', namely the preservation of life.⁹

By recalling how juridical universality refigures self-preservation, I am not raising anything that has not already been considered in legal and political theorising. From Austin's writing of law as commands backed by threats, through Hart's formalisation of law, and even Dworkin's version of 'law as integrity', constraint remains the defining attribute of the juridical, whether resulting from rules or from the nature of adjudication.¹⁰ More recently, Peter Fitzpatrick highlights this dual nature of the (legal) decision when, even as rewriting law in 'ir/resolution', he acknowledges that law operates precisely because of its internal struggle against the founding originary violence. In Freud's account of the social order, Fitzpatrick argues: 'Law finds its apotheosis in the determinant because it is imperatively set against a savage chaos, yet in the violence of its determination law remains also of the savage.'¹¹ However, while the 'savage' (the signifier of violence) provides a kind of ground, it is no longer the negative 'other' of modern philosophers' allegories of the state of nature or racial theories' lesser (because primitive, traditional, etc) 'man'; it becomes the negative but interior ground on which the force of law stands. For Fitzpatrick, law is also a thing of freedom and necessity: on the one hand, as (collective) self-determination, law is that which replaces the primal father, the sovereign commander; however, on the other hand, law is that which replaces the chaos ensuing after the killing of the father when the brothers assume the responsibility for their protection/preservation. In sum, self-determination and self-preservation refigure the violence that constitutes the unsettled core of law and the rigid armature of the state. And it is at work in

⁸ Locke (1887), p 192.

⁹ Locke (1887), pp 193–94: 'The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions ... Every one, as he is bound to preserve himself, and ... when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.'

¹⁰ See Austin (2000); Dworkin (1986); Hart (1994).

¹¹ Fitzpatrick (2001), pp 3–4.

deployments of universality to ground any determination (decision or judgment) regarding the ‘world of things’ or the ‘societies of men’.

Whence Difference?

When describing the rearrangement that composed the epistemological context of the emergence of human sciences, Michel Foucault notes another Cartesian gift to modern thought. In classical thought, he argues, Descartes’ *formal* representation of comparison enables the assemblage of a ‘science of order’ and its two strategies: measurement, in which a designated common unity allows for the attribution of equality and inequality to the things of the world; and order, in which the enumeration of differences permits the demarcation of identities and the design of the classifying table. Much like calculating instituted physics as the scientific account of the universal laws of motion, ordering deploys universality on to the domain of the simple and complex observable things. This was possible, Foucault argues, because of the designing of a language that resolved (in the mind) the endless abundance of things into a finite number of categories. Here, scientific reason governs through *formalisation* (and not *regulation*), which results from three distinct strategies: mathesis (‘ordering of simple natures’), taxonomia (‘table of visible differences’) and genesis (‘progressive series’). Because the other two are comprehended by taxonomia, ‘qualitative mathesis’,¹² he postulates, the table is ‘the centre of knowledge in the seventeenth and eighteenth centuries’.¹³

What makes the table a figuration of exterior determination, an instance of *necessitas*? Belonging to the moment of universal reason that Hegel decries as ‘dead reason’,¹⁴ the table refigures outer determination (exteriority/spatiality) when it arranges the things of nature (minerals, plants and animals) in a hierarchical grid organised by equality/inequality (mathesis), identities/difference (taxonomia) and the series of events (genesis). Unlike the other two epistemological arrangements Foucault describes, resemblance and the modern episteme, the classical table apprehends ‘nature’ in the fixity of its abstract (formal) typologies. In the scenography of formalisation, ‘nature’ remains in the moment of *necessitas*, where reason determines (from without) everything that can and will happen to things. The formulation of difference that emerged in this onto-epistemological context, which encapsulates both equality/inequality and identity/difference, would guide the conditions of production of knowledge of human existence in two distinct epistemological configurations. First, in the classical natural history, it writes human difference as an effect of body and territory without, because it is here fully in the stage of exteriority, making any claims that these actualise or express the essence (interior) of the human and other things. Instead, natural history represents ‘nature’ as a collection of beings, which can be distributed in the ‘table of identities and difference’ because endowed with both measurable and classifiable (external) traits and subjected to the disturbing series of geological events. Beginning with observation, it deploys its formalising tools, ‘structure’ and ‘character’, which

¹² Foucault (1994), p 74.

¹³ Foucault (1994), p 75.

¹⁴ Hegel (1977).

resolve the visible manifold into a few abstract notions — that is, knowledge occurs in the ordering of ‘nature’ according to a few abstract frames, namely form, number, proportion and situation.¹⁵ ‘In Classical terms’, Foucault posits, ‘a knowledge of empirical individuals can be acquired only from the continuous, ordered, and universal tabulation of all possible difference’.¹⁶ In short, natural history transformed the universe into a book, a text awaiting interpretation — once again, a task only the knowing mind could perform. ‘It is the exclusive property of man,’ Linnaeus affirms, ‘to contemplate and to reason on the great book of nature. She gradually unfolds herself to him.’ Nevertheless, while he argues that this mode of knowing nature still depends on the ‘agency of the senses’, he sees the rational thing as alone responsible for the interpretation of ‘nature’.¹⁷

Formalisation governed the classical epistemological field through the notion of order. In this context, a notion of difference emerges that signifies vertical (measurement) and horizontal (classification) in/equality. Through abstraction — possible because of the *a priori* use of a common unity for measurement or the *a posteriori* delimitation of a unit (a type or kind) with the identification of a common characteristic — this ordering of the living world (human, plant and animal) produced a formal mapping of the existing things without having to find an answer to the question of how they come into being, other than the divine author and ruler’s productive desire. With the table, a figuring of the stage of exteriority, scientific reason makes its first incursion in the writing of human conditions. But it remains at the level of observation, description and classification of territories, bodies and modes of existence, which it used to designate human varieties. What it lacked — that which would mark the emergence of the modern episteme — was the privileging of interiority and temporality, the onto-epistemological presupposition that would produce the body and territory as signifiers of the mind.

Though Montesquieu and Locke before him could refer to the ‘savage’ as the ‘other’ of the rational beings ruled by law, they could not rely on anything other than the visible traits that populates the table of human difference. Put differently, beyond territory and the diverse modes of existence found among them, there was nothing else that could be called upon to write the difference between the ‘savage’ and the ‘European’. Why? For one thing, the rational thing’s uniqueness had been grounded on the specificity of its mind; if this mental particularity, rationality, was only an effect of territory, it could be bridged any time an ‘other of Europe’ would leave its ‘original’ territory and move into a European space. As long as the classification of the human world depended solely on the observable, and as long as knowledge remained unconcerned with the interiority (the being) of things, the signifiers of racial difference (bodily and geographical traits) refigured universal reason as violence, the ordering (exterior) force, but they would not rewrite the mind as an effect of necessity, as it is represented in the laws of natural philosophy (classical physics) and the forms of natural history (classical biology).

