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## OF LIBERTY AND *LEBENSRAUM*

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### *Introduction*

As this chapter is being completed, American-made Israeli bombs continue to rain down on Gaza, where in the context of a brutal military occupation ongoing since 1948, a trapped, displaced and immiserated civilian population is gradually succumbing to a range of fatal options including disease, exposure, starvation, dehydration, injury, drowning, suicide and execution. It is now nearly six months into the conflict, and after well over 32 000 mostly civilian deaths, not to mention the destruction of the vast majority of Gaza's hospitals, schools, universities, records, places of worship and more than half of its 360 000 residential units, but the 'international community' is still struggling to persuade Israel to allow in even a trickle of aid, let alone agree to a ceasefire.<sup>1</sup>

While for Israel and its dwindling number of nonetheless powerful supporters, notably the United States and Germany, this violence is justified by Israel's right of self-defence in response to the Hamas-led attacks of 7 October 2023, for most this is clearly a failure of enforcement. As the two cases currently underway at the International Court of Justice confirm, the rights of Palestinians civilians both in Gaza and in the West Bank are protected by numerous overlapping legal regimes, those of internation-

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<sup>1</sup> See 'Israel-Gaza war in maps and charts: Live tracker,' Al Jazeera, at <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker> (statistics as of 14 March 2024).

al humanitarian law, the law of occupation, international criminal law, international human rights law, the right of self-determination, and the obligations of all states, including Israel, to refrain from any use of force that is not ‘proportionate’ and ‘necessary.’<sup>2</sup> Indeed, if Palestine is indeed a state — which its recognition by nearly three-quarters of the world’s other states suggests — then its territory is also protected by sovereign rights including territorial<sup>3</sup> integrity, political independence, non-intervention and self-defence. Palestine and Palestinians, in other words, are about as visible to the law as it is possible to be. Indeed, as Blinne Ní Ghrálaigh, representing South Africa, put it to the International Court of Justice (ICJ) in January 2024, this is ‘the first genocide in history where its victims are broadcasting their own destruction in real time in the desperate — so far vain — hope that the world might do something.’<sup>4</sup> The rights of Palestine and Palestinians are being violated brutally, systematically and relentlessly, but they exist; they are, in Jacques Rancière’s terms, ‘real.’<sup>5</sup> The question is what good that visibility has done.

In its scale, intensity and — of course — visibility, the horror that is currently being perpetrated on Palestinians by the most far-right government in Israel’s history is clearly unprecedented. In kind, however, this conflict is emblematic of a wider trend in which xenophobic carnage and far-right extremism are surging across the globe, from Ethiopia to Ukraine to Myanmar to the United States.<sup>6</sup> When viewed against this extraordinarily violent and xenophobic backdrop, it can sometimes be difficult to make

<sup>2</sup> See e.g. Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem Advisory Opinion, Public Hearing, 19 February 2024 (Verbatim Record).

<sup>3</sup> Blinne Ní Ghrálaigh (South Africa), ‘Risk of Further Genocidal Acts, Risks of Irreparable Prejudice and Urgency (Public Sitting, Verbatim Record),’ in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (International Court of Justice, 2024), 71 (para. 31).

<sup>4</sup> Ní Ghrálaigh (South Africa), ‘Risk of Further Genocidal Acts, Risks of Irreparable Prejudice and Urgency (Public Sitting, Verbatim Record).’

<sup>5</sup> Jacques Rancière, ‘Ten Theses on Politics,’ in *Dissensus: On Politics and Aesthetics*, ed. by Steve Corcoran (London–New York: Continuum, 2010), 36.

