POLITICAL CONCEPTS

A CRITICAL LEXICON

Ko Kirk Yamahira / Untitled (2018)
Impunity : Zahid R. Chaudhary

On January 23, 2016 Trump declaimed at a rally in Sioux Center, Iowa: “I could stand in the middle of 5th Avenue and shoot somebody and I wouldn’t lose voters.”¹ The statement—perhaps exaggerated and perhaps not—is outside the bounds of true and false because it is a performative, enacting, among other things, a masculinist will to power, one that anticipates a whole field of sovereign exemptions. The statement’s defiance relies on the libidinal mass appeal Trump already enjoyed. When the country would find out about the sexual assaults Trump had boasted about on a recording, and additional assaults came to light, it did not seem to matter. In assuming impunity, he delivered the frisson his rally audiences craved. The statement about shooting someone, however crude, relies on a set of cultural, political, and economic realities that are anything but simple. Unlike Hillary Clinton, whose every misstep seemed to stick to her and freight her campaign, we learned that Trump could flout any standard at all and still triumph. The fact that his very name is a synonym for “triumph” makes the Grand Guignol spectacle of contemporary American statecraft seem the result of a threatening fate.

Yet the mythic temporality of fate meets its concrete historical development in the rise of neoliberal rationality throughout the Cold War, and intensified by Bill Clinton’s leadership of the democratic party, with its commitments largely synchronized with the conservative agenda: the war against racially different “super-predators,” the mass increase in incarceration, the erosion of welfare at the same time racial justice took on a merely theatrical rhetoric around “diversity.” The vastly expanded prison-industrial complex became the most public sign of America’s commitment to “accountability.” An increasingly expanded definition of criminality meant that for people deemed “super-predators” the boundary between the permissible and the impermissible became more ambiguous. The space of state violence expanded with the force of an impunity in the name of stamping out impunity. George W. Bush would follow a similar logic, but instead of a war on domestic crime, he set his sights on large-scale wars abroad intended to secure America’s energy sources and military supremacy: carpet-bombing, torture, and the dismantling of governments became, once again (as in the Cold War), the favored techniques of a “New American Century” that never quite delivered the prosperity the Bush administration had hoped it would. Barack Obama, the benign face of a progressive neoliberalism, expanded George W. Bush’s drone program in extra-judicial assassinations abroad, increased the deportation of immigrants, and expanded governmental powers of data mining and mass surveillance. His great efforts to reform health care largely capitulated to neoliberal rationality and crippled the one project the Democrats have consistently promised. In this recent history, the Great Vulgarian Donald Trump may appear singular because of the shock and awe he regularly delivers to elite sensibilities and decorum, especially to Clintonian and Obama style progressive neoliberals. While the specificity of Trump’s brand of populism is worth analyzing, from the point of view of impunity as a political concept Trump is more rather than less continuous with the practices of American impunity. The country’s “exceptionalism” cannot be dissociated from the consolidations of its practices of impunity.

“Impunity,” according to the Oxford English Dictionary has two related meanings: ‘1. Exemption from punishment or penalty and 2. In a weaker sense: Exemption from injury or loss as a consequence of any action; security.’ To have impunity means, if one follows its root definition, to enjoy a double exemption: to be placed outside the purview of punishment, and into a sphere of security radically free of other consequences. Trump’s public statement about shooting someone on Fifth Avenue reveals another aspect of impunity somewhat buried in the OED definition, that impunity can also be a promissory note for violence. As a concept impunity gets at the heart of problematics concerning the social contract, the state of nature, and an agent’s claims on the legitimacy of its violence. It is an urgent problematic for an era in which political leaders can start wars across the world with spurious justification, and police forces are given a free hand with violence on minority subjects.

