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JEFF GRIFFIN

**The State of Exception in Film: Cloverfield and 24**

Giorgio Agamben, Carl Schmitt, and Walter Benjamin have discussed the centrality of the "state of exception" in the political sphere. Despite their disagreements, they all concede in one way or another that sovereign power hinges on the state of exception. In the modern West, the state of exception has become a constitutional paradigm. The current "War on Terror," which declares open hostilities on a de-localized, disembodied enemy that has yet to be determined, turns the state of exception into the *raison d'etre*. In his September 20, 2001 Congressional address, President Bush stated, "our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated." The emergency situation becomes

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1 I use "state of emergency," "state of siege," and "state of exception" synonymously. Agamben offers a brief history of the state of exception in its constitutional usage, beginning with Article 14 of French Constitution of 22 Primaire Year 8, which granted the sovereign the power to "make the regulations and ordinances necessary for the execution of the laws and the security of the State (11). This clause has its origin in Napoleon's decree of December 24, 1811 granting the emperor the power to declare whether or not a city was in a state of siege, and take exceptional powers to avert it (1). Article 48 of the Weimar Constitution gave the President of the Reich the power to declare a state of siege and, if necessary suspend the fundamental rights listed in the constitution (14). On August 3, The Swiss Federal Assembly gave the Federal Council full power to ensure the "security, integrity, and neutrality of Switzerland." 2 The Bush Administration's political use of the word terror conflates widely disparate strategies with readily identifiable subjects. But his public rhetorical use of the term is not consistent with its use in official State Department reports and publications, and neither are the definitions in these reports consistent. See Tilly, 2004. The Department of Defense defines terrorism as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience." U.S. State Department, "Significant Terrorist Incidents, 1961-2003: A Brief Chronology," Office of the Historian, Bureau of Public Affairs, ttp://www.state.gov/c/pt/hs/ps/71902.htm.

4 Ibid.
an interminable and potential legal operation in which, "the very distinction between peace and war (and between foreign and civil war) becomes impossible."\textsuperscript{5}

Before I begin the discussion on the representative aspect of law, I should clarify my own use of "representation," as well as my discussion of the state of exception as a representation vs. an objective reality. I use "representation" broadly to refer to conventional media through which we come to know the world, whether language, images, or sounds. Because formal knowledge is only possible through normal referencing, it is inherently problematic to discuss the state of exception as an "objective reality," and I forgo any attempts to do so. As Schmitt notes, "There exists no norm that is applicable to chaos."\textsuperscript{6} Rather, I wish to demonstrate how fundamental elements of jurisprudence and sovereignty are put into play in particular films, as well as in cinematic production in general. In its broad usage, the state of exception is a term that signifies a purely potential event. As an object of language, the state of exception marks the limit point of juridical competence, and ushers in a period of action without legal representation. Agamben's critical analysis of the "state of exception" makes use of a sort of Hegelian logic that couples the exception to the rule in a unity of difference. "What is excluded in the exception," he writes, "maintains itself in relation to the rule in the form of the rule's suspension. The rule applies to the exception in no longer applying, in withdrawing from it" (original italics).\textsuperscript{7} In his analysis of law and the theory of sovereignty, Agamben suggests that this relationship precludes a formal existence of a juridical "outside" or rather, a distinction between any outside and inside. In his discussion of the state of nature via Hobbes, Agamben claims that the state of nature is the "being-in-potentiality of the law, the law's presupposition as 'natural law."\textsuperscript{8} By moving the discussion from the objective presence of the signified to the object's potential to be present, Agamben avoids describing the "state of exception" or the "state of nature" in terms of any inherent qualities and falling into the same trap against which his polemic is aimed.

\textsuperscript{5} Agamben, State of Exception, 22.
\textsuperscript{8} Ibid., 37.

But while Agamben discusses the state of exception as a political paradigm, I wish to discuss it as a cultural paradigm. The reason is that in very obvious ways culture and politics are inter-formative. The "ticking-bomb" hypothesis, discussed below, has become a regular academic exercise in judicial policy and ethics following September 11th. "Terrorism" and "catastrophe," as spatially abstract concepts that refer to temporal occurrences, are made tangible in and through the "news." As I will show, they are also made real by virtue of a sovereign declaration. Agamben's own political philosophy is informed by his earlier work in aesthetics, and he owes much of his thought to Walter Benjamin's literary criticism. As a political paradigm, the state of exception, according to Agamben, has become a normal legal operation in terms of its potential. Likewise, it has become a regular feature of cultural production, as images of war, disaster, crisis, and terror proliferate in theaters and newspapers alike.\textsuperscript{9} This corresponds, in turn, to the novel means of representing war through television and cinema. In my discussion of the "ticking bomb" hypothesis, I will show how catastrophe enters into the repertoire of legal and ethical discourse and how this discourse both anticipates violence (as torture) and tries to manage and contain it. This is a precursor to my discussion of the representation of catastrophe in the film Cloverfield\textsuperscript{10} and the management of violence in the series 24.\textsuperscript{11} I end with a discussion of these films as part of a larger fiction of sovereign continuity in which the capture, suspension, and ritualization of anomic space become normal operations.

II.

Constitutional law is always involved in the act of representation by codifying norms into legally binding rules. According to Schmitt, constitutional theorists often isolate the norm from the decision, privileging the former at the expense of the latter. Such approaches misconstrue the nature of sovereignty or even "eliminate the sovereign" from the theoretical model. "But every general norm," he argues, "demands a normal everyday frame of life to which it can be

\textsuperscript{9} The U.S. State Department lists nearly the same number of "significant terrorist incidents" between 2000-2003 as 1963-1999. State Department, "Significant Terrorist Incidents, 1961-2003: A Brief Chronology."
\textsuperscript{10} Matt Reeves, "Cloverfield," (United States: Paramount, 2008).
factually applied and which is subjected to its regulations."\(^{12}\) By virtue of its power to suspend the normal order, the sovereign implicitly decides \textit{what} constitutes the normal state of affairs by withholding that power. As Wittgenstein reminds us, the practical use of language erodes in a state in which normal uses are not applied.\(^{13}\) In the \textit{Philosophical Investigations}, he would devalue the import he previously ascribed to propositional language and stress heterogeneous linguistic usages in various contexts.\(^{14}\) Propositional language is but one of a multiplicity of "language games." To Schmitt, the sovereign decision to suspend the law reduces the norm to a pure application. The coincidence between the linguistic and the juridical stated here is synthesized by Agamben:

In the relation between the general and the particular (and all the more so in the case of the application of a juridical norm), it is not only a logical subsumption that is at issue, but first and foremost the passage from a generic proposition endowed with a merely virtual reference to a concrete reference to a segment of reality. This passage from \textit{langue} to \textit{parole}, or from the semiotic to the semantic, is not a logical operation at all; rather, it always entails a practical activity, that is, the assumption of \textit{langue} by one or more speaking subjects and the implementation of that complex apparatus that Benveniste defined as the enunciative function, which logicians tend to undervalue.\(^{15}\)

In the case of language, the propositional statement, or language as a "picture of the world," dissolves into various semantic acts at the level of enunciation. In the juridical sphere, law, in the constitutional, normative, or signifying sense, dissolves into a "decision [made] in absolute purity."\(^{16}\) And the space in which this occurs in both cases is the state of exception, to which we will now turn.

\(^{14}\) The Tractatus of earlier Wittgenstein posits the "picture theory" of language, in which the world is determined by facts (1.11) given to us in pictures (2.141) and articulated through propositions (3.1) (Wittgenstein, 2003 #21). The later Wittgenstein abandoned his earlier tendency to contain "meaning" within logical pictures. "For a large class of cases..." he states, "the meaning of a word is its use in the language" (ibid., par 43).
\(^{15}\) Agamben, \textit{State of Exception}, 39.

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\textbf{The State of Exception and the Continuity of Power}

The state of exception has been a point of frustration for legal theorists and jurists alike. Agamben writes that they "seem to regard the problem more as a \textit{quæstio facti} than as a genuine juridical problem," and they assume that "state of necessity," which founds the exception, "cannot have juridical form."\(^{17}\) And yet, as Schmitt has shown, the exception is precisely that which gives life to the sovereign. "Sovereign is he who decides on the exception," is the famous opening line of \textit{Political Theology}.\(^{18}\) Here he locates the originary place of sovereignty in the decision to suspend the normally existing juridical order in an emergency situation. But Schmitt insists on the absolute legality of this decision: "Although [the sovereign] stands outside the normally valid legal system, he nonetheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety."\(^{19}\) While Agamben agrees that the sovereign ultimately decides on the exception, he views the work of Schmitt as part of a strategy to lend cohesion to a radical form of sovereignty whose "gradual exacerbation of the use of the state of exception" threatened to disrupt that unity.\(^{20}\) To Agamben, this unity and cohesion are part of a mythos of power that attempts to secure the resurrection of the constituted order following the proclamation of its annulment, or annex the state of exception to the rule. He concludes that the state of exception is an anomic, unlocalizable, and contestable space that, in a formal sense, requires the intercession of a "force of law," in which, "on one hand, the norm is in force but is not applied and, on the other, acts that do not have the value of law acquire its 'force'."\(^{21}\) Even more, Schmitt's attempt to maintain the legal status of the sovereign decision in the state of exception is ultimately self-destructive, because it hinges upon a clear distinction between the rule and the exception: "[the rule] derives only from the exception."\(^{22}\)

Insofar as this distinction is evident, the state of exception can maintain the "specifically juristic element" of the pure decision.\(^{23}\) But when the two elements become confused and ultimately

\(^{17}\) Agamben, \textit{State of Exception}, 1.
\(^{18}\) Schmitt, \textit{Political Theology}, 5.
\(^{19}\) Ibid., 7.
\(^{20}\) He is referring specifically to the Weimar Constitution which was suspended during the Third Reich. Agamben, \textit{State of Exception}, 34.
\(^{21}\) Ibid., 30.
\(^{22}\) Schmitt, \textit{Political Theology}, 15.
\(^{23}\) Ibid., 13.
undecidable, Schmitt's entire program loses its juridical coherence. At this point, Agamben offers a reading of Walter Benjamin, which is crucial to the understanding of his own analysis of the relationship of law and praxis. In his eighth thesis of the philosophy of history, Benjamin states, "The tradition of the oppressed teaches us that the 'state of emergency' in which we live is not the exception but the rule."24 This simple proposition blurs the norm.exception distinction and thus prefigures the opening of a juridically formless space. Hence, when Benjamin states shortly after, "...it is our task to bring about a real state of emergency,"25 he is positioning revolutionary violence within an anomie space where it is juridically indistinct from sovereign violence. Schmitt's analysis of the state of exception is thus realigned with every such fiction constructed upon and suspended within an inherent "juridical void" that is nonetheless strategically decisive for the juridical order.26

Agamben's reading of Schmitt in contrast to Benjamin reveals the basis for his analysis of law and praxis. In fact, two levels of analysis can be located through his work: the abstract-logical and the practical-enunciative. In reality, his thought oscillates between these two poles, highlighting a fundamental disjunction between "language and the world" (or norm and application).27 On the level of discourse, language represents the world through denotation, while on the level of enunciation, which refers to the mere "taking place"28 of speech, language is reduced to a pure event and signifies before all else the fact of signification itself (or the intention to signify).29 This implicates a dual subject, who, through a process of both withholding and suspension, is solely present in voice or parole, and absent in discourse, and who represented in discourse or langue, and absent in voice. If a political community is understood as the place of norms, laws, or justice, and the political subject as both pre-political and politically capable (as in Aristotle's notion of "political animal") we can say that the presence of a subject as animal is both suspended within and excluded from a political identity within a community. In articulating this bond between language and politics, Agamben writes, "The living being has logos by taking away and conserving its own voice in it, even as it dwells in the polis by letting its own bare life be excluded, as an exception, within it."30 This is the basis of Agamben's thesis on sovereign power and "bare life," in which both the former and the latter are "captured out" (as in ex-capere) of the normative, political sphere and are exposed as bare-life-as-such in the state of exception.

