

Considering Democracy and Power in Light of the Kyle Rittenhouse Acquittal

Written by Ali E. Erol

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ALI E. EROL, NOV 20 2021

Under a feudal system, such as a fiefdom or a kingdom, a monarch would justify its power over people and over land by the idea of *divine right*—that the king took his authority from whatever divinity was associated with that particular political or cultural entity. The line of authority flowed from *above*: just as the monarch bowed to the rule of the divine, at least in appearance, people under his rule bowed to him. In a way, obedience to the king was obedience to the divine itself. Kings and rulers obviously abused hell out of this authority, from wars to genocides. But what gave the king ultimate authority was his ability to take life—if the king wanted someone’s head on a pike, that person was getting their head on a pike. This ability to take life or grant life was an early conceptualization of the state’s monopoly over violence. In other words, whatever was the king’s decision and authority over taking life and the monopoly over the ability to take life transferred into, got translated into the criminal justice system in modern bourgeois democracies. This is still present in the form of capital punishment in some states, for example, and in other places we see this in police’s and military’s ability to take human life with whatever justification and in most cases with little or no consequence. But a king’s authority over human life during feudalism, also translated into the instrumentalization and the implementation of the carceral state in the present moment.

As Foucault notes, in *Discipline & Punish*, the punishment that was considered appropriate, over time, went from physical to mental or spiritual. Regardless, this *evolution* meant that the “ancient right to take life or let live was replaced by a power to foster life or disallow it to the point of death,” as Foucault, writes in *History of Sexuality*, Vol. 1., through the criminal justice system. This is what Foucault calls *biopower*, the ability to arrange the social, cultural, economic, and legal structures such that the intersection of these contexts make some lives thrive while they make others die. Adaptation of biopower into the structures of governance gives the current political systems the appearance of being civilized and democratic because the power over life is not as explicit as it was during the feudal times and now it is even made invisible within endless pages of bureaucratic record keeping, in thousands of pages of legal codes, tax codes, and labor practices.

Biopower reached its peak of self-expression during Europe’s fascist period, which coincided with the rising of kkk violence against Black people in the US—all the way to the mid-1900s till the freedom movement (otherwise known as civil rights movement, although Angela Davis, for example, does not like the term civil rights because she says it makes liberation sound like accumulating rights) put an end to more explicit forms of racism, such as the commonplace lynchings. In fascist dictatorships, death was a goal in itself. It did not serve a larger narrative such as the economy of the country or liberation from an oppressive or invasive force. Death and erasure in themselves were valuable goals to pursue. This was, in a way, a fetishization of biopower—that the value of taking life was moved *from* a justification of development, sacrifice, or national liberation *to* being valuable in and for itself. Gas chambers and death camps were the ultimate show of biopower. They committed genocide because they could mobilize all kind of historical narratives to make regular people want to kill others in a show of having power over life. They committed genocide because they could.

One of the ways in which three fascist regimes in Europe—Spain, Italy, and Germany—were able to take power and really display the extent to which they would utilize biopower was through this thing called “*state of exception*” or “*state of emergency*” rule. Giorgio Agamben draws our attention to how these *states of exceptions* developed over

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time, starting as exceptions then becoming the norm. *State of exception* rule was first established during the French Revolution—it has been woven into the very fabric of constitutional regimes since then. It is basically the idea that under extreme circumstances where the ruling body needs to take decisive action, the law can suspend itself with certain limitations, so that decisive action can be taken without losing precious time with deliberation. Similar clauses popped up in French law, periodically, until the First World War. When the First World War was taking place, pretty much every country in Europe adopted a kind of clause that suspended their laws for the duration of the war.

Unsurprisingly, after the First World War, the governments wanted to hold on to at least some of the power they had gained by the enacted states of emergencies during the war—and consequently pretty much all countries in Europe ended up having a version of this law that granted ruling body a ridiculous amount of power while at the same time suspending the law that applied to everyone and governed day to day life. But, during interwar years (that is, between the first and the second world wars), fascist groups, starting with Mussolini, began stirring up violence using paramilitary groups. Mussolini was himself a veteran of the First World War and it did not take long for him to find other veterans who were disgruntled and upset that Italy did not get enough after the war. They had fought and suffered and Italy was short changed during the peace process. That narrative struck a chord with other veterans. A paramilitary group called “Blackshirts”—which later influenced Hitler’s “Brownshirts”, but they were both inspired by Russia’s “Black Hundreds”, a proto-fascist group in Russia that took a pro-Tsarist position during late 1800s and embodied many fascist ideals—was formed and it didn’t take long for Mussolini to take control of that group.