From natural history, then, the nineteenth century sciences of man and society inherited an account of human difference which comprehended modes of being

¹⁵ Foucault (1994), p 134.

¹⁶ Foucault (1994), p 144.

¹⁷ Quoted in Eze (1997), p 11.

human in the abstract (universal) units authorized by formalisation. To be sure, the classical table's formal apprehension of the body and territory as signifiers of human difference would remain operative in the modern episteme, even if bracketed by historicity, in phenomenology (the text in which body and territory signify existence as an effect of self-representation), biology (the text in which the body signifies existence as the effect of outer-determination) and sociology (the text in which the territory signifies existence as the effect of collective self-determination).

Before Legitimacy

How can this grounding of universality in *necessitas*, the epistemological figuring of reason as violence, sustain an account of how raciality, a social scientific signifier of human difference, fashions the juridical architectures and procedures of the global present? Is it possible to do so without rehearsing raciality's very production of the racial subaltern subject as the sole agent of violence? For instance, the notion of *somatechnics* suggests an approach to the political significance of racial difference that targets the 'capillary space of connection and circulation between macropolitical structururations of power and micropolitical technics of subjugation'.¹⁸ Following a parallel path, here I read racial and cultural difference as a political signifiers, moments of deployment of power in the naming of modes of being human — that is, in the very designing of the notion of humanity now circulating in the global vocabulary. For this is necessary if the question implicit in the opening quote is to be adequately and politically formulated; if one wishes to comprehend how is it possible that that which should happen to nobody, to 'no human being', has consistently delineated the existence of so many human beings — those whose bodies signify something that seem to escape all that should be comprehended by the Enlightenment notion of humanity, and its onto-epistemological descriptors, namely universality and historicity.

In this section, I set up the argument that formalisation (a tool and effect of scientific universality), the referent of the notion of difference refigured in the arsenal of raciality (in signifiers of racial and cultural difference), produces the racial subaltern subject as a mind that cannot occupy the seat of decision. That is, as a political-symbolic toolbox, raciality institutes an ethico-juridical position that belongs in the stage of exteriority, one which post-Enlightenment articulations of universality and historicity fail to comprehend. With this claim, I am not arguing that racial subaltern subjects figure outside the domain of rights, as they stand in the letter of the law and the architectures and procedures of the administration justice. Neither individually nor collectively fully excluded from the text of rights, today's racial subaltern subjects, virtually everywhere, can and do make demands for the respect of their civil and human rights in the national and global halls of justice. Nevertheless, I will show later, each and every one of these rights collapses when the state claims that it deploys its instruments to total violence for self-preservation.

Does it mean that, for instance, each occupation of, and armed confrontation in, Rio's *favelas* constitutes an *ipso facto* suspension of law or an *ad hoc* declaration of the state of emergency? Possibly. Whether or not state of emergency

¹⁸ Quoted in Pugliese and Stryker (2009), p 3.

is adequate to describe these occupations in the juridical language, there remains the question of their political-symbolic effect — namely, of their ethical significance. A consideration of legitimacy ensues whenever the state unleashes its ‘executive power’ in (or on the verge of a) breach of the rights of the citizenry. For, as Foucault argues, ‘the essential role of the theory of right is to establish the legitimacy of power’ — which it does by dissolving ‘the element of domination in power and to replace that domination, which has to be reduced or masked, with two things: the legitimate rights of the sovereign on the one hand, and the legal obligation to obey on the other’.¹⁹ Unmasking ‘domination’, unveiling the state’s self-defining violence, I think, requires more than a critique of the notion of right because, as I will discuss later, these occupations take place under the guise of a worldwide demand for the expansion of (civil and human) rights. Much of what I do in the analysis of these occupations is to unearth a modality of ‘disciplinary coercion’, the one which, according to Foucault, has been concealed under the grammar of legitimacy by ‘the establishment of public right articulated with collective sovereignty’.²⁰ Tackling the question of legitimacy, I think, opens up a critical terrain which, though similar to Foucault’s studies of the mechanisms of disciplinary and biopower, re-centres juridical-political power. For one thing, as my reading shows, mapping the grounds for the state’s claims for the legitimacy of *favelas*’ occupation exposes how raciality refigures the simultaneous workings of disciplinary power and juridical-political power, thereby rendering claims for and recognition of civil and human rights irrelevant.

With/out Legality

My discussion of legitimacy focuses on the ruling view that universality, as a principle and ontological descriptor, governs the democratic polity because, I think, it more productively speaks to the question of how certain human beings’ civil and human rights so immediately disappear in the state’s decision to deploy its self-preserving forces in the territories it is supposed to protect. Though his was not the first, Max Weber’s account of universality as a modern ontological descriptor most directly speaks to how it composes the ethical grounds of the state. Exemplifying how legitimacy has been written to displace the moment of domination, Weber deploys his typology of motives to write the law and the state, in their modern variations, as effects of interior (cultural) determinants.²¹ When defining the political organization, he postulates that ‘A “ruling organization” will be called “political” insofar as its existence and order is continuously safeguarded within a given *territorial* area by the threat and application of physical force’, but it will only ‘be called a “state” insofar as its administrative staff successfully claim the *monopoly* of the *legitimate* use of physical force in the enforcement of its order’.²² That is, while the state is a spatial (territorial) figure, its existence and continuation

¹⁹ Foucault (2003), p 26.

²⁰ Foucault (2003), p 37.

²¹ Weber (1978), p 11: he defines motive as ‘a complex subjective meaning which seems to the actor himself or the observer an adequate ground for the conduct in question’.

²² Weber (1978), p 54, emphasis in original.

depend on its ethical hold, namely legitimacy. In the case of the modern state, its authority (domination) rests on the ‘belief in legality’, the ideas that: (a) ‘expediency or value-rationality’ ground legal norms; and (b) ‘every body of law’ is a ‘consistent system of abstract rules’ and ‘the administration of law is held to consist in the application of these rules to particular cases’. Further, the impersonal order (‘the law’) also comprehends ‘the typical person in authority, the ‘superior’; the member of the organization ‘obeys ... only the “the law”’.²³ In sum, legality — now a principle — grounds claims for legitimacy based on rational motives. Legal authority, according to Weber, rests on the view that ‘the administration of law is held to consist in the application of these [abstract] rules to particular interests which are specified in the order governing the organisation within the limits laid down by legal precepts and following principles which are capable of generalised formulation and are approved in the order governing the group, or at least not disapproved by it’.²⁴ What Weber does here — and it was later taken upon by Unger — is rewrite law as legality, the principle — the interior determinant of the social actions, relationships, organizations — that fashions modern social political configurations, and hence the grounds for the state’s legitimate use of violence within a given liberal territory.²⁵

How could Locke’s instituted law, which he describes as an exterior (objective) force, become the interior (even if formal) determinant of post-Enlightenment European (political) particularity? The answer requires an account of how universality morphed into the principle actualised and expressed in Enlightenment European bodies and territories — or, to rephrase, how *necessitas*, as articulated in scientific and juridical universality, as an outer-determining (exterior) force, could become the interior ground for human action, the ruler of morality. For that to be possible, universal reason had to undergo transformations which allowed for the assertion of its sovereign ruling that did not undermine the writing of the mind as a self-determined thing.

