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The War on Terrorism as State of Exception: A Challenge for Transnational Gender Theory

By Sarah Blake

Abstract

In this article, I explore the contributions of theoretical engagements of bare life and states of exception to gender theory in relation to the U.S.-led 'war on terrorism,' beginning in 2001. I discuss connections between the ongoing struggle over representations of the 'Third World Woman,' among feminists and the mainstream discourse that established the United States' invasions of Afghanistan and Iraq and imprisonment of an extralegal class of 'detainees' as an inevitable, natural consequence of exceptional difference. In addition I highlight the responsibility academics, including feminist academics, to consider their own positions in relation to the economic, political and representational power dynamics they analyze.

Keywords: United States, war on terrorism, state of exception, transnational feminism, politics of representation, ethics

Introduction:

Theoretical engagements of 'States of exception' and 'bare life' are, as a rule, critiques of power. Like gender theory, this realm of critical engagement focuses on the consequences of politics and state power on the body.¹ Where gender theory has long prioritized the body and the experience of power as a basis for its critiques,² theories of bare life and the state of exception address violence perpetrated on the body in the exercise of extra-legal power.³ Most significantly, the connections between, and potential contributions of one to the other, revolve around questions of what is at stake in analyzing a particular experience of power in a particular way. The focused, ethical urgency of theoretical engagements of states of exception has much to offer gender theory. Put simply, it illuminates the stakes of issues that are already under consideration by gender scholars. The struggle over representations of the 'Muslim Woman' in American popular discourse in the early 2000's is instructive. In this essay, I will discuss how specific works in both theoretical traditions deconstruct the idea that the United States' response to the terrorist attacks on September 11 was natural, inevitable and justified. The 'war on terrorism,' was justified by the claim of an intractable, culturally

¹ Biopower, or discipline and regulation of the body as a means of state power, See: Michel Foucault, *The History of Sexuality Vol. 1: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1990) 139-140.

² A summary of this can be found in Catherine Bell's mapping of body-centered scholarly traditions: "feminist scholarship has pioneered the recognition of gender as a fundamental condition of experience and as an analytic category for specifically addressing the body's relation to language and identity, writing and power" Catherine Bell, "The Ritual Body," (Ch. 5 in *Ritual Theory, Ritual Practice*. New York: Oxford University Press, 1992), 96.

³ For a discussion of Agamben's theory of bare life as pushing "Foucauldian thought into dark spaces" or biopolitics as control of bodies denied political existence See Christine Sylvester, "Bare Life as a Development/Postcolonial Problematic," "Bare Life as a Development/Postcolonial Problematic" (*The Geographical Journal*, 172 (1) [2006]: 66-77), 67.

inscribed opposition of cultures. The challenges to this claim that I will explore here carry ethical questions for academics, and raise new possibilities for critiques of state power and violence.

Questions regarding the historical and discursive constructions of what constitutes natural or inevitable power dynamics, the role of the academic in the world and the interpretation of personal experience of political institutions are priorities for theorists working in both fields of bare life and gender theory. Beginning from these shared questions, it becomes evident that theories of the state of exception and gender theory have much to offer each other. A conversation between them can illuminate historical, social, cultural and legal contexts for particular, pressing ethical demands.

The focus of recent theoretical engagements on the ways that states of exception are constructed and preserved resonates with gender theory's ongoing struggle with political and social exercise of power internationally. With the centrality of the image of the 'Muslim Woman' in arguments for the invasion of Afghanistan in 2001 and in the years since, gender theorists, including Lila Abu-Lughod and Judith Butler, have - explicitly or implicitly - engaged with the multiple ways that states of exception are constructed and justified. From the lead-up to the invasion of Afghanistan through the spectacle of the abuses at Abu Ghraib and continuing today, as a new administration struggles with the "war on terrorism," (in both discourse and policy), the multiple 'fronts' in what has become an increasingly nebulous, global conflict, have been understood in gendered, sexualized terms. Giorgio Agamben contends, "*the essential task of a theory of the state of exception is not simply to clarify whether it has juridical nature or not, but to define the meaning, place, and modes of its relation to the law.*"⁴ He finds the state of exception pervading institutions beyond new detention centers or legal procedures. Here, the investment that many feminist scholars share in discourse and representation - in politics, media, and academia can find an ally in engagements of the state of exception.

The dominant discourse used by the United States' government under the Bush administration treated the 'war' as exceptional at every level: a new kind of war, with a global reach and exceptional urgency, requiring exceptional exercises of power, and the suspension of normal legal processes. When it comes to concrete interactions, both the United States government and the detainees are treated as exceptional, involving neither a normal armed conflict or criminal endeavor, but a grand struggle between good and evil. This exception, in the form of claims that normal law does not apply, is a subject that demands investigation both in relation explicit theoretical engagements of bare life and the state of exception and in relation to gender theory, as it was established in explicitly gendered terms.