Given the abundance of practices of impunity, it is surprising how rarely the concept is taken up in social theory. Law is perhaps the only field with a robust and varied dialogue on impunity, and political scientists broach the problem now and again in their discussions of the aftermath of genocides. To some extent this is understandable, since “impunity” as a concept conjures the juridical. In legal parlance, the classic definition of the concept comes from French lawyer, Louis Joinet, author of the 1997 principles against impunity of the Office of the United Nations High Commissioner for Human Rights. These principles came to be known as the “Joinet principles” and they define impunity as “the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account—whether in criminal, civil, administrative, or disciplinary proceedings—since they are not subject to any inquiry that might lead them to being accused, arrested, tried, and, if found guilty, convicted.”²

Surely, conceived of in this way, impunity is something one ought to be against, and well before the Joinet principles were codified at the UN, Cold War social movements in Latin America explicitly invoked impunidad in
their opposition to unchecked power (sovereign and otherwise), and this dovetails with contemporaneous legal scholarship around impunity which argued for an anti-impunity stance.

More recently, however, legal scholars are divided about anti-impunity, since being against impunity in any categorical way has raised multiple problems: legal efforts to battle impunity assume that criminal law can solve the problem of impunity without examining the notion of punishment itself or the possibility that anti-impunity measures widen the scope of pernicious forms of criminal law. Some critics find anti-impunity measures to be either inefficacious or selectively applied, with specific violent acts claiming greater attention than systematic forms of quotidian violence. While the legal discourse on impunity and anti-impunity is vital it necessarily assumes the juridical judgment as a possible solution, and the juridical scene as the only efficacious one. Impunity has sometimes been legally granted and certainly legally fought, but most often it is practiced without legal attention of any kind, as an everyday practice not restricted only to “terrible” (that is, exceptional) historical times. How, then, does one attend to aspects of the practices of impunity that exceed the juridical space? To be clear, when I speak of practices of impunity that exceed the space of the juridical I am not referring to states of exception or suspension of the law, moments when the law can be glimpsed in its elemental violence. I take it as given that in states of emergency impunity reigns; instead, I am more interested here in the impunity that adheres to the operations of the law itself, either as its secret unnamed sharer or as extra-judicial forms of impunity that are outside of the purview of formal juridical attention.

Instances as diverse as Cold War catastrophes such as the genocide in Indonesia, a contemporary development project in Pakistan that entails the destruction of feudally-regulated villages in Balochistan, the massacre of Muslims in Gujarat secured by the very agents of the law charged with protecting the citizenry, and police brutality in the United States are all cases in point. At stake in each instance is the differentiation of the social field, the minoritization of a population subject either to some doctrine concerning objective necessity (e.g. economic necessity) that demands bloodletting on their part or that enacts the brutalization of this population through the very laws intended to secure their freedom. To think impunity outside of the strictly juridical domain means to make way for understanding its multiple dimensions: its libidinal, economic, political, and ecological realities. Moreover, one might speak of the distribution of impunity at a particular historical juncture, a distribution that activates residual forms of impunity and synchronizes them with the most recent realities. For example, in India, age-old caste categories are energized and consolidated under colonial rule, and in contemporary India merge seamlessly into the projects of neoliberal rationality.

Such a capacious sense of the concept, thinking past the UN’s discourse on human right violations, requires being open to forms of impunity that are not always traceable to particular people or perpetrators, but instead point to the systemic conditions that enable impunity to be practiced, whether collectively or by individual agents.

Impunity names an excess of the law in its very operations and as such requires diverse methodologies; this diversity is required because it seems the concept has haunted other concepts so familiar to us: in Marx, impunity would have to be a condition of primitive accumulation itself, that is of the state’s violent synchronization of divergent historical and economic processes; for the liberal tradition of political thought, impunity might name an assumption of a scandalous freedom without limits, violating the presumptive legal equality among persons before the law; in psychoanalysis, impunity might operate by means of a regressive fantasy of escaping one’s own death. In each instance impunity functions in an indistinct zone between potentiality (a scandalous possibility) and the operative principle (operative all along) that somehow tends only to be named after the fact—that is, after the violence it has wrought.