While the exception is persistent is any normal state of affairs, the state of exception is problematic both theoretically and practically. Theoretically, because, as mentioned above, it presents a contestable and anomie space, and practically because it can be neither wholly contained nor exhausted in discourse. But insofar as the state of exception is originary to sovereign power, it is conceptually available to formal knowledge as a relation. Equally problematic is the conceptualization of catastrophe that inspires "anomic terror" which, in turn, lends juridical consistency to the state of exception.31 The possibility of catastrophic phenomena, according to Schmitt, is the ultimate guarantor of sovereign power. But even he was aware of the problems involved in codifying a norm prior to a catastrophic event: "The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency and of how it is to be eliminated".32 This is why Schmitt shifts the figure of the sovereign from the constitution to the figure that is delegated the authority to decide, "what constituted the public interest of the state, public safety and order... and so on (italics added)."33 And insofar as the sovereign decides what action to take in light of a catastrophe, he implicitly decides on the very fact of the catastrophic occurrence; that is to say, the sovereign speaks the catastrophe into existence. Catastrophe, rather than an objective situation, is the anomic potential contained within the sovereign's person, whose latent or virtual presence guarantees the continuity of sovereign power and whose actual appearance coincides with the sovereign proclamation of a state of emergency.

Thus, catastrophe emerges from within the sovereign in a juridically formless space. From the logical-abstract level of

25 Ibid.
26 Agamben, State of Exception, 51.
27 Ibid., 40.
30 Agamben, Homo Sacer: Sovereign Power and Bare Life, 8.
31 Schmitt, State of Exception, 56.
32 Schmitt, Political Theology, 7.
33 Ibid., 6.
III. THE TICKING BOMB AND ITS SUCCESSORS

Imagine this: a bomb is set to detonate in a crowded metropolitan area and authorities have apprehended a suspect. They are sure that the suspect has planted the bomb and have limited time to find it. All non-violent options have been exhausted. Would torturing the suspect for information be ethical in this case, or should the law ban torture in all cases?

The ticking bomb has become a staple for the American political palate. The popular media and the scholarly community alike have invoked it to wage arguments for or against the legitimate use of torture.40 These arguments attempt, in various ways, to compensate for a juridical or ethical lacuna that opens up in the emergency situation. David Luban argues that the ticking bomb "cheats" by already stipulating the condition of epistemic certainty where, in reality, certainty is improbable.41 Allhoff Fritz, on the other hand, argues that this is beside the point; it is perfectly acceptable to wage an ethical argument upon purely idealized situations.42 Their arguments are both correct but not mutually exclusive. In the case of Luban, the improbability of certain prior conditions being met in actual practice is sufficient grounds for skepticism. For Fritz, the actual taking-place of the event is irrelevant insofar as the possibility exists. In either case, we have gotten nowhere because the event that


42 His argument is a purely philosophical/ethical argument. One could object that his criteria are different from that of a legal argument, but I disagree. The ethical models he uses in his argument are all, in some ways, incorporated in the others' arguments. Furthermore, torture is still technically illegal in the US (with exceptions of course), so everyone incorporates a different criterion based on ethical assumptions. See Fritz, "A Defense of Torture: Separation of Cases, Ticking Time-Bombs and Moral Justification," 247.
we are speaking of has never occurred. By this I mean that a similar occurrence will never exhaust the ticking-bomb question. To be sure, there are real-life examples that seem congruent with the hypothetical scenario. But the ticking-bomb scenario hovers between the virtual and the real, demanding a decision where, in fact, there is no place of application. It requires a normative answer to an exceptional situation.

Any author who confronts the ticking-bomb hypothesis must organize his or her strategies against an "empty space." My intention is not to dismiss such strategies outright, but rather to highlight the place of frustration that pits judicial prudence against judicial efficacy. To take up one is to weaken the other. To maintain both, as Fritz does, requires an ethics waged within a purely virtual space divorced from both legal reference and practical judgment. In terms of its concrete application, however, the question is not so much whether the actual act of torture could be ethical, but whether or not it can be managed, coordinated, systematized, and articulated within any applicable, theoretical model. Matthew Hannah is right to suggest that the popularity of and debates surrounding the ticking bomb hypothesis make it possible to see torture as part of "a symmetrical reversal of and geopolitical response to the threat of terrorism." That is, terrorism, at the limit point of juridical competence, constitutes an exceptional and destabilizing threat that is countered with an exceptional response. But it is a mistake to construe the act of torture as automatically tied to a given juridical, geopolitical, or biopolitical model. When the images of Abu Ghraib were leaked to the public, public outrage was aimed at the character of violence that took place. In the media, the image of bureaucratized discipline confronted the image of excess and sadism in an environment in which "Army regulations and the Geneva conventions were routinely violated." However, a particular logic governed the abuses at the prison that defied official guidelines and conventions, and followed more elementary rituals of power relations between empowered and disempowered, occupier and occupied. While the purpose of the acts may have coincided with the interests of the state in the last instance (detainment, discipline, information, etc.) the means by which these ends were secured fell outside the boundary of institutional management and delegation, leading to a situation in which it becomes impossible to determine exactly for whom the violent acts were administered. Hence, the problem is inevitably construed as a deficit in oversight and surveillance. In this opaque, unbounded region, sovereignty changes hands fluidly and indiscreetly, and the possession of violence itself becomes the object of struggle. The ticking bomb hypothesis deploys the element of urgency that severs the tie between agent/institution, power/authority, norm/decision, exploiting a fundamental juridical fact echoed in Schmitt's observation that, "all law is situational law." But even in his own terms, it is unclear who holds the "monopoly to decide" in this scenario. As a hypothetical situation, the ticking bomb situation is always already beyond normative judgment, and constitutes a "real state of emergency" in Benjamin's terms, in which sovereign violence is ultimately indistinct from any other act of violence.