To discuss the gender dimensions of the 'war on terrorism,' and the institutions it has established, it is important to first discuss what constitutes a state of exception in any context. Giorgio Agamben provides a definition: "*The state of exception is not a special kind of law (like the law of war); rather, insofar as it is a suspension of the juridical order itself, it defines law's threshold or limit concept.*"⁵ He further asserts: "*In any case, to understand the problem of the state of exception, one must first correctly determine its localization (or illocalization) . . . the conflict over the state of exception presents itself*

⁴ Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005), 51.

⁵ Agamben, *State of Exception*, 4.

essentially as a dispute over its proper locus.”⁶ The primary institution of the state of exception is ‘the camp,’ which is located in a ‘juridico-political structure.’⁷ The state of exception in this conflict is located in the physical institutions of military prisons outside of normal U.S. territory, and the broader context of public culture, and political discourse. . . It is in the focus on this structure, and, particularly, the political elements, that this resonates with the strand of gender theory dedicated to interrogating the justification for construction of oppressive biopolitics,⁸ particularly in transnational exercises of power.

To heed Christine Sylvester’s call to “*follow bare life politics into its hideouts, and into our texts and toolboxes as well, searching with undeflecting and nuancing eyes*”⁹ demands applying a gendered lens to the context that has allowed for the production of a state of exception. Sylvester points to a particular responsibility in her call to search out the ‘bare life politics’ that may be hiding out in gender theory. This requires locating the dynamics that, extending beyond government offices, allow states of exception to take hold in societies where sovereign power is normally assumed to be constrained by the law requires more than a dispassionate examination from without.¹⁰ Sylvester echoes a call that resonates with those of postcolonial feminist theorists like Gayatri Spivak and Chandra Mohanty, who contend that feminist academics have no choice but to examine their own position, and the consequences of their own attempts at representing themselves and others.¹¹ To take the history of epistemic violence seriously means to pay attention to “*remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other,*”¹² and to expose such projects wherever they arise.

While searching out the hideouts of bare life politics, however, it is also important to map the state of exception’s most obvious supporting elements. Here, this involves theoretical engagements that maps the more overt arguments supporting a state of exception in U.S. military prisons and the conduct of the ‘war on terrorism’ in general. For this, I will turn to the discussion of terrorism and security that Judith Butler discussed in *Precarious Life*, published in 2004. In Butler’s assessment, the United States responded to the unprecedented experience of the terrorist attacks on September 11, 2001 with “*heightened nationalist discourse, extended surveillance mechanisms, suspended constitutional rights, and developed forms of explicit and implicit censorship.*”¹³ Butler argues against any claim that these developments were natural or inevitable. She focuses on an effort that extends beyond the ‘military order’ allowing for ‘indefinite detention’

⁶ Ibid., 24.

⁷ Giorgio Agamben, “The Camp as the *Nomos* of the Modern” (Ch. 7 in *Homo Sacer: Sovereignty and Bare Life*, Palo Alto: Stanford University Press, 1998), 170.

⁸ Foucault, *The History of Sexuality*, 139.

⁹ Sylvester, “Bare life as a development/postcolonial problematic,” 75.

¹⁰ See Butler, *Precarious Life* and Agamben “The Camp as the *Nomos*” and *State of Exception* for further discussions of the forms of state power.

¹¹ See Chandra Mohanty, “Under Western Eyes: Feminist Scholarship and Colonial Discourses” (Ch. 1 in Chandra Mohanty, Ed. *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity*. Durham: Duke University Press: 2003, 17-42), and Gayatri Spivak, “Can the Subaltern Speak?” (Chapter 4 in P. Williams, and L. Chrisman, Eds. *Colonial Discourse and Post-Colonial Theory*. New York: Columbia University Press, 1994: 66-111).

¹² Spivak, “Can the Subaltern Speak?” 76.

¹³ Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2003), xi.

and trial by non-judicial ‘military commissions’ that Agamben cites as the genesis of a persistent state of exception¹⁴. Butler, too, understands the consequences of this suspension of normal law, and focuses her analysis on the elements that contributed to its appearance as utterly necessary, if not natural.