The articulation of the notion of the transcendental, as Foucault argues, is key.²⁶ This transformation took at least two moves. The first transformation, Immanuel Kant’s response to Hume’s challenge of the possibility of knowing with certainty, introduced the notion of the transcendental, which transformed universality into an effect of the (rational) mental apparatus, namely the understanding. When mapping the conditions of possibility of knowledge with certainty, Kant introduces the notion of transcendental reason (pure/formal) as that which provides the understanding with the tools — intuitions and categories — that comprehend the objective and necessary forces at work in phenomena, the modes through which the extent of things of the world is accessible to scientific knowledge.²⁷ Consistently, when bringing transcendental reason to the consideration of human affairs — more specifically, morality — Kant re-enacts the protective disavowal of exteriority to rewrite the mind’s intimacy with its formal (interior)

²³ Weber (1978), pp 217–18.

²⁴ Weber (1978), p 217.

²⁵ Unger (1976).

²⁶ Foucault (1994).

²⁷ Kant (1990).

determinant. ‘There is therefore but one categorical imperative’, he postulates. ‘Act only on that maxim whereby thou canst at the same time will that it should become a universal law.’²⁸ While in his formulation of the moral law, self-determination remains a gift of reason, it now comes with the charge of transcendental — that is, without any experiential, empirical, exterior determinant: ‘If therefore I were only a member of the world of understanding,’ Kant acknowledges, ‘then all my actions would perfectly conform to the principle of autonomy of the pure will; if I were only a part of the world of sense, they [my actions] would necessarily be assumed to conform wholly to the natural law of desires and inclinations, in other words, to the heteronomy of nature.’²⁹ That is, here the moral subject ought to emerge in mediated self-relation, in the presupposed identification of the rational mind with its transcendental (formal) producer. Though the negation of exteriority removes the possible violence (as a function of heteronomy, affectability) — always there in the relation with the (exterior) object of desire, inclination, etc — the Kantian determination of the moral subject (the productive symbolic gesture), namely formalisation, is in itself violent. For the grounding of morality in the formalising powers of the understanding, according to Herder, robs the human thing of its most cherished capacity, namely self-production or self-development.³⁰ Not surprisingly, the Kantian solution remained an insufficient articulation of universality as a moral guide. It was necessary to resolve the violence — here signified as formal (interiorised) mediation — inherent to scientific articulations of *necessitas*, namely calculation and formalisation.

The second transformation, G.F.W. Hegel’s rewriting of formal (transcendental) reason as a living (self-developing) force, resolved *necessitas* into a productive step in the self-revealing (self-representing) trajectory of human consciousness. In Hegel’s version, universal reason becomes a transcendental self-determined (interior/temporal) force that is realised in post-Enlightenment European minds and territories. The writing of transcendental reason as spirit, the self-producing, self-knowing, living force, transforms universality (and along with it self-determination [freedom]) into an ontological descriptor, on which signifies (because an effect) a particular spatial/temporal juncture, namely the moment of transparency, where the revelation of transcendental announces the end of the temporal trajectory of spirit. In this moment, self-consciousness, the rational thing, becomes the transparent I — for here, in the moment of ethical life, it learns of its fundamental identity with spirit and everything that exists.³¹ When describing this moment, Hegel characterises it as the one when the good (‘the substantial universal of freedom’) and conscience (‘the purely abstract principle of determination’) resolve in ‘absolute certainty’.³² Ethical life, then, ‘is the Idea of Freedom in that on the one hand it is the good become alive — the good endowed in self-consciousness with knowing and willing and actualised by self-conscious action — while on the

²⁸ Kant (1956), p 88, emphasis in original.

²⁹ Kant (1956), p 121.

³⁰ Herder (2002).

³¹ Hegel (1977).

³² Hegel (1967), p 103.

other hand self-consciousness has in the ethical realm its absolute foundation and the end which actuates in its effort. Thus ethical life is the concept of freedom developed in the existing world and the nature of self-consciousness.³³ Everything (the things of necessity and the things of freedom) is resolved here, in the scene of engulfment, the self-actualising temporal trajectory of spirit: ‘ethical order is freedom or the absolute will as what is objective, a circle of necessity whose moments are the ethical powers which regulate the lives of individuals’.³⁴

Freedom and universality (an abstract signifier of morality) can now be reconciled in existence, because the stage of exteriority has become but spirit’s exhibition hall. Outer-determination, the effect of exteriority/spatiality Kant disavowed by writing moral law in mediated (formal) self-relation, is no longer a threat because all that lies outside of self-consciousness is but an actualisation of a (spatial/temporal) moment of spirit. When universality is interiorised, it becomes a principle and ontological descriptor, The state, as Hegel describes it, becomes ‘the actuality of the substantial will which it possesses in the particular self-consciousness once that consciousness has been raised to consciousness of its universality. This substantial unity is an absolute unmoved end in itself, in which freedom comes into its supreme right. On the other hand, this final end has supreme right against the individual, whose supreme duty is to be a member of the state.’³⁵ Further, law (as the constitution) is particular only because it expresses the ‘character and development’ of the nation’s ‘self-consciousness’³⁶ — that is, as spirit continues its journey, there is nothing that could prevent the laws of a nation from developing into expressions of universality.

Consistently, when addressing ‘the problem of sovereignty’, Hegel raises the points that would become central in Weber’s formulations, as both the power and authority of the state and of its ‘individual functionaries and agents’ rests on universality — that is, ‘sovereignty depends on the fact that the particular functions and powers of the state are not self-subsistent or firmly grounded either on their own account or in the particular will of the individual functionaries, but have their roots ultimately in the unit of the state as their single self’.³⁷ What protects the state from (subjective) particularity is these ungrounded conditions, which do not resolve into the will of any individual ruler. Under the aegis of historicity, the mode of becoming of spirit, universality, as a principle rules ethical life through and through only because it describes the ethical-juridical totality, figured by the nation and the state — in the late nineteenth century consolidated in the hybrid (ethical-juridical) political entity, namely the nation-state — that marks the end of the trajectory of spirit. When he rewrites universality as a marker of the end of spirit’s trajectory, Hegel opens up the possibility for reformulating other renderings of universality. By bringing transcendental reason to existence through the engulfment of the stage of exteriority, Hegel’s accomplishment marks the onto-epistemological

³³ Hegel (1967), p 105.