Those who support torture in the ticking-bomb scenario often cite "necessity." But who decides what is necessary, and when does this decision acquire its legal force? In normal situations, laws and conventions delegate the proper authority and prescribe the means (or at least establish limits) through which decisions are to be carried out. Ideally, at least, law represents these acts through their duration. The extreme situation falls beyond the competence of legal calculation, and acts carried out therein are momentarily severed from legal representation. Necessity becomes a mechanism to ensure the juridical continuity of violence, if only after the fact. The Israeli lawyer, Shai Nitzen, in defense of the state authorization of torture, invokes the law of necessity and cites a statute that absolves Israeli officials from criminal liability, provided their acts were "required to prevent immediate serious harm and there was no other way to achieve their goal." Even after the court decided to ban torture, it still left open the possibility that, in an actual ticking-bomb

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43 Luban cites the case in the Philippines when authorities tortured a Pakistani bomb-maker out of information revealing an al Qaeda plot to assassinate the Pope. However, they didn't that such a plot existed prior to the decision to torture. Luban, "Liberalism, Torture, and the Ticking Bomb," 1441.
45 Seymour M. Hersh, "Torture at Abu Ghraib," New Yorker 80, no. 11 (2004): 47.
47 Schmitt, Political Theology, 13.
48 Ibid.
scenario, an agent could resort to torture and use the "law of necessity" as a legal defense. Human rights groups argue that the necessity defense is only applicable after the fact. Alan Dershowitz, while normatively opposed to torture, has "no doubt" that in the ticking-bomb scenario the agent who holds the suspect would torture the victim. The question is whether the torture should occur outside the law or within it. Requiring that agents obtain torture warrants prior to the actual torture would bring an inevitable torture into legal jurisdiction prior to the act. The difference between Dershowitz's suggestion and the Israeli court's decision is simply the anterior or posterior place of judgment. The assumption that torture would be inevitable or necessary removes it from the hand of the agent while the decision of the court places the torture into the hands of the state. But Dershowitz, who acknowledges the potency of the ticking-bomb situation, downplays the immanence of the crisis it presents. His suggestion, in his own terms, is only applicable for those cases in which the ticking-bomb leaves the agent enough time to obtain a warrant. And if it is true that the agent would resort to torture in any case, the legal meaning of torture in all other cases is still unclear. In his argument against the ticking-bomb hypothesis, it is appropriate that David Luban, citing Wittgenstein, writes, "Confusion arises when we become bewitched by a picture." But it not so much a matter of comparing the picture with a given reality, as it is recognizing the fact that the reality to which we are referring has no applicable form: its form is constituted through the taking place of the event. Such an event is not an object of knowledge at all, rather it is perhaps analogous to what Wittgenstein called the "mystical," which merely "shows itself." In what follows, I take up a discussion of film in this context. I intend to show how strategies waged against the ticking-bomb hypothesis anticipate formal elements of film production in general, and the representation of the state of exception in particular.

Where scholars have fallen short of providing answers, filmmakers have risen to prominence. Cloverfield and 24 are more "complete" answers to the question because, as films in general, they are capable of capturing a procession of events that are unmediated by speech. Films can show series of occurrences without words. Kommerell, the German literary critic claimed that speech is "originary gesture." In Agamben's reading of Kommerell, "gesture is not so much a prelinguistic content" as it is a cipher of mankind's "speechless dwelling in language" As mentioned above, this "speechless dwelling" is the place in which the elemental voice of the subject is captured and suspended, as an exception, within discourse. In cinema, the place of representation is located between gesture and speech, intention and act. Because movies are transmissible through a minimum of denotation, they "oscillate forever between reality and virtuality, life and art, the singular and the generic." They lie on a second order of seeing, one that excludes the viewer as participant but includes it as spectator. Thus, they are capable of bridging the gap between a particular event hidden from formal knowledge and a representation already capable of mass transmission. This is because reproducibility is inherent to the film's production. The entire technological ensemble called into the work of production is organized upon this task. "The equipment-free aspect of reality," writes Benjamin, "here has become the height of artifice."

CLOVERFIELD

In Cloverfield, as in 24, artifice reaches its limit point. In the former, the events play out in real-time, and the camera bridges the temporal world of the viewer with the virtual world of the actors. The latter involves a group of friends, Rob (Michael Stahl-Davis), Hud (T.J. Miller), Marlena (Lizzy Caplan), Lily (Jessica Lucas), and Beth (Odette Yussman), whose going away party for Rob is cut short by an invasion of monsters, although this is only gradually made clear. The plot is driven by an attempt to rescue Beth, and is perhaps secondary to the film's presentation of catastrophe. We are (supposedly) watching a digital recording from Hud's camera, and Hud struggles to steady the camera while fleeing for his life.

54 Ibid.
55 Ibid. 80.
56 Ibid. 80.
In *Cloverfield* the camera is incorporated into the film as a subject. In Vertov's *Man with a Movie Camera*, the point-of-view shifts between multiple cameras. At times the viewer is presented shots of the filmmaker shooting the film. The illusion of the objective eye is effaced by the ostensive focus of a second camera onto the first, and, immediately, a second order of seeing is inaugurated before an invisible camera. Using this technique, Vertov parleys an artifice of theatrics for a theatrics of artifice. In *Cloverfield*, the first and second orders of seeing are contained within a single camera, and the film achieves its illusion by binding the camera, as an objective recorder, to the physiological limitations of the characters. But the film can only be seen in contrast with the present conventions of filmmaking that incorporate sharp resolutions, command all aspect of colors, hues, and shadows, and capture the most intimate gestures and fleeting expressions of the characters on screen, even as the camera dissimulates its own participation in the events. *Cloverfield* exchanges all this for a shaky cameraman and grainy footage. That is, *Cloverfield* already anticipates one's acclimation towards standard techniques of filmmaking and attempts to thwart it.