By highlighting the silencing of serious explorations of why the attacks occurred within the United States, followed by a starkly differing treatment of American lives and Afghan ones lost in the wake of the United States’ military response, Butler illuminates a broader ‘state of exception’ permeating American public life in the early 2000’s. Butler asserts this issue of grievability as fundamental to the state of exception: “*the differential allocation of grievability that decides what kind of subject is and must be grieved, and which kind of subject must not, operates to produce and maintain certain exclusionary conceptions of who is normatively human.*”¹⁵ Here, the exception is located in literal space at Guantanamo Bay, where “*the dehumanization effected by ‘indefinite detention’ makes use of an ethnic frame for conceiving who will be human, and who will not.*”¹⁶ Observing the fallout, both in the erasure of combat-related deaths and the treatment of ‘detainees,’¹⁷ Butler touches on an underlying contemporary political current and a crucial link to historical exercises of domination linked to the history of conquest and colonization. She points out that “*the dehumanization that Orientalism already performs is heightened to an extreme, so that the uniqueness and exceptionalism of this kind of war makes it exempt from the presumptions and protections of universality and civilization.*”¹⁸ Butler both demands attention to historical context and highlights a historical context which, ironically, involves a long history of claims to ‘unique,’ unprecedented need to suspend normal law based on a suspension of the recognition of the ‘Other’s’ common humanity.

The paradox of the exception claimed here sits with the fact that the United States claimed that part of its mission was in defending the rights of women, which it inevitably couched in universalizing, civilizational terms. This particular paradox lends itself to a dimension of what a state of exception requires, “*this space devoid of law seems, for some reason, to be so essential to the juridical order that it must seek in every way to assure itself a relation with it,*”¹⁹ including this international juridical order of gender equality. In her 2002 essay, ‘Do Muslim Women Really Need Saving?’ Lila Abu-Lughod addresses the deployment of images of women in the discursive war effort. She focuses on the ethical questions raised by the “*‘war on terrorism,’ a war which justifies itself by purporting to liberate, or save, Afghan women.*”²⁰ The questions she poses and discomfort she expresses occupy the point where gender theory’s position in relation to

¹⁴ Agamben pinpoints the nexus of the state of exception in a November 13, 2001 executive order permitting noncitizen terrorism suspects to be held indefinitely and, if tried, to be subject only to trial by military commissions, which, he stresses, are not governed by the “law of war” that applies to military tribunals that often decide the fates of combatants during normal conflicts. Agamben, *State of Exception*, 3.

¹⁵ Butler, *Precarious Life*, xiv-xv.

¹⁶ Butler, *Precarious Life*, xvi.

¹⁷ “The prisoners . . . are not even called ‘prisoners’ by the Department of Defense or by representatives of the current US administration. To call them by that name would suggest that internationally recognized rights pertaining to the treatment of prisoners of war ought to come into play.” *Ibid.*, 64.

¹⁸ *Ibid.*, 89

¹⁹ Agamben, *State of Exception*, 51.

²⁰ Lila Abu-Lughod, “Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others” (*American Anthropologist* 104 (3) [2002]: 783-790), 783.

the state of exception is most relevant. That is, the point where a gendered discourse is used to justify the construction of a state of exception. Abu-Lughod's concerns are hardly new, even if the events inspiring them are. Indeed, Gayatri Spivak highlighted the same issue when she declared, many years earlier (and referring to earlier events), "*what interests me is that the protection of women (today the 'Third World Woman')* becomes a signifier for the establishment of a good society which must, at some inaugurative moments, transgress mere legality, or equity of legal policy."²¹ That is, where women's status in one society is treated as evidence of that society's backwardness, and justification for any intervention on the part of a self-professed guardian of gender equality becomes an urgent case of "*white men saving brown women from brown men.*"²² Like Butler, Abu-Lughod's ethical queries carry an awareness of historical context, and, particularly, the cultural and social dimensions of the justifications for establishing exceptional legal – or extralegal – procedures and physical spaces.

Abu-Lughod's discomfort with the public discourse on gender and, crucially, 'culture,' raises important questions for both academics and activists, which lend urgency and specificity to questions that have concerned Spivak and other gender theorists for decades. Considering the degree to which gender theorists have, as a community, struggled to deal with 'culture,' her criticism of the popular discourse around the invasion of Afghanistan retains a particular salience:

The question is why knowing about the 'culture' of the region, and particularly its religious beliefs and treatment of women, was more urgent than exploring the history of the development of repressive regimes in the region and the U.S.'s role in this history. Such cultural framing, it seemed to me, prevented the serious exploration of the roots and nature of human suffering in this part of the world. Instead of political and historical explanations, experts were being asked to give religio-cultural ones. Instead of questions that might lead to the exploration of global interconnections, we were offered ones that work to artificially divide the world into separate spheres—recreating an imaginative geography of West versus East, us versus Muslims, cultures in which First Ladies give speeches versus others where women shuffle around silently in burqas.²³

The 'imaginary geography' that Abu-Lughod describes here is familiar to gender theorists working on transnational issues, which relate to how power is justified and exercised through actual and imagined space. Achille Mbembe further explores the circular logic of imaginary and physical geography that traps individual bodies in its exception in his discussion of the circumstances of colonial occupation. Mbembe asserts:

Colonial occupation itself was a matter of seizing, delimiting and asserting control over a physical geographical area—of writing on the grounds a new set of social and spatial relations. The writing of new spatial relations (territorialization) was, ultimately, tantamount of the production of

²¹ Spivak, "Can the Subaltern Speak?" 94.