³⁴ Hegel (1967), p 105.

³⁵ Hegel (1967), pp 155–56.

³⁶ Hegel (1967), p 179.

³⁷ Hegel (1967), pp 179–80.

transformation that authorised scientific reason to venture into the sacred terrain of freedom.

When describing the context of articulation of classical difference in post-Enlightenment scientific writings of human existence,³⁸ I argue that Hegel's resolution of spatiality into temporality, the engulfment of exteriority, opened up the possibility for a knowledge project that approached the mind as an object of the tools of *necessitas* without removing the rational things from the stage of (freedom) interiority. What I do is describe the conditions of production of racial and cultural difference as signifiers of human (moral and intellectual) difference in nineteenth and twentieth century versions of the anthropological and sociological projects. More specifically, I show how the arsenal of raciality apprehends the body and territory — in the nineteenth century as 'racial types' or forms, as signifiers of two fundamentally distinct kinds of minds: the *transparent I*, the post-Enlightenment white/European, the ones who actualise/express the final actualization of Spirit, and the *affectable I*, 'the others of Europe', those whose mind actualised/expressed the effects of productive reason as comprehended by the productive tools ('laws' and 'forms') of the understanding. I will not repeat the whole argument here except to say that my mapping of the analytics of raciality shows how, in scientific rewritings of the human body and territory, self-determination remains the exclusive attribute of the rational mind, which exists in the kingdom of freedom, where transcendentalism is realised, namely where reside the ethical-juridical things of reason, modern subjects whose thoughts, actions and territories refigure universality.

My mapping of raciality unearths how this political-symbolic arsenal that refigures a power-effect of *necessitas* (formalisation) produces the 'others of Europe' in affectability, as subjects which do not play in ethical life. There, the others of Europe alone inhabit the realm of *necessitas*, thoroughly subjected to the constraining/regulating power which produces and determines the parts and movements of their bodies, thus responding for the inferior quality of their minds, which is signified in modes of existence flourishing in their territories. Nevertheless, because the self-determined thing cannot be so if it emerges in a relationship — and the apparatuses of social scientific knowledge cannot but produce types, categories, particulars that necessarily relate to each other as instances of the productive *nomos* (the shape of *necessitas* when engulfed by spirit) — the tools of raciality produce the others of Europe as always already vanishing, either for the weakness of their affectable minds or when confronting the 'active power' of the transparent I. Put differently, raciality produces both the subject of ethical life, who the halls of law and forces of the state protect, and the subjects of *necessitas*, the racial subaltern subjects whose bodies and territories, the global present, have become places where the state deploys its forces of self-preservation.

The Security Turn

Anyone who lived in the city of Rio de Janeiro's economically dispossessed areas (*favelas* and housing projects), in the 1960s and 1970s grew up in spaces where the

³⁸ Ferreira de Silva (2007).

forces of law enforcement — Rio de Janeiro state's civil and military police — had a more consistent presence than the state's biopolitical apparatuses. Because the armed resistance to the military dictatorship recruited primarily among the educated middle class, none of us ever imagined that the state's self-preserving forces (army, air force or navy), even under a state of emergency, would be deployed in our neighbourhoods. Not until recently, that is. Over the past few years, the Brazilian army has been called to act as an agent of law enforcement on a number of occasions. In early 2006, it happened because some time in early March or late in the previous month, weapons were stolen from an army facility in Rio de Janeiro. A few days later, without a declaration of emergency, the Brazilian army was deployed in the city — about 1,600 troops occupied ten *favelas* in Rio de Janeiro. After less than two weeks, the federal troops departed the city, with the stolen weapons, leaving at least one person dead, publicly denigrated in the national press but without any public calls from the left for a revolutionary response or from the left or the right for the return of the rule of law.³⁹

Under what authority could the self-preserving forces of the state 'legitimately' be deployed within national boundaries without an official suspension of the rule of law, a public declaration of the state of emergency? Whether a 'global society' (cosmopolitan or fragmented) or a new empire describes the present global configuration, there is no question that, in the past 20 years or so, states have been busy assembling the neoliberal juridical-economic program that governs all of them. The directives of this 'global contract', or the global mandate, found in the agreements setting up the multilateral bodies (such as the APEC, Mercosur or the European Union), have instituted the global free marketplace: economic reforms (de-regulation, elimination of trade barriers and stimulus to private investment); inclusive democracy (measures that expand citizenship rights through mechanisms that promote the inclusion of women, people of colour and other socially excluded groups, and the protection of human rights); and security architectures (such as Plan Colombia and the Merida Initiative, which includes military [financial, personnel, weapons, and intelligence] aid).⁴⁰

³⁹ Major Brazilian newspapers covered this event. See, for instance, *Folha de São Paulo*'s full coverage of the event at www.folha.uol.com.br/fohla/especial/2006/exercitonorio.

⁴⁰ The latest is the 2008 NAFTA Security Prosperity partnership, which has been consolidated in the Merida Initiative: 'The Letter of Agreement today makes available \$197 million dollars of the \$400 million the U.S. Congress approved in fiscal year 2008 supplemental funds. More than \$136 million is already being used in the fight against crime through military cooperation and Economic Support Fund accounts, which also form part of the Merida Initiative. The remainder of the \$400 million consists of \$43 million which the U.S. Congress will release once we have met internal reporting requirements, and \$24 million to develop and administer the Initiative. This \$400 million from the FY2008 supplemental spending bill represents the first installment of the \$1.4 billion in support the United States has committed to provide over the next three years.' <http://americas.irc-online.org/am/4497>. According to the Mexican Ambassador to the United States, it show how: 'Together, the governments of the United States and Mexico will continue to fight the scourge of drugs and narco-trafficking, but in order to succeed we will need the support of the people of both our countries. I am confident that, together, we will succeed in bringing greater security and

The contradictions of neoliberal capitalism are both more elusive and more complex than classical historical materialism could have anticipated. For instance, when looked separately it is impossible to imagine how, for instance, working-class black youth in Brazil might benefit from inclusive democracy (such as affirmative action policies) if the economic reforms had not created a situation of precarious ('flexible-', sub-, or un-) employment for their parents. Furthermore, the same activists and intellectuals that attack economic reforms also celebrate the inclusive democracy measures, such as recognition of indigenous land rights, the creation of institutional means to address the effect of gender subjugation and recognition of the rights of children. More importantly, because economic reforms have received more scholarly and media attention, much of the reshaping of the state that has taken place under the global mandate has been ignored. How the global mandate functions as new configuration of the global political scene only becomes evident, I think, if one looks simultaneously at the intersection of the three moments. Unfortunately, I do not have space to develop this argument here. Let me just say that it speaks directly to the fact that, in Latin America and the Caribbean and elsewhere, the number of young men and women in the sphere of narco-trafficking has grown exponentially over the past 20 years.