The blackshirts would attack workers in factories, unions, and socialists and then they would claim self defense. These attacks would take place in more rural places where it was easier to drown out the truth with rumors, where a nascent visual media would not be able to reach. With these attacks, they were able to shift the public opinion against socialists and against Jewish people. With media propaganda, they were successful in showing themselves as the defenders of law, order, safety, and security from the agitation and violence they had caused. Once the public opinion was shifted in favor of the fascists, and once they accumulated enough votes, they claimed a “state of emergency” in their countries, one by one, to take charge and consolidate power in their own hands and to make every other party or thought illegal. When this was unfolding, paramilitary groups acted as state-sanctioned vigilante groups that sought and harassed, assaulted, and killed socialists, Jewish people, and union organizers. Because they had aligned with the state’s ideology, anything they did were not only forgiven but were actively condoned—the police and the courts turned away while vigilantes did most of the dirty work. After consolidation of power, these vigilante groups were absorbed into the regular military of the state.

This further solidified the idea that the monopoly over violence that the state had through its repressive apparatuses, such as the police and the army, would and could be extended to citizens who aligned with state’s ideology and objectives and preferred identity positions. In other words, those individuals and groups who did not have the legal authority to use violence, still could as long as they aligned with the state—as long as they were good citizens within the parameters of that state’s ideology. So, not only the state could exert biopower through official means, but also others could take it upon themselves to exert state-brand violence wherever and whenever they would see fit with the full knowledge that the legal, social, political, and cultural context would not condemn them. Because that is how biopower works, it creates the conditions for some to thrive and others to die.

In the post-war period, this was, obviously, disturbing. Except for Spain, who would remain under fascist Franco rule until his death in 1975, Europe moved to choosing sides in the cold war and central and western europe picked the ‘*respectful and dignified*’ side of the US—maybe it had something to do with Marshall Plan (also called ‘European Recovery Program’), which was a plan that got put into action in 1948 that gave a lot of money to Europe (114 billion in today’s money), to rebuild war torn countries in the hopes that they’d fall under US influence. That turned out to be an accurate assessment of the next 50 years, until the collapse of the Soviet Block. Consequently, during and after the Second World War, bourgeois democracies adopted a form of *state of exception* laws to prevent something like the hollacaust from happening again, from fascist dictators to take power again after stirring up violence and claiming self defense.

But these laws did nothing more than increase the state’s powers over time. However, it is important to keep in mind that the law wouldn’t have been able to be suspended, if it didn’t have the capacity to be suspended to begin with. In

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other words, law's capacity to suspend itself creates a legal atmosphere whereby the suspension of law by whatever justification becomes the legal regime itself. That is exactly what it is to live in a bourgeois "democracy" that can suspend the law as it sees fit whenever it wants. Within the constraints of the US constitution, these kinds of acts are done with the justification of Article I, Section 9, Clause 2, called the "suspension clause": "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." This means that whenever those who are in power need to justify suspending the functioning of the law, they just can.

For example, in the US, state of emergency law was used during the Second World War by President Eisenhower to issue Executive Order 9066 that enabled Japanese internment camps. For that to have happened, the Executive Order 9066 needed to have the legal capacity or standing to suspend the laws that protected the rights of certain groups of people due to a justification like national security. After 9/11, George W. Bush passed the "patriot act" that consolidated a lot of power within the government, expanding the security and the surveillance apparatuses of the state. Based on this, a lot of random Muslims, especially in NYC, were randomly taken into custody by the FBI because their names sounded similar to those who committed the attacks—they were interrogated, in some cases deported.

Using these states of emergencies and suspending the law, those who are in power, the state, extends the circumference of the biopower they can justifiably use. One thing to note, however, states of emergencies that suspend the law and, consequently, the targets of the expending biopower are always those who do not align with the state, state's ideology, and privileged identity groups—those who are deemed as enemies, racial minorities, leftists, religious minorities. Meanwhile, those who are aligning with the state and those who are taking it upon themselves to use and impose the biopower bestowed upon them by the state, those who are blessed as the champions of the statist ideology are protected and shielded from legal, social, or cultural consequence because they are implicitly protected by the shadow of the state of emergency that hums in the background of the socio-legal order. This has been the case with George Zimmerman to Kyle Rittenhouse, this has been the case when Proud Boys coordinate with the police to beat up Antifa, just like it had been the case ever since those who embodied state's monopolized violence lynched, raped, murdered and simply walked away with a badge of honor attached to their lapel by the loving hands of the paternal state himself. It keeps happening. This is the norm. This is what democracy means and this is why the word democracy itself becomes a protective shield to support the status quo and the accusations of being anti-democratic can be wielded against those who do not align with US interests—internally or externally.