With this proviso that impunity is necessarily a concept that conditions non-juridical realms even if it emerges from the space of the juridical, I would like to turn to one critical account of the juridical that gets at the heart of the scandal that underlies impunity—namely its challenge to our notions of justice. As a political concept impunity names a problem concerning justice. In 1990 Jacques Derrida gave a lecture at Cardozo School of Law entitled “Force of Law: The Mystical Foundation of Authority,” where he thinks through how the primal scene (if you will) of the legal judgment operates by means of excess that reaches beyond the moment of decision or judgment. I would like to focus on two elements of Derrida’s essay: first, to analyze what Derrida teaches us about the extra-juridical realm that is regulated by the juridical, and secondly, to parse the meanings of “justice” in Derrida’s reflections on law. The word “impunity” does not appear in Derrida’s text, though arguably it is ever-present in his account of the possibilities of justice. Derrida considers, through a reading of Montaigne, Pascal, and Benjamin, what deconstruction might contribute to our understanding of law and justice. Montaigne had described a central crisis at the heart of all law, namely that it does not secure justice, that justice and the functioning of the law are radically foreign to each other. This is so, in part because legal categories are never adequate to the sheer diversity and multiplicity of human actions. Law operates, according to Montaigne, by means of custom and by sheer authority. Laws are respected not because, in truth, they are just, but “because they are laws: that is the mystical foundation of their authority.”
I would like to consider different aspects of this mystical authority, rife with mysteries, not only of the state but also of the substance that binds social relations. This mystical authority is critical to the operations of law and is so often invisible in its operations. Impunity has an intimate relation to the law’s mystical foundation. Let’s briefly follow a moment in Derrida’s essay where he considers the basis of the force of law, or what Walter Benjamin calls Gewalt, a combination of force/authority/violence. Derrida considers the problem of differentiating between the force of a legitimate power (or law) and the supposedly originary Gewalt that established this power, a violence that necessarily would not have been authorized by a prior authority—Derrida writes, “so that, in this initial moment, it is neither legal nor illegal.” This is to say that it is neither legitimate nor illegitimate. Its performative nature is like the nature of performative utterances, which are neither true nor false. This prior violence that establishes the law necessarily enjoys impunity, of a very specific type: this violence is not in violation of a previously existing law, and as such it is neither legal nor illegal. Outside the purview of law, not in its suspension but in its absence, this violence may be committed without accountability, in fact cannot serve as foundational (if it claims to be foundational) except with the absence of accountability, authorization, or legitimacy. Herein lies the scandal of constitutive violence, or in Benjamin’s words, “law-making violence.” This is the violence disavowed by liberalism, and generally a scandal only for liberalism because it is an aporia at the heart of its commitments to civility, freedom, and the good life. This same aporia is celebrated by nationalist liberation movements as well as atavistic political orders such as ISIL.

What are the implications of reading impunity as this kind of excess at the heart of the law’s mystical foundation? At one point, Derrida refers to this inaugurating, founding violence as kind of coup de force, enacting performative power itself. In his deconstruction of the Declaration of Independence in another essay, Derrida demonstrates how the chain of signatories to the founding document—the ultimate in the performative—must rely on the constative: the signatories give themselves the authority to sign a list of complaints and at the same time reference God, a pre-existing authority, who authorizes their founding act. This is so because no signature or founding act can guarantee its own authority; it must rely, in a fashion illegitimate to its manifest claims, on a previous guarantee. In Derrida’s reading, the Declaration of Independence can serve as a founding document because of the undecidability of a gesture that presents performative statements as constative ones. The document gains its performative power in this moment of risk, in the space of a vulnerability whose historical conditions are the conditions of its iterability.