Perhaps the least exposed dimension of the neoliberal program is the fact that, while the state everywhere has dramatically reduced their presence in the economy, the assembling of the juridical architecture of free trade has also included measures that allow it to play a large role in law enforcement. For almost eight years, the architectures and procedures of national security have become an unescapable fact in the United States. Built under the claim that it was necessary for protection from foreign threats, this enormous apparatus — which is a good example of how the state has not shrunk under the global mandate — has recently shifted its targets from the phantasmagoric 'terrorist' toward the ubiquitous 'undocumented immigrant', which it seeks along the country's borders, in rural areas, and in large and small cities. Following the security turn, the Brazilian government began building a 'homeland security' apparatus of its own with the launching of the National Program of Public Security with Citizenship (Programa Nacional de Segurança Pública com Cidadania, or PRONASCI), which includes 94 projects to be managed in partnerships formed between the federal, state, city governments and economically dispossessed communities. According to the Ministry of Justice, the program is a unique 'initiative in the confrontation with criminality in the country. The project articulates security policies with social initiatives; [it] prioritises prevention and seeks to reach the causes of violence, without relinquishing the strategies necessary to ensure social order and public security.' On the website, the highlights (what the Ministry of Justice probably finds most attractive to the public) of the project include two social actions: 'Women of Peace', designed to train women to educate their communities about the ills of violence and 'Protejo' (Project for the Protection of Youth in Vulnerable Territories), which 'focuses on citizenship formation ... through sports, cultural and educational activities'. Most of the mentioned initiatives, which include the National Security Force (Força

Nacional de Segurança Pública), an elite squad created in 2004, are directed to the training and protection of police officers and other law enforcement agents.⁴¹

What *justifies* this conflation of law enforcement (state-level policing) and self-preserving (national security) forces? When commenting on actions by drug dealers in January 2007, Brazil's president, Luis Inacio (Lula) da Silva, deploys the familiar trope of the 'enemy within' to justify this reconfiguring of the country's forces: 'This ... cannot be treated as common crime. This is terrorism and it should be treated with a strong political gesture and the strong hand of the Brazilian State.' How do the actions themselves, the killing by drug dealers of *favelas*' residents, authorise the elimination of the distinction between 'crime' and 'terrorism' — a distinction that holds because the latter has been usually circumscribed to attacks that target the state? While President Lula did not find it necessary to fill in the blanks, to specify how the distinction between 'crime' and 'terrorism' was breached, he mentions all-too-familiar sociological explanations for crime to describe what he calls 'terrorist actions':

If there is disaggregation in the family, if the father and the mother don't get along, everything will be difficult ... This violence results from accumulated historical errors by the whole society, it should take responsibility and help the state, local, and federal government to find a definitive solution.

The solution he introduces in this speech was the creation of a National Security Force, a federal police force, the function of which is to help Rio de Janeiro's state police. Why? 'Because,' the Brazilian president states, 'we have to guarantee the right of free and honest men to leave their homes in the morning and return in the evening. We cannot allow disturbance at home, disturbance in the states. This is not a man's, a party's task. This is the task of the whole nation.'⁴² What he articulates is the moral mandate of the nation and the charge of the state to protect 'free and honest men' from drug-related violence of the 'criminals', which he attributes, as if a good sociologist, to the 'disaggregation of the family'. The problem, however, resides in how this distinction between 'free and honest men' and the 'marginal' already justifies the existence and the deployment of the forces of law enforcement — the task of which is to protect citizens from one another.

What, then, explains the excess, the creation of an extra arm — the National Security Force — when increasing the numbers of law enforcement officers would be enough? This excess, I think — the deployment of the self-preserving forces of the state in the *favelas* — is prefigured in sociological rendering of raciality, which produces *favelas* — any community, neighbourhood or country, for that matter — as *affectable* (pathological) territories, as moral regions ruled by *necessitas*. The same field of studies that provides us with crime statistics, usually used in claims for more state (juridico or biopolitical) presence, has also provided us an account of racial subjugation that writes cultural (moral) difference as an expression and

⁴¹ See Ministério da Justiça, Brasil at www.mj.gov.br/data/Pages/MJF4F53A-B1PTBRNN.htm.

⁴² 'Lula: Onda de Violência no Rio não é crime comum, é terrorismo', *O Globo*, 1 January 2007.

producer of the 'social ills' or 'social dislocations' ('crime', 'female-headed households', 'unstable families', 'drugs', 'welfare dependence', etc) found in these territories. From Gunnar Myrdal's use of Richard Wright's 'Bigger Thomas' to describe the 'a-social' social subject, he found 'walking the streets unemployed; standing around on the corners; or laughing, playing, and fighting in the joints and poolrooms everywhere in the Negro slums of American cities', and demonstrate 'a general recklessness about their own and others' personal security and property, which gives one a feeling that carelessness, asociality, and fear have reached their zenith'.⁴³ From mid-1940s sociological studies, through William Julius Wilson's neo-liberal trilogy,⁴⁴ into the latest writings on criminology and 'gang' activity, this 'marginal' figure has been consistently written as a product of the social conditions found in the places inhabited, as Kenneth Clark states, by 'the pathologies of the ghetto community [which] perpetuate themselves through cumulative ugliness, deterioration and isolation and strengthen the Negro's sense of worthlessness'.⁴⁵ He continues:

Not only is the *pathology of the ghetto self-perpetuating*, but one kind of pathology breeds another. The child born in the ghetto is more likely to come into a world of broken homes and illegitimacy; and this family and social instability is conducive to delinquency, drug addiction, and criminal violence. Neither instability nor crime can be controlled by police vigilance or by reliance on the alleged deterring forces of legal punishment, for the individual crimes are to be understood more as *symptoms of the contagious sickness of the community* itself than as the result of inherent criminal or deliberate viciousness.⁴⁶

My point here is that the justification for the deployment of the forces of self-preservation already resides in President Lula's sociological truth, which represents black and brown economically dispossessed urban regions, like Rio's *favelas*, as *affectable* territories, political (ethical-judicial) regions with/out law. Because they are always already constructed as indigenous zones of violence, there the state must necessarily show its self-preserving face. Hence President Lula's in/distinction between 'crime' and 'terror' is superseded by how raciality always already renders in/significant his distinction between 'free and honest men' and 'criminal/

⁴³ Myrdal (1944), p 763.