Because the camera plays the dual role of subjective participant and objective observer, *Cloverfield* can display catastrophe as a lived event. Benjamin was attuned to changes occurring in lyric poetry, particularly through the works of Baudelaire. Baudelaire wanted to guard himself against the experience of the "shock" -- the unguarded experience of a moment -- so he placed its poetic production at the center of his work. In that the crisis is secured as a poetic representation, the latter takes on the "character of having been lived in the strict sense." To perform this Sisyphean task, one must construct a representation that mimics the intangibility or singularity of the experience of shock (*a flash... then night! [Baudelaire]*). According to Benjamin, photography "gave the moment a posthumous shock" by capturing the singularity of the event onto an infinitely reproducible medium. In film, "the shock is established as a formal principle." The consequence of the shock as a formal principle of the artistic production is the subject's "emancipation from experiences." Films radically alienate the viewers from the lived experience in exchange for a radically intimate representation of that experience. According to Robert Baird, however, the lived experience is momentarily awakened through the effect of "startle" in film, which takes the form of imperceptible bodily jerks and physiological reactions. In fact, the physical "participation" of the spectator in this sense affords the startle its exceptional status. Baird celebrates the startle as evidence of a prehistoric remnant of Man. If Baudelaire wished to galvanize the intensity of a lived moment onto the page at the expense of experience, Baird is happy to activate his slumbering biology into seizure. They "engage our psychophysiology, and, for an hour or so, mock and remember mortality... as well as "reaffirm the animalistic, atavistic and irrational" qualities of the human." The author separates a form of life present in abrupt, involuntary, physical shocks from a life that had forgotten its subjection to death. The irrational animal is thus confined within the rational human as an erratic and primordial effect. The principal figure of both the "shock" and the startle is an involuntary subject. In Baudelaire, this figure anticipates the poem; for Baird, that subject is located in and through the film as an exception. In turn, it is re-inserted into *Cloverfield* in the dual role of the camera. Between the poetic work of Baudelaire, photography, and film, we see an operation in which the exception, as an a-historical, unmediated, and de-serial event is integrated into the artistic production as the rule. This movement is characterized more by its velocity than its particular medium, and this velocity coincides with the spectator's alienation from the events. The "physiological" element of the startle at every moment colors the film. But the film translates this into objective and visual language, formalizing it into a technique. Baird outlines the essential characteristics of the film startle effect: "(1) A character presence, (2) an implied off-screen threat, and (3) a disturbing intrusion into the character's immediate space." In Baird's model, the character serves as an intermediary between the "involuntary subject" and the catalyst, but in *Cloverfield*, this subject is the ever-present medium. The monster is only visible in short glimpses, and not until the end

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60 Ibid., 175.
61 Ibid., 162.
63 Ibid.: 22.
64 Ibid.: 15.
do we get a somewhat sustained view of it. The “immediate space” of the characters is constantly disturbed by the destruction around them.

In sifting through the archival record of the Holocaust—perhaps the most extreme and sustained example of the normativization of the state of exception in history—Agamben locates a lacuna in the testimony of the Auschwitz survivors. The lacuna appears by virtue of the fact that the survivors bore witness to an event that language cannot give account. The extreme figure of Auschwitz was the *Muselmann*, to whom starvation and abuse had taken its toll, reducing him to a near vegetative state. The *Muselmann* was the “complete witness” who, by virtue of this condition, cannot bear witness to the event. He can only be spoken for by that part of the human that survives the inhuman. In the same way, the “imagined substance” of the *I* impenetrable to the discourse that it initiates nonetheless survives the discourse as a remnant of the speaker, who in term, testifies on its behalf. At the beginning of *Cloverfield*, the text against the black screen informs the viewer that the following footage is the property of the Department of Defense, recovered from a digital hand-held camera in an area that was once New York’s Central Park. We are not told why we are given this viewing or in what context we are watching it. But we know that the same state of order that preceded the catastrophe is still in force at the end. This recording, held somewhere in an archive, survives Marlena, Hud, Rob and Beth.

At the end of the film, there is a scene in which Rob and Beth take refuge beneath a bridge in Central Park. They each face the camera and say a few words before we hear a crash and the camera flickers off. Presumably they die. If they had lived, the illusion of the film, contingent upon their deaths, would have evaporated. This is the novelty of *Cloverfield*: the death of the living becomes coupled with the survival of the dead object (the camera), allowing the infinite reproducibility of a singular event, and the radically passive observer can witness that which even the characters cannot. The camera and death bind the characters to both themselves and to us at the very place in which the bind is compromised. The camera is a more “authentic” witness than a survivor because its objective status lends the recording continuity at the point in which subjectivity recedes into terror, taking its own survival as its object. Where language left a void in the archive of Auschwitz, the camera is capable of bridging that void through disengaged recording. The objective and technological faculties of the camera hold the exception, and the bare life that arises as its subject, in a suspended captivation that survives the rupture of transmission. Even a period as intangible as a startle, has been captured in studies using high-speed cinematography. Benjamin was hopeful for film, believing that reproducibility “emancipated the work of art from its parasitic dependence of ritual.” For centuries art had been aligned so closely with its origins in time and space. The criterion of its value was its authenticity—emanating as an “aura”—which was grounded onto its physical locus and “the testimony to the history which it had experienced.” Because reproducibility is inherent in the photographic image, the image would loose itself from tradition, and art would move towards the realm of politics. In film, according to Benjamin, the aura of the actor is tied to his presence and is dissolved in its cinematic projection. This is because, as he claims, presence “cannot be replicated.” An expression or gesture originating from a theater actor on a traditional stage is manifestly different from that of an actor in film. In Benjamin’s terms, presence cannot be replicated insofar as it is always associated with the physical locality of the subject. But, as is seen in *Cloverfield*, it can be approximated as a representation through the separation of intentionality and act, which is accidental in nearly all films, a formal element of *Cloverfield’s* production. In theater, intention and act (gesture and speech) are part of the same expression, whereas in film (and this will be more clear later) gesture and intention occur intermittently within, and despite of, speech and act. *Cloverfield* is exceptional because it incorporates the camera as an unintentional subject, which makes possible the exhibition of a form of subjectivity suspended at times in pure intentionality. This is best demonstrated in scenes of terror and flight, in which a monster diverts the intended course of action that is re-constituted, diverted again, and so on. In the midst of this struggle, the viewer glimpses a form of being whose actions proceed despite of intent, and intent never resolves itself in

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66 [Ibid., 121.](#)
action. Besides their recent political significance, terror, self-preservation, and being-towards-death, all describe a form of being dissociated from formal processes of signification and delivered over to the viewer in self-exhibition.