²² *Ibid.*, 84.

²³ Abu-Lughod, "Do Muslim Women Really Need Saving?" 784.

boundaries and hierarchies; zones and enclaves . . . and, finally, the manufacturing of a large reservoir of cultural imaginaries.²⁴

Abu-Lughod maps the imaginary geography deployed in discourses about Afghan women in a way that reveals their historical precedence in the uses of 'colonial feminism,'²⁵ by the English and French in the Middle East in the late 19th and early 20th centuries. The contrast that she highlights between that administration's use of images of women's rights in the territories it sought to dominate and the low status it granted to women at home²⁶ points to a precedent for challenging the American government's moral authority in this case. This rings particularly true in hindsight, and knowledge of the United States military's abuses at Abu Ghraib, which Judith Butler called "*the actions of a misogynist institution against a population in which women are cast in roles bound by codes of honor and shame, and so not 'equal' in the way that women ostensibly are in the West.*"²⁷

Abu-Lughod's final criticism already touches on some of the instrumentalization already at work in 2002:

Even RAWA, the now celebrated Revolutionary Association of the Women of Afghanistan, which was so instrumental in bringing to U.S. women's attention to the excesses of the Taliban, has opposed the U.S. bombing from the beginning. . . They consistently remind audiences to take a close look at the ways policies are being organized around oil interests, the arms industry, and the international drug trade. They are not obsessed with the veil, even though they are the most radical feminists working for a secular democratic Afghanistan.²⁸

This creates a sense that, from the beginning, the gender justice argument was almost entirely a symbolic one. This divergence in stated priorities – between the oppressed, yet activist RAWA, and the liberating government, raises questions about the degree to which Muslim—particularly Afghan—women were and are seen as muted subalterns. Indeed, their subaltern status is assured by the fact that even when they actively campaigning for their own political priorities, their alleged liberators continue to speak for them. Indeed, the treatment of RAWA provides an illustration of Spivak's argument that subalterneity, rather than defined as mere disenfranchisement or disadvantage, but a reduction to an identity defined only as difference.²⁹ To return to a crucial element of Agamben's idea of what structures states of exception:

...in the modern era, misery and exclusion are not only economic or social concepts, but eminently political categories. . . In this sense, our age is nothing

²⁴ Achille Mbembe, "Necropolitics," Libby Meintjes, trans. (*Public Culture* 15 (1) [2003]: 11-40), 26.

²⁵ Leila Ahmed, *Women and Gender in Islam* (New Haven: Yale University Press, 1992), 244.

²⁶ Abu-Lughod, "Do Muslim Women Really Need Saving?" 784.

²⁷ Butler, "Sexual Politics, Torture and Secular Time," 17.

²⁸ Abu-Lughod, "Do Muslim Women Really Need Saving?" 789

²⁹ Spivak, "Can the Subaltern Speak?" 80.

but the implacable and methodical attempt to overcome the division dividing the people, to eliminate, radically the people that is excluded.³⁰

It is possible, then, to read the instrumentalization of particular Afghan women's advocacy as a consequence of the American public's desire to accept any intervention that would eliminate this marked difference. This complicates the discussion of the politics that encourage the use of the 'liberation of Afghan women' to justify violence that inevitably leads to the suffering of many such Afghan women. If symbolic deployments of women's images is shorthand for the existence of the 'people' that suffers and that must be eliminated through 'development' in some cases, and overt violence in others, then investigating the discursive construction of certain categories of women becomes an even more urgent task.