⁴⁴ I am referring here to Wilson's (1978, 1987, and 1997) books, which have framed much of the neo-conservative racial discourse and US racial policy for the past 25 years or so.

⁴⁵ Clark (1965), p 12.

⁴⁶ Clark (1965), p 81, my emphasis. Clark's description is just an example of the basic mid-twentieth century sociological rendering of raciality, in which cultural difference becomes the privileged marker of human difference. Kelley (1997), pp 16–17: he agrees, that the social scientific literature on the ghetto produced in the 1960s and 1970s 'not only conflates behavior with culture, but when social scientists explore "expressive" cultural forms or what has been called "popular culture" (such as language, music and style), most reduce it to expressions of pathology, compensatory behavior or creative "coping mechanisms" to deal with racism and poverty'. Nor has this argument disappeared from the sociological literature.

terrorists'. Because the latter exist in the *moral* in/difference raciality inscribes in these territories, anyone, everyone, any *person*, the (ethical-juridical) entity, residing there does not figure the subject of ethical life, the self-determined *persons* the law and the state protect; before these juridical structures, these racial subaltern subjects are nobodies.

Black Flags, White Skulls

April 2008. My parents and I were following on TV and the newspapers the unfolding of a weeklong occupation of the *favela* Vila Cruzeiro when news broke about a confrontation in another neighbourhood, Cidade de Deus. A major newspaper reported that 10 drug dealers were killed during the action, including the leader. 'Besides the dealers,' the TV report informed us, 'a 70-year old housewife died [as the] victim of a stray bullet. Two other people were wounded. [The] cops apprehended three assault weapons, two hand grenades, two and a half kilos of cocaine, and two stolen motorcycles.' The 70-year-old lady and her two also elderly friends (who were wounded) were returning from the supermarket when they were caught in the crossfire. 'To avoid protests by the residents,' the paper reported, the police commander in the area ordered the occupation of Cidade de Deus.⁴⁷ The report also mentioned the weapons (including photos) and highlighted the fact that some of them were 'normally used by the armed forces and the military police special forces'. And it included two pieces on the killed drug lord — one mentioned his friendship with drug lords in other *favelas* and commented on the fact that he 'had a good relationship with the community and avoided participation in confrontations with the police'; the other was about his 11-year-old daughter, who had been killed by a stray bullet during a confrontation between the police and the dealers in Vila Cruzeiro the previous month. Besides the girl, we learned, another five people, 'among them two other children who played with her', were killed during the operation.

Located in a part of Rio the locals call 'The Gaza Strip', Vila Cruzeiro has been occupied several times in the past few years. At the beginning of the April 2008 operation, the commander, Colonel Marcus Jardim, told the press that the occupation was meant to ensure the state's exercise of its biopolitical, public health services tasks. 'The first objective of the operation,' he stated, 'was to respond to some people's complaints of the difficulty to leave their homes [to be treated for dengue fever] because of barriers and physical obstacles imposed by the narco-trafficking.' When questioned about the number of casualties, he said: 'The PM [military police] is the best remedy for dengue ... it does not leave one mosquito on its feet', and stated that: 'The PM is there to protect. If nine people were killed, it is because it was a difficult and bloody battle. We need to respond in the same proportion as the criminals. The action is legal, legitimate and the corporation has to act in accordance with the society's interests.'⁴⁸ A week later, the police officers, member of the elite squad known as BOPE (Batalhão de Operações Especiais),

⁴⁷ 'Cerca de 150 policiais militares fazem operação contra o tráfico na Cidade de Deus', *O Globo*, 25 April 2008.

⁴⁸ 'Policiais voltam a trocar tiros com traficantes na Vila Cruzeiro' and 'ONGs critical Coronel que chamou a polícia de "inseticida social"', *O Globo*, 16 April 2008.

‘spread a black flag with a skull’, the symbol of the squad, ‘on the highest point of the hill [where the *favela* is situated]. The officers said that they were celebrating the expulsion of the drug dealer ... [they also said that] it is common to put up flags’ — according to a lieutenant the paper quotes, it ‘is the symbol of total occupation.’ A day later, ‘about 100 members of the elite squad remained on the top of the hill. They occupied the local police stations.’ The black flag was then ‘placed in the front of the [police] station’.⁴⁹

If the police intervened to protect Vila Cruzeiro’s residents’ access to ‘citizenship’ public health services, why does the choreography of the occupation only included visual and verbal signifiers of death? It seems to me that the objective of these actions is a symbolic reappropriation of the territory but not necessarily the return of its inhabitants to the protected region of legality. That 70-year-old housewives and little girls — and many others hit by stray bullets or unarmed *favela* residents who have been shot by the police — are killed is *justifiable* when the killing happens in territories where ‘free and honest men and their families’ and the ‘criminals and their families’ exist *in/difference*. They are unfortunate deaths, but necessary because they are caused by the state’s legitimate deployment of its self-preserving forces in the attempt to reappropriate symbolically the territory of death — hence the black flag with prominent white skulls displayed in the occupation apparatuses, including the *caveirão*, the armoured cars whose approach empties the streets of the *favelas*.

That the assertion of the state’s authority renders such deployments of total violence legitimate was conveyed by Rio de Janeiro state’s Governor Sergio Cabral when he was asked about the killing of ‘working men’ during the occupation of another *favela*:

For three years, there had not been an operation of this kind, with 350 officers. The marginal were not afraid of going to the streets. They were acting during the day, with powerful weapons, stopping and killing people. The state cannot accept this. This is not an ideological issue. It makes no difference if I am called violent.⁵⁰

What Governor Cabral suggests here is that, in these occupations, the state intervenes not to protect its citizens but to preserve itself, to reassert its exclusive right to deploy death in these territories. That this *in/difference* refigures an un-resolvable moral (cultural) difference, because an effect of *necessitas*, signified in black bodies and territories is exemplified in Governor Cabral’s defense of legal abortion, a few months earlier:

The issue of interruption of pregnancy is related to public violence ... If you consider the number of children per mother in Lagoa Rodrigo de Freitas, Tijuca, Méier e Copacabana [white/middle class neighbourhoods], you find a

⁴⁹ ‘Bope hasteia bandeira na Vila Cruzeiro’, *O Globo*, 21 April 2008.