24

In the state of exception, which I have discussed as a fictional space, the breakdown of norms creates a situation in which violence escapes management. Benjamin writes that "violence, when not in the hands of law, threatens it, not by the ends that it may pursue, but by its mere existence outside of the law."73 Violence, as a normal and legitimate operation, is reduced to a state of "mere existence" when it is dissociated from official sanction. As discussed in the case of the iustitium, "necessity" becomes the operative mechanism that guarantees the legitimacy of violence in a juridical void as it binds the self-preservation of the citizen to the self-preservation of the state. In the following discussion of 24, I want to present the show as a play between the tensions of legitimate and illegitimate violence in the state of exception. For those unfamiliar with 24, it is centered on the character Jack Bauer, a member of the CTU (Counter Terrorist Unit). The novelty of the show is its use of real time. Each episode is one hour (approximately 42 minutes after commercials), and it represents that hour in real time, while each season is twenty-four hours. The show is premised upon the ticking bomb dilemma.74 At the beginning of every season, Jack Bauer uncovers an insidious terrorist plot (assassination attempt, nuclear bomb, virus, etc.), while the viewer follows his exploits in real time. Predictably, the show becomes almost a vehicle for the exhibition of torture and, at the same time, a mechanism for ensuring a perpetual bond between the viewer and the character Jack Bauer, a member of the CTU (Counter Terrorist Unit). The novelty of the show is its use of real time. Each episode is one hour (approximately 42 minutes after commercials), and it represents that hour in real time, while each season is twenty-four hours. The show is premised upon the ticking bomb dilemma.74 At the beginning of every season, Jack Bauer uncovers an insidious terrorist plot (assassination attempt, nuclear bomb, virus, etc.), while the viewer follows his exploits in real time. Predictably, the show becomes almost a vehicle for the exhibition of torture and, at the same time, a mechanism for ensuring a perpetual bond between the viewer and the character Jack Bauer begins to approximate the anthropogenic condition of the animal.

In The Open, Agamben seeks to understand "life" as a result of a series of divisions between animal and man. Because life cannot be readily defined, it appears that, for this very reason, it "must ceaselessly be articulated and divided."75 Historically speaking, "Man" is "always the place—and at the same time, the result," of these divisions.76 Every attempt to articulate man implicates a re-zeoning of the terrain of animal and vice-versa. This interminable articulation culminates in Heidegger's concept of the "open" as the proper dwelling place for Dasein. Heidegger's attempt to map the terrain of the openness of Dasein forces him each time in tandem to ground the animal in the "not-open."77 It is no accident then that his method and terminology begin to resemble that of the ecologist, Jacob von Uexkull.78

Uexkull was interested in the possibility of translating the perceptions of animals in their own "phenomenal world or the self-world of the animal."79 The agency (effector world) and perception (perceptual world) of the animal are to be understood as a closed system, the Umwelt.80 The animal is bound within a field of specific stimuli, or "carriers of significance (what Heidegger calls, 'disinhibitors')," that serve as perceptual and effector cues to the organism. For example, the Umwelt of a tick is comprised of a small series of cues (butyric acid, heat) to which the receptor and effector organs of the tick respond.81 The "poverty" of this tiny world of receptor/effector cues "guarantees the unfailing certainty of her actions," Uexkall writes, "and security is more important than wealth."82 According to Heidegger, the open is the place in which the animal is "exposed [to Dasein] without disconcealment."83 Animals are situated within a coordinate system of cues and are impotent to deactivate them. Humans are the ones who witness this poverty and even more, arrive at the closedness of animality by means of subtraction, or "destructive observation."84 In order to contain his desire to inflict pain for the sake of his own self, 24 throws Jack

76 Ibid.
77 Ibid., 79.
78 Ibid., 67.
80 Ibid., 6.
81 Ibid., 11.
82 Ibid., 12.
83 Agamben, The Open 62.
84 Ibid.
Bauer into a whirlwind of events that manages his desires and organizes acts of violence within the constraints of the necessary circumstances. Hegel states that work is "desire held in check." And while Jack is a member of the CTU, his activities are not solely linked to his "work" at the CTU administration, nor are they carried out under its guidance. This is a characteristic feature of the show. Jack evades orders and official protocol. During the early part of the season, CTU agents investigate him even as he continues his own investigations. In one scene, he actually resigns from the CTU so that he can torture a man for information. He isn't bound to the law by virtue of its institutions or decrees, but to necessity, which the law claims as its own. He traverses a field of effector/receptor cues in which he is held in captivation and suspense. Time constrains his actions and expiates him of guilt. The show's creators wanted to give their characters, "no time to think in ordinary terms because the dilemmas they face are so overwhelming." The element of time allows latitude in the numerous torture scenes that have invited criticism as well as popularity. I am not going to talk specifically about the torture scenes here, as they are a source of much media discussion. Critics tend to accuse the show of portraying excessive violence or using unrealistic or improbable situations to endorse the exhibition of violence. But such critiques fail to appreciate the truly "novel" aspects of the show, in terms of its production as well as its moral value. In the case of the latter, 24 puts into play the mythic "force of law" that intercedes at the limit point of juridical competence. The limit point is the crisis that motivates and sustains the plot. By consigning Jack Bauer to the closed place of animal innocence and captivation and aligning his self-security to

that of the law's, the producers of the show can endlessly inscribe violence into the plot and, at the same time, guarantee the "moral" coloring of such violence. Walter Benjamin described "mythic violence" (lawmaking violence) in terms of Classical mythological archetypes in which violence is not simply a means towards some end, but a "manifestation," of lawmaking power itself. And while Jack's actions are always in accordance with the end goal of averting a terrorist attack, his actions are almost always unmediated by official sanction. In season 5, he uncovers a plot linked to the U.S. President. He kidnaps the president in a feigned attempt to get a confession. Throughout the series, the CTU is ridden with internal strife and suspicion of inter-departmental espionage. And then of course, the acts of torture are technically illegal. In other words, Jack Bauer deploys a juridically formless kind of violence carefully orchestrated within a field of crisis and captivation through which we see the specter of "force of law" in which the violent act occurs as an exception to the norm, but nonetheless acquires legal "force" at the moment of application.