Regarding such power of founding, Derrida writes in “Force of Law,” “it is what I here propose to call the mystical. Here a silence is walled up in the violent structure of the founding act.” This silence, it turns out, speaks of many things. Following Derrida following Benjamin, the law-making Gewalt repeats in a movement of displacement in the operations of the law itself, represented in all those institutions—the police, the courts, the army—that practice a law-preserving Gewalt. In this movement of différance, impunity modulates into the very conditions of legality itself. Once a practice outside the purview of all authority, outside the sphere of the legitimate and the illegitimate, it now comes to underwrite the everyday forms of calculability surrounding the legal and the illegal. Once the Gewalt-regulating authorities are established, the violation of their rules, at least in theory or at least formally, have to be accountable to the rules themselves. There shall be no impunity, so the story goes. Moreover, the enforceability of the law stretches into extra-juridical domains, far removed from the scene of the courtroom. Boundaries become ambiguous; the law is in force whether or not one is aware of it, and the unlocatable guilt (or its absence) that results from the supra-juridical force of the law becomes a cornerstone of modern subjectivity (a horror captured well by Kafka). So one can hardly speak of the law without the possibility of this excess, of the extra-juridical that the law regulates precisely through the juridical.

As we have already seen, nothing intrinsic in the law secures justice. The law is haunted by an aporia, founded as it is by means of an impunity that results in the outlawing of impunity itself (at least formally). This aporia, resulting from the law’s mystical foundation, is related to the key aporia on which Derrida’s argument turns: “the decision between just and unjust is never insured by a rule.” This is so because if one is simply applying the law like a rule, like a calculating machine, to a particular case then that act of judgment does not enact justice. Justice is broached when the decision, the judgment, halts before the unsubsumable particularity of the case, confronted with the experience of the undecidable, and arrives at a verdict that, in its reiteration reinvents the rule itself. According to Derrida, we still could not call that judgment just because we have a limitless responsibility to the other, a responsibility that requires that our assessment of justice hold wide open the possibility, at every turn, of not having arrived at justice. As such, “justice is the experience of the impossible.” The schism that Montaigne had indicated between law and justice becomes, as an experience of the aporia and of the undecidable, the very grounds for raising the stakes for the project of achieving justice, and even more, the grounds for justice itself. To say that justice has been done risks diminishing justice itself. Derrida gives the example of subjects who may not historically have counted as subjects. Violence done to such people would not register as an injustice because the charge of injustice “supposes that the other, the victim of the language’s injustice, is capable of a language in general, is man as a speaking animal, in the sense that we, men, given to this word language. Moreover, there was a
time, not long ago and not yet over, in which ‘we, men’ meant ‘we adult white male Europeans, carnivorous and capable of sacrifice.’”

For imperialism, including its neoliberal formations, one of the underlying calculations is to consider which population is worthy of subjection by means of contract and which one can be exposed to precarity or wiped off the face of the earth.

Even the truth of the utterance “injustice has been done” has depended on prior understandings of the subject “worthy” (if you will) of injustice since some people have not counted as subjects. The boundary around what constitutes the subject of injustice is a perennial problem for politics. Earlier, in the moment of foundational violence we were concerned with the distinction (or its lack) between the legal and the illegal; here, in the instance of beings who might not count as subjects, it is the distinction between just/unjust that is markedly absent. Violence done to such subjects—a brutal combination of structural and isolated acts of violence—can be and has been done with impunity. Hence Derrida’s call for thinking of justice as the experience of the impossible, installing a radical doubt that justice is ever fully delivered. In order to comport legal judgments in the direction of justice, decisions, insofar as they reinstitute and reinvent a rule by means of an act of interpretation, must be “both regulated and without regulation . . . conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle.”