⁵⁰ ‘Cabral defende aborto como forma de combate à violência no país’, *GI*, 24 October 2007.

Swedish pattern. Now, if you take Roçinha [*favela*]. The model is Zambia, Gabon. This is a factory of criminals.⁵¹

No wonder that when the elite squad of state's military police forces occupy this 'factory of criminals', death (the referent of *Necessitas*, the Roman goddess of destiny) signifies reappropriation, where the black flag and its prominent skull signify the end(s) of the state action.

My point is that the skull, a signifier of death, can only signify the state's deadly forces' right to kill. Killing anyone alone signifies reappropriation of these territories. That is, in these territories the state's right to kill is always-already legitimate. Not because it is unleashed for the protection of lives of *favelas*' residents, there the state acts to preserve itself. During the territorial disputes between the state and drug dealers, the (civil, social, human) rights of residents are immediately suspended — the administration of justice collapses in law enforcement — for law as a protective force does not embrace the residents of *Cidade de Deus*, *Vila Cruzeiro* and other *favelas*. In the crossfire between the police, the army and drug dealers, they inhabit a position that political theorising has yet to bring under consideration. From that position, the one that gazes at the horizon of death, it is impossible to distinguish between the police's law-enforcing and the drug dealers' law-breaking actions. This *in-difference* refigures the particular mode though which, in the global present, the state performs its role in racial subjugation. For this reason, I think, the dead bodies of black and brown teenagers count not as casualties of urban wars, unleashed because the state needs to recuperate the inhabitants of these spaces back into its ethical fold. In this *affectable* territory the state performs in/difference; for the *favelas*' residents are no-bodies as their existence unfolds *before* (in front of) ethical life, the ethical-juridical territory the architectures and procedures of law enforcement are designed to protect.

Naming this mode of operation of the state racial violence distinguishes it from moments of deployment of the state's violent arms, which either necessitate the mechanisms of administration of justice or require that the state justify why these are unnecessary through the naming of the enemy. The naming of the enemy, in these instances, becomes unnecessary, because in these occupied territories, raciality institutes an in/difference between state protective and self-preserving tasks, which collapses the moment of administration of justice in/to law enforcement, and the claim to the right to self-preservation (exemplified above by President Lula's and Governor Cabral's statements) annuls demands for ethical condemnation and legal redress.

Notes Towards a Critical Program

From the juridical point of view, the killing on site/on sight of *favela* residents — regardless of whether or not they are involved in drug trafficking — could be read as an instance of Kant's *jus necessitatis* (right of necessity), which applies to a

⁵¹ 'Cabral defende aborto como forma de combate à violência no país', *O G1*, 24 October 2007 and 'Gobernador de Rio de Janeiro Promueve Legalizar el aborto ... para disminuir criminales', *Aciprensa*, 26 October 2007.

subjectively determined act, the kind that is altogether beyond condemnation (inculpable), but which is ‘only to be adjudged as exempt from punishment (impunibile).’⁵² We are familiar with *jus necessitatis* in criminal cases when self-preservation (self-defence) is used to justify the killing of a person — as in the case of the police officers who were acquitted of the killing of Amadou Diallo.⁵³ My argument in the preceding analysis, however, is that *justification*, as in the case of these occupations of Rio’s economically dispossessed black and brown territories, precedes the deployment of the state’s deadly forces. This is not, however, because the state has now acquired some kind of subjective dimension, but because self-preservation (as a duty and right) is already articulated the writings of the modern sovereign. Neither a pre-existing nor a thus named enemy, I think, *justifies* deployments of racial violence. For racial violence, as defined here, refers us fully back to *necessitas*; the in/difference justifying these occupations is neither (god-) given nor the effect of after the fact dehumanisation. This in/difference, which marks an ethical position, is always-already signified in the bodies and territories of the racial subaltern subject which social scientific instruments of racial truth write as expressions and producers of affectable subjects, those of human beings whose particularity/difference the formal (exterior/spatial) tools of racial knowledge produce as subject of *necessitas* (outer-determination) and not life (self-determination).

For this reason, I do not think that Giorgio Agamben’s rewriting of biopower is an appropriate guide for the analysis of the mechanisms of racial subjugation at work in the global present. While his formulation of biopower returns to the ‘problem of sovereignty’ without reinscribing interiority through a rearticulation of legitimacy, his recuperation of the state as the absolute locus of power, by returning total violence to the writing of the political, negates (articulates and disavows) exteriority in a double strike. On the one hand, Agamben returns sovereignty to the relationship with the subject’s naked body. For ‘bare life’, the one ‘who may be killed and yet not sacrificed’ does no more than to demarcate the very borders of the polis (an ethical-juridical space), where sovereignty emerges as absolute authority.⁵⁴ Recalling Foucault’s description of royal punishment, with imagery of the ‘bare life’ in the Nazi concentration camp, he disassociates his formulation of biopower from Foucault’s mapping of the mechanisms of productive regulation through which universal reason governs and produces (individual and the social) bodies. On the other hand, he resolves the political back into the social (the political space of the nation-state) where the sovereign exercises its legitimate (legal and moral) authority. Nevertheless, when Agamben dismisses Schmitt’s friend/enemy pair, which situates the political in the relationship between sovereigns (modern states), he retrieves the political back from exteriority, which the social threatens to signify, by writing it in potentiality. Because it names a self-productive exclusion, bare life does not refer to the outside of the law, but to when it operates in its suspension: ‘An act is sovereign,’ Agamben explains, ‘when it realises itself by simply taking

⁵² Kant (2002), p 52.

⁵³ Author (forthcoming).

⁵⁴ Agamben (1995), p 8.

away its own potentiality not to be, letting itself be.⁵⁵ Self-determination and self-preservation, the sovereign's distinguishing attribute and highest duty, are deployed, but now protected in potentiality, as self-relation, which takes place between the sovereign that is and is not there — in what he calls the 'zone of indistinction'. For Agamben, the ban, the kind of relation the exception signifies, 'is the form of pure reference to something in general, which is to say, the simple positing of a relation with the nonrelational'.⁵⁶