24 enacts a truly mythic characteristic of sovereign violence: the agent of extra-judicial violence maintains his innocence. Executive producer Howard Gordon remarked, "Jack is this really tragic character... He's really the walking damned. He can't have the life the rest of us have. He kind of bleeds for our sins." The concept of Jack as hero-martyr has a new meaning in the Western literary tradition. The term "tragic" must be seen in contrast from its Classical use. Hegel, in his study of Greek tragedy, warns of associating innocence with the Greek tragic hero, and, for that matter, determining that innocence upon the hero's restrained subjectivity. "For [the Greeks]," he states, "the bond between the subject and what he wills as his object remains indissoluble... No worse insult could be given to such a hero than to say he acted innocently. It is the honor of these characters that they are culpable." The plight of the hero, according to Benjamin, "invalidate[d] the ancient rights of the Olympians" and broke "the hold of demonic fate" from the humanity that revered him (or her). In other words, the tragic hero of the

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86 Joel and Robert Cochran Surnow, "12:00am-1:00am," in 24 Season 5 (television broadcast) (United States: Fox Network, 2001).
89 Benjamin, "Critique of Violence," 294.
90 Surnow, "12:00am-1:00am." Season 5
93 Walter Benjamin, The Origin of German Tragic Drama, trans. George Steiner (New
Greeks performed the rites of liberation from the very "demonic fate" that constrains Jack Bauer. By constructing the character in such a way, the producers are able to localize violence onto a single character, but at the same time, remove the character from the ethical, legal, or moral responsibility of those acts. Hence we can watch the application of sovereign violence that is wholly divested from a corporeal place of origin: a specter of sovereign power within the state of exception. When Jack Bauer states, as a prelude to a torture, "I need to do whatever is necessary to stop this nuke from being used against us," he is articulating the bond by which the state of necessity ties the subject's self-preservation to the sovereign's, annexing the violence of the former to the latter. When he tells a policewoman, "Cops have to play by the rules. I have to break a few with this guy," and, even more, when he resigns from the CTU so that he can torture a suspect, he is bridging the state of exception to the rule, ensuring the continuity of law. And where violence threatens to become an object for Jack's own use, he assumes the silent gesture of guilt on his face that, in tandem with his mantra, "what needs to be done," divests him of his last vestige of will and returns to him an impotent, if fleeting, token of "humanity." Tellingly enough, this very sentiment is echoed by General Patrick Finnegan, who, in a critique of the scenes of torture, stated hesitantly, "The disturbing thing is that although torture may cause Jack Bauer some angst, it is always the patriotic thing to do."  

Time is an invisible protagonist in the show, and it dually consigns Jack Bauer as well as his watchers, to an inoperative position. In the case of Jack, he is captivated in a field of effector/receptor cues that motivate his actions while holding his own being-for-himself in check. The viewer is bound in time to a perceptual world centered the Umwelt of Jack. At times the field is divided, showing multiple subject worlds in simultaneous time. Either way, the viewer is fully engaged to a world that is fully disengaged from his or her intervention; at the same time, the world that engages the viewer-- Jack's world-- is "exposed without disconcealment." This isn't to say that 24 is radically different from the medium of film in general, but the difference is of degree, not kind. One luxury of watching film is the fact that a narrative can play out in summary time. This is even more so in literature, where the procession of silence is impossible. As a production, we are given precisely that which we were intended to see.

In his discussion of cinema, Gilles Deleuze contrasts what he calls a "movement-image" to a "time-image." The former contains its own description (like an ostensible gesture of emotion) and, as such, is not subordinate to time. The latter is contained in and through time, exemplified in post-World War II cinema in which the sequence of frames was commensurable with real-time perception. According to Deleuze, the perception of the time-image in contemporary cinema is a radical departure from that of the prior movement-images, because, while the latter references a thing outside of the image, and thus requires the cognitive intervention of the subject, the former, as it represents time directly, leaves no room for such intervention. The radical passivity involved in viewing the time-image of cinema implicates a new form of subjectivity that does not necessarily correspond to activity, but to "pure perception." In 24, the "moral" function of time corresponds to its sequencing. Jack's actions do not necessarily reference norms, institutions, or decrees; he dispenses "justice" outside of the law, which opens up an anomic and contestable space that is immediately annexed to state of necessity. The manifestation of pure lawmaking power is postured onto the pure manifestation of time. Because such power is non-referential, it is made real, as a representation, through its irreducible presence. In 24, time is not allowed to escape, because within it and through it, the state of exception occurs. The ticking-bomb dilemma can never be "resolved" in a formal sense, because it requires a moral judgment in a place that does not cite morality, but only exhibits itself as pure event in the irreducible duration of time.

Deleuze suggests cinema constitutes a form a perception "anterior to all significance," upon which signification is possible. At the same time, he implicates a new form of subjectivity that recognizes itself through the pure duration time. This subjectivity is vested with a form of perception originary to signification. How

98 Deleuze, Cinema 2: The Time-Image, 262.
99 Ibid., 47.
100 Ibid., 87.
can a subjectivity so attached to a cinematic experience precede that experience? For that matter, why is the act of viewing so attached to this subjectivity? To answer this, I will come back to the discussion of the “open” via Heidegger’s metaphysics of boredom.

Heidegger identifies boredom as the condition in which Dasein achieves its place in the open, but, paradoxically through this process, comes to occupy the “closest proximity” to the world of the animal.102 “In becoming bored, by something,” Heidegger observes, “we are precisely still held fast by that which is boring, we do not yet let it go, or we are bound to it for whatever reason.”103 Or, as Benjamin states, “We are bored when we don’t know what we are waiting for.”104 Boredom is a force that draws us and, at the same time, refuses to reveal that to which we are drawn. The animal, which is held in captivation to its disinhibitors (receptor/effector cues), begins to coincide with Dasein, who is held in captivation by boredom. “In becoming bored,” states Agamben, “Dasein is delivered over to something that refuses itself, exactly as the animal, in its captivation, is exposed in something unrevealed.”105 Rather than the open being radically distant from the animal world, it is found “only by means of a suspension and a deactivation of the animal relation with its disinhibitor.”106 Through this “destructive observation” something like an “open” is realized.