A decision that is both regulated and without regulation, a decision that destroys the law and also preserves it or suspends it by confirming its principle: this is the transmutation of an originary Gewalt in the service of justice. Recall that the originary authority assumed itself to be foundational (or gave itself a foundation) and enjoyed impunity, therefore standing outside the orbit of legitimacy or illegitimacy altogether. Now, that force is only faintly recognizable as impunity: decisions must be unregulated, destructive of the law, and a mark of the law’s suspension at the same time as the decision is regulated, law-preserving, and confirming the law’s principle. If one can speak of something like impunity here, it would be impunity-as-illegitimacy, that aspect of the undecidable moment in which the law has to be suspended in order to do justice to its ends. This is a moment of risk-taking because it is a moment of free decision (as opposed to the mechanical application of a rule). This is how the decision can serve the interest of justice even if we can never say, must not say, that justice has been done. Where Montaigne indicated the danger, Derrida finds in the same place a saving grace: the inadequation of law to the unsubsumable example.

Justice emerges from what Derrida calls, “the sense of a responsibility without limits, so necessarily excessive, incalculable, before memory.” If exacting justice means to face the experience of the impossible, then the experience that is all too possible and immediately at hand can be presumed to be one of injustice. Derrida has given us a generative way of thinking about justice, but what of injustice? Is justice incalculable but injustice readily calculable? Or is the sense of responsibility that is the very condition for a possible justice limitless because the injustice it addresses is itself without limits? What does it mean that we cannot say “This is a just decision / Justice has been done” but we can say “Injustice has prevailed”? It would have to follow that injustice is also incalculable; it would have to be, given that the field of subjects who are recognized as receiving unjust treatment has been historically variable. The danger that attends the utterance “This is a just decision” is that it is poised to turn justice into another precedent, another rule, when justice cannot be delivered by rules.

So we are cast back into the assumption that it is from a space of injustice that we pose these problems of justice and of impunity. What are we to do with this assumption? Far from casting doubts on the existence of injustice in the world, I am taking Derrida at his own word when he says “responsibility toward memory is a responsibility before the very concept of responsibility that regulates the justice and appropriateness of our behavior, of our theoretical, practical, and ethico-political decisions.” Derrida accepts that an interrogation of such responsibility necessarily creates anxiety but no deconstruction is possible without such interrogation, without appealing to something beyond the determinations of given contexts in order to approach the possibility of justice itself. In that spirit, then, I submit: How do we know injustice?

I ask this naïve question not because I seek a foundational explanation for the injustices I can easily inventory, but our current historical moment leads me to this question in a very specific way. The young white supremacists parading around Charlottesville (and other locations) since Trump has become president, too, have cried out injustice. Vulnerability, wounding, a sense of being wronged fires up their rhetoric, and this fact should only remind us that the totalitarian movements that their protests cite and also seek to model, also constituted themselves around a sense of injustice. Assuming injustice as a way of comporting toward justice is not, in itself, sufficient. Perhaps injustice is a little too readily discernible, at hand for forms of politics that may be in conflict with each other, but whose complaints, at a formal level, are commensurate.

With respect to white supremacist marches, it would help to understand their sense of injustice as related to the force of law in its performative authority. All marches are performative acts, assuming an authority that is
Trump cracked the glowing amulet open, releasing its eldritch energies. "But whereas his forebears carried whiteness like an ancestral talisman, power." This is a mystical power, as Coates realizes well because he refers to whiteness as a "bloody heirloom" whiteness as an actively sought ideal has secured impunity for him—according to Coates, it "is the very core of his populations, precisely how this fact has historically been deployed. Trump is the "first" white president because given Coates's examples of the many forms of violence endured under white supremacy, it becomes clear that claiming injustice for itself ("white slavery") has been critical to the constitution of whiteness, an element of the mystical foundation of American authority. The aim is not to argue that white workers were "slaves without masters" and black workers, by contrast, were "elevated by history, he argues. In the 19th century pro-slavery intellectuals such as George Fitzhugh argued that free white workers were terribly exploited ("slaves without masters") and black workers, by contrast, were "elevated by enslavement," since a master provided for them:

Nevertheless, the argument that America's original sin was not deep-seated white supremacy but rather the exploitation of white labor by white capitalists—"white slavery"—proved durable. Indeed, the panic of white slavery lives on in our politics today. Black workers suffer because it was and is our lot. But when white workers suffer, something in nature has gone awry. And so an opioid epidemic among mostly white people is greeted with calls for compassion and treatment, as all epidemics should be, while a crack epidemic among mostly black people is greeted with scorn and mandatory minimums. One kind of person is worthy of grievance, and another is left to their grief. Mandatory minimums are akin to the operations of fate, a threatening violence that in this historical example strikes in multifarious forms, representing, reinventing the foundational Gewalt in all of its excessive power.

The law is haunted by impunity, either in the form of a suspension of the law or prior to this, in a self-authorizing and foundational Gewalt. In addition, there are the flagrant instances of impunity: the legacies of slavery, the rise of the carceral state, and the pattern of police brutality in the United States bespeak a history where the force of law regularly produces injustice, where impunity operates in the service of a disproportionate use of violence. There is the impunity granted to police officers by a court's decision, but prior to this there is the pernicious tendency of police agents to assume impunity when they disproportionately apply the force of law to racialized bodies. Derrida reminds us, in a key turn in his argument in "Force of Law," of Benjamin's reading of the police in all of its excessive power.

The police intervene 'for security reasons' in countless cases where no clear legal situation exists . . . [Police power] is formless, like its nowhere-tangible, all-pervasive ghostly presence in the life of civilized states. . . . [bearing] witness to the greatest conceivable degeneration of violence.¹⁸

This is so because policing entails a suspension of the distinction between law-making and law-preserving—in order to preserve law the police agent's word acts as if it were the law.

The mystical foundation of the law resides in its self-authorizing fictionality. Given US history, whiteness is part and parcel of this mystical foundation. In a recent article in The Atlantic entitled “The First White President,” Ta-Nehisi Coates suggests that Trump's triumph rests securely on “whiteness,” itself a strangely tautological and self-authorizing phenomenon, intimately tied to an order that delivers violence in the guise of fate.¹⁹ Not only did Trump have broad support across all classes, but the common thread linking the support across the classes was whiteness. In our contemporary historical juncture, Coates argues, class is being deployed to conceal its conjunctures with a racialized history of injustice. Pitting the white working class against the black has a long history, he argues. In the 19th century pro-slavery intellectuals such as George Fitzhugh argued that free white workers were terribly exploited ("slaves without masters") and black workers, by contrast, were "elevated by enslavement," since a master provided for them:

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Given Coates’s examples of the many forms of violence endured under white supremacy, it becomes clear that claiming injustice for itself (“white slavery”) has been critical to the constitution of whiteness, an element of the mystical foundation of American authority. The aim is not to argue that white workers were not dealt injustice at the hands of capital, but that this fact need not be adduced in order to naturalize the injustices faced by black populations, precisely how this fact has historically been deployed. Trump is the “first” white president because whiteness as an actively sought ideal has secured impunity for him—according to Coates, it “is the very core of his power.” This is a mystical power, as Coates realizes well because he refers to whiteness as a “bloody heirloom” passed by means of a violent tradition: “But whereas his forebears carried whiteness like an ancestral talisman, Trump cracked the glowing amulet open, releasing its eldritch energies.”²¹
These are energies of a foundational Gewalt that is all the more powerful for not being codified, an excess operating in the future anterior to secure emerging forms of impunity. The mystery of whiteness is such that it secures its supposed universal vantage point by policing when it can be named; it finds itself when it feels besieged; it is both the silent standard of what might count as justice while claiming enduring injustice as its foundational experience. A sense of vulnerability underwrites its assumption of impunity. Of course, it matters whether vulnerability is perceived or real, but the sense of vulnerability creates the possibility of a habituation in which the law can be seen as not applying to oneself even when the world has been assembled in so many ways around oneself, or laws and norms created to ensure heterogeneity can be appropriated for the sake of one’s own burning and besieged singularity. The logic of preemptive warfare and the perpetual war against terror are also grounded on a sense of deep vulnerability. Michel Foucault understood this dynamic as a shift in modern forms of sovereignty, a shift that requires racism: the modern regimes of normalization can only exercise the sovereign right to kill by producing racial differentiations. In contemporary warfare (abroad) and domestic biopolitics (at home) the exposure of racialized populations is done in the name of the flourishing of the majority. Impunity is aligned, under biopolitical regimes, with the greater common good—common, however, only to the dominant group.