Even if I concede that the occupations of Rio's *favelas* may be read as *ad hoc* declarations of the state of exception, the key difference between Agamben's bare life and my reading of racial violence, I think, resides in how he writes the ban as an act of dehumanisation, the stripping off of legal and moral protection (the 'ban'), that which produces the bare life, the naked body before which sovereignty appears as naked (total) violence. Beginning with the conception of the body, I read the human body as inscribed by the arsenal of scientific reason, the instruments of productive violence, always-already comprehended by the tools of raciality, namely social scientific signifiers of human (racial and cultural) difference. For Agamben deploys the body to signify life (as *zoē* or 'the simple fact of living common to all living beings'):⁵⁷ 'If it is true that the law needs a body in order to be in force, and if one can speak, in this sense of 'law's desire to have a body', democracy responds to this desire by compelling law to assumed the care of this body'.⁵⁸ That is, the political decision that distinguishes biopower, he argues, refers to 'the value and nonvalue of life' as such — that is, a bare life without law and culture. This difference is explicit in his analysis of the Holocaust, in his account of Hitler's decision on the non-value of Jews, homosexuals and others. Though Agamben acknowledges that racial knowledge (nineteenth century science of man) provides the Nazi regime with formulations which allow that the 'care for life would coincide with the fight against the enemy',⁵⁹ he argues that racism as a political ideology marks the 'paradox of Nazi biopolitics and the necessity by which it was bound to submit life itself to an incessant political mobilization could not be expressed better than by this transformation of natural heredity into a political task'.⁶⁰ Much like Foucault's, his use of the Nazi model of racial power limits readings of racial subjection as a political fact. For the reduction of racial signification to 'natural heredity', of the body as a thing without history and without science — which is consistent with the post-World War II move to ban the racial from modern vocabulary — only renders raciality a political matter, following the logic of exclusion, when racial difference is used to excuse personal and collective prejudices and agendas.

What, then, comprehends racial violence — the fact that before racial subaltern subjects the state exercises only its right to self-preservation? My excavations of

⁵⁵ Agamben (1995), p 46.

⁵⁶ Agamben (1995), p 29.

⁵⁷ Agamben (1995), p 1.

⁵⁸ Agamben (1995), p 125.

⁵⁹ Agamben (1995), p 145.

⁶⁰ Agamben (1995), p 148.

modern representation in an earlier project revealed that the deployment of the tools of raciality has instituted globality as a modern onto-epistemological horizon. Unlike historicity, the preferred ontological descriptor that writes modern subjects as self-determined (interior/temporal) things, the political-symbolic arsenal that confectioned globality institutes post-Enlightenment modern subjects as racial things, universal entities that signify *necessitas*, thus establishing an unresolvable distinction between the self-determined I and its affectable others. There I also show how critical analyses of racial subjugation miss the more insidious effects of raciality because they rely on the logic of exclusion, which assumes that universality does encompass every mode of being human, that racial subjugation only persists because modern social configurations have yet to realise (fully) its universal claims. What the notion of racial violence does is to capture the workings of the most insidious power effect of raciality, the logic of obliteration, which is inscribed in the very production of racial subaltern subjects as the *affectable I*. Not surprisingly, the neoliberal program's embracing of the logic of exclusion, which is to be corrected with inclusive democracy measures, renders this raciality's power-effect all the more apparent. Yet it consistently escapes our critical eyes because it does not require the naming of racial difference, the specification of the many ways in which the racial subaltern subject fails to express or actualise post-Enlightenment principles, that which the logic exclusion has trained us to recognise as the manifestation of racial power.

Neither is the camp an appropriate metaphor for the *favela* nor does the refugee refigure the residents' political (ethical-juridical) position. Racial violence, unleashed in the in/difference that collapses administration of justice in/to law enforcement, immediately legitimating the state's deployment of its forces of self-preservation, does not require stripping off signifiers of humanity. On the contrary, this collapsing is already inscribed in raciality, which produces humanity, the *self-determined* political (ethical-juridical) figure that thrives in ethical life, only because it institutes it in a relationship — united/separated by the lines of the Classical table — with another political figure (the *affectable I*) that stands before the horizon of death.

For this reason, I think, neither Agamben's ban nor Schmitt's friend/enemy pair are useful tools for the critique of racial subjugation. Raciality does its work because it is a referent of *necessitas*, the ruler of the stage of exteriority; its delineation of ethical life resists both postmodern deployments of historicity to write the racial subaltern out of moral fixity and neoliberal measures of inclusive democracy which promise (once again) to realise universality in all corners of the globe. As such, it undermines political projects that — because grounded on the transparency thesis, the ontological tale that announces ethical life — fail to recognise raciality's political/symbolic task, its effect of power, which is the very writing of its boundaries. Put differently, because raciality prefigures the impossibility of both gestures, the critique of racial subjugation should target the very delineation of the territory of justice — that is, the ethical text sustaining our demands for recognition and legal redress should become the object of radical critique. When writing against renderings of *nomos* as a signifier of law, Carl Schmitt provides a useful tool for such critique. His objective here is to recuperate earlier articulations of the concept, in which *nomos* signifies the original 'measure',

land appropriation which ‘grounds law’. ‘In every case,’ he argues, ‘land-appropriation, both internally and externally, is the primary legal title that underlie all subsequent law.’⁶¹ *Nomos*, he argues, ‘is the immediate form in which the political and social order of a people becomes spatially visible ... the land-appropriation as well as the concrete order contained in it and followed from it’;⁶² it is the signifier of ‘order and orientation’. In this formulation of the origins of political power, Schmitt removes the political authority from the Weberian (interior) region of meanings (motives) and, along with it, dismisses the ‘problem of legitimacy’ — the one which Foucault sees as intrinsic to the notion of right. Defining *nomos* as ‘the full immediacy of a legal power not mediated by laws’ as the ‘constitutive historical event — an act of legitimacy, whereby legality of mere law is first made meaningful’,⁶³ he inscribes sovereignty on to the territory, thereby bracketing readings of law and the state as signifiers of interiority, as actualisations of the rational thing’s self-determination — as Hegel writes both of them.

In Schmitt’s rendering of *nomos*, I find the possibility for a reading of globality as a site of deployment of the modality of subjugation, racial violence, in which juridical and disciplinary power merge. That is, it allows for an approach to the political that comprehends instances of racial violence, such as occupations of Rio’s *favelas*, as moments of political/symbolic ‘land-reappropriation’. For these inscribe on to these territories — through the legitimate killing on site/sight of their residents — a kind of ‘order and orientation’ (ethical life) that does not comprehend the *favelas* and their residents. Legitimacy is always already given — in exteriority — to these deployments of total violence because raciality renders the decision to kill residents of Rio’s *favelas* just because it is deemed *necessary* for the reinscription of the state’s authority. Because it functions, *a priori*, immediately (always-already) in representation, the deployment of architectures and procedures of security — occupations, military interventions, torture, summary executions, and so on — need no further justification. For raciality assures that, everywhere and anywhere, across the surface of the planet, that ever-threatening ‘other’ exists because already named; as such, it is an endless threat because its *necessary* difference *consistently* undermines the subject of ethical life’s arrogation of self-determination.

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⁶¹ Schmitt (2006), p 46.

⁶² Schmitt (2006), p 70.

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