Deleuze, in his search for a pure subject, finds common ground with Heidegger in his search for the “open.” Heidegger can only locate the open through the metaphysics of boredom, which, in turn, brings Dasein into the “closest proximity” with the animal, and Deleuze can only grasp “pure perception” in close proximity to the experience of cinema. In both cases, the object of observation is both captivating to and captivated by an “emancipated” subject whose being-as-such is vested within a duration of time. To Heidegger, this duration carries the subject being held in suspense by boredom, while to Deleuze, time is residually present in a subjectivity given over to pure perception. Both of these thinkers “arrive” at the authentic subject through a process of subtraction, grounding the subject to an irreducible form of being that evades representation. The animal that stands exposed before Dasein guarantees a mutual and non-exchangeable relation of presence, that is, “animality” is always the being-exposed-before-Dasein. The animal, whose presence is always represented to Dasein in exposure opens up the possibility of an authentic presence of non-exposure for Dasein, that is, a presence not given over to re-present activity. The subject who is given over to the cinematic experience shares this same relation of presence, in that “pure perception” is given over to virtual representation of that perception on the screen, leaving the residue of a subject ontologically present in and through the duration of the experience. Cloverfield and 24 are unique, but are perhaps also representative amongst film. They also demonstrate the impulse by which artistic production seizes upon the elemental, irreducible, and exceptional forms of being and offer them up to knowledge as representations. The “shock” becomes a principle of poetic production, formalized in film, leaving the residue of an involuntary subject that Baird identifies through the startle effect. His subject is grounded in activity, barely perceptible in time, while Deleuze’s subject is grounded in inactivity, present in time. Cloverfield captures the former and 24, the latter. These two subjects are perhaps two sides of the same coin, the product of a tradition that sought the authenticity of being through imminence on one hand, and that of transcendence on the other. This operation functions at a normative and political level as well. In structuring the plot onto the irreducible duration of time, and structuring the actions of Jack Bauer within a “disinhibiting ring,” the state of exception is given over to the moral world as an object of perception. The incompossible presence of the de-serial, singular event and the witness to the event—the state of exception and the rule—is overcome in a relationship of mutual suspension and captivity. 24 opens up a world fully vested with its own self-referencing in terms of both morality and mere signification. The being-moral and the being-animal of Jack Bauer collapse onto his own person, stripping away the very possibility of signification upon which the distinction of the two are possible. The viewer is left with a form of life and law that can only reveal itself in and through the pure duration of time, and in the act of revealing itself, holds the viewer in suspense and captivation. If “boredom is

103 Agamben, The Open 62.
105 Agamben, The Open 65.
106 Ibid., 68.
the threshold to great deeds," as Benjamin thinks, cinema erects a screen at that threshold.

V. FESTIVAL OF MOURNING

According to Agamben, anomic feasts such as funeral processions of the emperor and Carnival originated from the *iustitium* mentioned above. The legal declaration of *iustitium* in a state of siege brought about the possibility of pure anomie unleashed in the city. It carried over to the funeral rights of the sovereign. Violent riots followed the death of Caesar, for instance, but, over time, the death of the sovereign became an occasion for public mourning. The rupture of legal continuity, which was embodied in the sovereign, was "ritualized and controlled, transforming the state of exception into public mourning and mourning into *iustitium*."

The anomic license attributed to celebrations like Carnival can be seen as the ordering of the exception into the juridical sphere, ensuring its continuity through the ritualized spectacle of legal transgression. Cloverfield, 24, and perhaps the entire spectrum of entertainment constitute our celebrations of power and the anomic festivals that bridge the gap between the death of the sovereign and the reinstition of its legacy. In Cloverfield, we witness the catastrophic space, opaque to legal representation, strategically restored upon the constituted order. At the same time, it emancipates the life that dwells in catastrophe--that is, the life that binds itself to itself in terror—and gives it over to the world as a representation. The film celebrates the triumph of a biopolitical struggle that, in one of modern democracy's great aporias, "put the freedom and happiness of men into play in the very place—'bare life'—that marked their subjection." Jack Bauer, on the other hand, is the tragic hero of our time. He "solves" the endless debates on torture and the ticking bomb by casting aside contingency. Benjamin noted of Baroque tragedy, "The prince, who is responsible for making the decision to proclaim the state of emergency, reveals, at the first opportunity, that he is almost incapable of making a decision."

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GRIFFIN


KATHY MAC

OMAR KHADR IS NOT HARRY POTTER

"Either you are with us, or you are with the terrorists."
-George W. Bush

"...the world isn't split into good people and Death Eaters."
-Sirius Black

The twinning which is the subject of this paper first arose simply out of the observation that media coverage of Omar Khadr frequently noted his love of the Harry Potter stories. Khadr discussed Potter at length with fellow Guantánamo prisoners, his lawyers, UN prisoner advocates, even his interrogators. The fictional hero's triumph over institutionalization, exploitation and evil must have resonated with the adolescent Afghani Canadian, captured on an Afghani battlefield in 2002 when he was fifteen. Deeper consideration of the two child soldiers reveals startling differences in the wars which formed them.

OMAR KHADR'S DEFENSE CANNOT BE HARRY POTTER'S DEFENSE

Harry Potter belongs to an old-fashioned sort of conflict, and his story is at heart a familiar bildung in which the hero develops what he needs - combat skills, eloquence, the ability to lead both by example and by inspiring others - to succeed at a necessary task which he alone can complete. In the process of developing those skills, at the age of fourteen, Potter is forced to meet his nightmarish enemy in a graveyard. He first defies Voldemort and then fights: 'he was going to die trying to defend himself; even if no defense was possible'. Because of Potter's resolve to protect himself, he lives.

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1 C.F. 60 Minutes, Friscolanti, Shephard Guantánamo's Child, etc.
2 Michelle Shephard, Guantánamo's Child: The Untold Story of Omar Khadr. (Toronto: John Wiley and Sons, 2008), 107, 174, 175, 194.
3 Ibid., 575.