Derrida’s account of the force of law speaks directly to these historical conditions. Recall that in Derrida’s account the violence that takes itself to be foundational operates in the space of an impunity defined as being outside the orbit of legitimacy altogether. Once established, the law can make justice possible but only in the face of an undecidable moment of decision where the law must be suspended in order to be reinvented. Its suspension is as critical as the eventual confirmation of its principle (not necessarily its word). In other words, if the abyss between the law and the unsubsumable example points to the unjust operations of the law, when justice is approximated it carries with it a tinge of the illegitimate. If mandatory minimums are an example of the deep intertwinement of white supremacy with the rule of law— that is, if existing law has delivered a history of violent injustice then it follows that justice will appear illegitimate, a scandal, from the standpoint of these laws. That illegitimacy is what Derrida’s understanding of the undecidable opens up, without guarantees: justice as a form of illegitimacy.

Recall that a certain vulnerability already attended the supposedly foundational Gewalt in its insecurely self-authorizing act that enjoyed impunity, and that approximating justice also requires vulnerability in that the law must be suspended in order to be reinvented. Vulnerability is the other side of impunity, both in the operations of the law and in the actions of subjects who seek to escape its force, whether they are dominant groups or less dominant groups. The language of vulnerability is what opposing political groups share in common, and such language is the basis for an appeal to the law’s protection and also the basis for rendering the law illegitimate. Since vulnerability does not have a political attachment, it follows that neither does impunity, not in itself. It can inaugurate a legal order; as a form of illegitimacy it can create the possibility of justice by opposing unjust laws; it can also threaten a social order with forms of extreme violence. However, impunity-as-illegitimacy, which is one way of describing revolutionary violence, indicates a weaker, procedural, or formal understanding of impunity as a lack of accountability to actually existing unjust laws. As Frantz Fanon’s account of revolutionary violence shows, this violence must in fact be held accountable to the notions of freedom as well as justice. Insofar as it invokes questions concerning accountability, redress, and responsibility, impunity as a political concept requires contending with an ethical horizon.

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4. Giorgio Agamben’s account of bare life and the state of exception argues, via Carl Schmitt’s classic formulation, that the exception—that is, when the law is suspended—sheds light on the rule, on the operation of the law in its quotidian function. I agree with this assessment but find it incomplete: while states of exception might shed light on the rule, it would be reductive to conclude that this light illuminates the rule in its entirety. When the rule is in force it is operating alongside a host of other potentialities, with its suspension being one of them.

5. I analyze these cases in my forthcoming book on impunity, entitled Impunity: Notes on a Global Tendency.
6. I thank Adi Ophir for suggesting this phrase, “distribution of impunity.”


20. Ta-Nehisi Coates, “The First White President.”


22. Foucault writes, “If the power of normalization wishes to exercise the old sovereign right to kill, it must become racist. And if, conversely, a power of sovereignty, or in other words, a power that has the right of life and death, wishes to work with the instruments, mechanisms, and technology of normalization, it too must become racist. When I say ‘killing,’ I obviously do not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on” (Michel Foucault, Society Must Be Defended: Lectures at the Collège de France, 1975-1976, trans. David Macey, ed. Mauro Bertani and Alessandro Fontana (New York: Picador, 2003.), p. 256.