If Muslim women and their clothing will always be trotted out to illustrate the utter incommensurability of the East and West, the other strain of Abu-Lughod's essay, which calls on academics and feminists engaged in critiquing the purportedly natural institutional power around gender to look more closely at their own positions. . Christine Sylvester echoes Abu Lughod's concerns where she calls for academics and development workers to "*look at ourselves looking at and aiding others*"³¹ in light of the ways in which, as institutions, international development organizations and, more importantly, the Academy, are treated as separate from the political conditions that reinforce natural-seeming divisions and structures of domination. Indeed, this is a particularly important point of cohesion for theorists working on understanding states of exception and feminist academics, driven by arguments following Mohanty's:

Western feminist scholarship cannot avoid the challenge of situating itself and examining its role in such a global economic and political framework. To do any less would be to ignore the complex interconnections between First and Third World economies and the profound effect of this on the lives of women in all countries³²

Abu-Lughod's reminder that "*We do not stand outside the world, looking out over this sea of poor benighted people, living under the shadow—or veil—of oppressive cultures; we are part of that world. Islamic movements themselves have arisen in a world shaped by the intense engagements of Western powers in Middle Eastern lives*"³³ challenges the constructed division of (Middle) East and West that claims to necessitate an exceptional response. The challenge that Abu-Lughod poses for her audience, and particularly the part of her audience that also uses gender lens as both political and academic tool echoes both Sylvester³⁴ and Spivak, who declares: "*The subaltern cannot speak. There is no virtue in global laundry lists with 'woman' as a pious item. Representation has not withered away. The female intellectual as intellectual has a*

³⁰ Agamben, "The Camp as the *Nomos*," 179.

³¹ Sylvester, "Bare Life as a Development/Postcolonial Problematic," 72.

³² Mohanty, "Under Western Eyes," 20.

³³ Abu-Lughod, "Do Muslim Women Really Need Saving?" 789.

³⁴ Sylvester, "Bare Life as a Development/Postcolonial Problematic," 75.

circumscribed task which she must not disown with a flourish."³⁵ Gender theory to join postcolonial studies and development studies must, then, involve a degree of self-critique and take responsibility to "*address more of the troubling biopolitics of our time.*"³⁶

Butler's recent work on sexual politics provides a vivid illustration of the use of academic work to inform the construction of state of exception. Butler argues that 'Bad anthropology' in the form of a book titled *The Arab Mind* was used in making up procedures meant to intimidate, humiliate and control detainees: "*Since of course there is no 'Arab mind,' and it is not possible to attribute the same fears and anxieties across the Arab world to its geographical complexity and its cosmopolitan formulation, the text constructed an object that it could manipulate.*"³⁷ In addition to highlighting the ethical responsibilities of the academic, Butler extends the critiques of the state of exception, to reveal its reliance on an idea of a specific, simplistic form of cultural difference reinforced by an academic text.

In considering the ways in which American politics have taken an exceptional form in the last few years, it is striking to read, repeatedly, the overt demands for a new configuration of politics from theorists discussing states of exception. While Agamben's theory of the state of exception is neither a perfect description of the world, nor a solution to all of the difficulties within gender theory, or in the relationships gender theory has with other critical fields, it provides useful dimensions for exploring gender-based inquiries into exercises of power within and beyond the law.

In their discussions of different elements of the discourse and conduct of the 'war on terrorism,' Judith Butler and Lila Abu-Lughod have highlighted many of the historical precedents and contextual influences for this particular conflict and the institutions it depends on to continue. Their arguments underscore the responsibility gender theorists hold for engaging with the distribution of power that allows this to persist. This responsibility extends begins with the task of investigating and, where appropriate, challenging claims that women can be liberated by a foreign government's invasion of their country.

Whether the conduct of this conflict consists a point at which a truly new politics, heeding Agamben's claim that "*only a politics that will have learned to take the fundamental biopolitical fracture of the West into account will be able to stop this oscillation and to put an end to the civil war that divides the people and the cities of the earth,*"³⁸ or Butler's lamentation of the lost opportunity to introduce a nonviolent ethics American politics based in the awareness of its own vulnerability³⁹ remains to be seen. However, the possibility that theorizations of states of exception offers to disciplines that already function as critiques of biopower is one of altering, or expanding the basis for critique. Perhaps, through the reflection of engagements of states of exception and gender it will be possible to follow Butler's argument "*only . . . a critique of state violence*" will allow for "*finding and acknowledging the already existing alliances and sites of contact . . . in order to consider systematically how coercion seeks to divide us and to*

³⁵ Spivak, "Can the Subaltern Speak?" 104.

³⁶ Sylvester, "Bare Life as a Development/Postcolonial Problematic," 76.

³⁷ Butler, "Sexual Politics, Torture and Secular Time," 15.

³⁸ Agamben, "The Camp as the *Nomos*," 180.

³⁹ Butler, *Precarious Life*, xi-xii.

keep attention deflected from the critique of violence itself,"⁴⁰ and, from there, to approach politics, representation, and the exercise of power in new ways.

⁴⁰ Butler, "Sexual politics, Torture and Secular Time," 21.

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