In other words, it is okay if a paramilitary group or a person decides to showcase state's biopower on those who are deemed surplus or disposable, since the law always will bend or suspend itself in order to protect those who align themselves with its power, those who act as the extensions of its power. This is also apparent in the ongoing Ahmaud Arbery case—where three white men cut off and killed a Black jogger while he was jogging—the defendant's lawyer was able to invoke history of lynchings against Black people in the US and liken three white defendants to Black people who were lynched. Turning history on its head, sure. But by doing so, brilliantly showing who has the right to live and who can only have the right to die. When Black people were getting lynched, the lynching was acceptable. Black people had the right to be lynched and through the extension of *state of exception* to those who enforce state's biopower, those white people who would do the lynching would get a celebration and lynching postcards. Now that the lynching is unacceptable, the cruel language gets weaponized against a Black person who was actually killed by a white mob and against the understandable anger directed towards a justice system that is built on criminalizing people of color.

Whatever ends up happening with the Arbery case, even if there are convictions, we will know that those convictions happened not because the criminal justice system wanted to make people of color feel safer, but because, in this case, the murderers did not cover their tracks well enough and the case was beyond the criminal justice system's saving grace. After the murder, the local prosecutor refused to press charges, the police didn't investigate and the three white men who killed Ahmaud Arbery weren't even arrested. If the video of the shooting didn't go viral, nobody would have cared about Arbery's death, further proving how the law conveniently suspends itself in different directions when it comes to people who embody and enforce the biopower that aligns with the state's ideology, historical existence and privileged identity positions.

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What happens? What is the social or cultural consequence? Do we wake up tomorrow and go about our days, like we did after every person of color whose murder by a repressive state apparatus, legal or otherwise, was swept under the rug? The *state of exception*, that was historically meant to denote rare cases, *is* the rule—has been the rule, has been the context in which the law existed not as an independent institution, but as an extension of the state's ideology precisely because crises that demand *states of exception* are easily and readily manufactured to work around the law. And the law only exists against those who cannot be covered by the *state of exception* to begin with. As such, the state's biopower can be used against its eternal enemies: people of color, leftists, women, unionists, sex workers, neurodivergents, homeless, working class people, etc. And because the state of exception *is* the rule, the consequences of exerting biopower are suspended—violence stays within the state's monopoly, now extended to vigilantes.

The more these socio-legal mechanisms reveal that contemporary bourgeois democracy is an illusion of modernity, is an illusion of painting the present as the lack of the past—but as we keep seeing the present moment is a mere repetition of the racist, sexist, classist past—then will it embolden further reactionary and regressive politics that yearn for a past that has never actually left us in the first place? Will they long to wear and express the symbols of the past? Will the desire to bring back that past and materialize it in movements that would like to *Make America <live in the past more explicitly> Again?*

In *Open Veins of Latin America*, Eduardo Galeano writes that “History is a prophet who looks back: because of what was, and against what was, it announces what will be.” In the opening of his work *Eighteenth Brumaire of Louis Bonaparte*, Marx writes “Hegel remarks somewhere that all great world-historic facts and personages appear, so to speak, twice. He forgot to add: the first time as tragedy, the second time as farce.” What about 4 centuries of repetition? What about brutal consistency? What about countless genocides, not only repeating from one massacre to another but also the individual pain within each instant repeated millions of times? What is farce to the power of infinite?

Inversely, what would it mean to live in a regime in which the *state of exception* does not exist and the legal structure cannot make exceptions for those who want to take a slice of the monopolized violence pie by exerting state's biopower against minorities? What would it look like to live in a place where people cannot be disposed of because they are defined as disposable? At what point do we stop repeating? At what point do we stop repeating not because the system gets fixed but because we stop trying to exist with it and within it? What happens then?

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Ali E. Erol (Ph.D) is Assistant Professor of the Practice at the Department of Communication, Boston College. His research focuses on critical linguistics, discourses of subjugation, and queer talk-back. He has published articles in *International Journal of Communication*, *Sexualities Journal*, *Journal of Narrative and Conflict*, *Oxford Journal of Socio-Legal Studies*, and *KaosQ+*, and is currently working on a monograph that analyzes the discursive mechanisms by which the state and the protestors aligned to erase queer voices and concerns during the 2013 Occupy Gezi Uprisings in Turkey.