<sup>6</sup> In 2022, the most recent year for which statistics are available, nearly 240,000 people died in more than 182 armed conflicts around the world, only a minuscule proportion of them in inter-state conflict. Instead, the vast proportion of these conflicts involve ‘non-state armed groups,’ with a large proportion characterised as ‘one-sided violence’ perpetrated by ‘a state or non-state armed group against civilians.’ There have been over 140 conflicts involving over 100,000 deaths on average every year since 2014, higher than at any time since measurements began in 1989, with virtually all of these taking place outside Europe with the exception of the early 1990s and 2022, representing the Yugoslav and Ukraine Wars. See ‘Number of Armed Conflicts,’ ‘Deaths in Armed Conflicts’ and ‘Deaths in Armed Conflicts by Region,’ *Our World in Data*, <https://ourworldindata>.

out what is perhaps the most distinctive feature of the twenty-first century world we inhabit today — an unprecedented development that affects not only every human, but every organism on the planet. This is an exceptional degree of consensus which our world appears to manifest as to the normative and institutional basis upon which human collectivities should organise themselves. Compare a map of the world today with a similar map produced 400, 150, or even 40 years ago. What jumps out immediately is that the polities we can see on the map today are defined as such, not by themselves, but on the basis of a single, shared understanding of law — of what it takes to be visible. What was once an unfathomably multiple human and non-human world, organised on the basis of an equally countless range of different legal systems, whose location, scale and diversity lay far beyond the sphere of knowledge available to any cartographer, has been replaced by a uniform world of legal subjects: of states and, within them, individuals. In a process of transformation lasting at least five centuries, a pluriverse has, in formal terms, given way to a universe. And although it is widely accepted that multiple forms of non-state law are still recognised as such in various jurisdictions, including such as Sharia law, Indigenous law and so on, the originally Western European legal framework associated with the state/individual matrix is commonly referred to simply as ‘law.’

What I hope to explore in this chapter is the question of what the dissonance between this momentous process of normative homogenisation on the one hand, and the kind of genocidal violence now unfolding in Palestine, might have to tell us about each other. Why, for example, does the former seem so unremarkable? The apparently consensual nature of the process through which (European) law has gradually come to be universalised. In the formally post-fascist, post-colonial, post-soviet world of the twenty-first century, it is easy to see this process as having taken place gradually in response to the demand coming from two directions. This is the demand, on the one hand, of individuals initially excluded from the social contract, whether fully or partially (such as, at different times, slaves, ‘natives,’ women, members of ethnic, religious and sexual minorities, immigrants, those with disabilities and so on) to be recognised as ‘men... born free and equal in rights,’<sup>7</sup> in the famous words of the French Declaration. It is also the demand, on the other hand, of communities (settler colonies, ‘semi-sovereign states,’ protectorates, colonies, occupied territories, ‘constituent republics,’ oppressed minorities and so on) initially denied rights and duties under international law to be recognised as equal, sovereign,

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org/war-and-peace?insight=relationships-between-countries-have-become-more-peaceful#key-insights

<sup>7</sup> *Déclaration des droits de l'homme et du citoyen* (Paris: Assemblée nationale constituante, 1789).

independent states. To return to the example of Palestine, for instance, it was to progressive journey, in which law's purported universalism has gradually become an institutional reality, that Palestine's representatives referred when they described Israel's 'manifest' and 'gross' violation of Palestine's 'peremptory' right of self-determination before the ICJ.<sup>8</sup> Or as the Palestinian Minister for Foreign Affairs and Expatriates, Riad Malki, put it: 'The United Nations enshrined in its Charter the right of all peoples to self-determination and pledged to rid the world of the gravest breaches of this right, namely colonialism and apartheid,' they argued. 'Yet, for decades, the Palestinian people have been denied this right and have endured both colonialism and apartheid.'<sup>9</sup>

In June 1945, when the signatories of the Charter of the United Nations, meeting in San Francisco in the wake of the Second World War, affirmed their 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,'<sup>10</sup> the struggle for civil rights was still two decades away from victory. Indeed, it was none other than the architect of what in 1949 would crystallise into the apartheid regime in South Africa, Jan Smuts, who drafted these moving words. Likewise, when the Charter referred to the 'the principle of equal rights and self-determination of peoples,'<sup>11</sup> it was not colonialism and apartheid that they initially had in mind. It was, instead, the wartime experience of recently liberated states like Poland, whose rights to sovereign equality, territorial integrity and political independence had

<sup>8</sup> Philippe Sands (State of Palestine), 'The Violation of the Right to Self-Determination of the Palestinian People,' Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem Advisory Opinion, Public Hearing, 19 Feb. 2024, Verbatim Record, 88-98. As Sands argued:

*First*, the Palestinians are a distinct people.

*Second*, as such, they enjoy the very same rights as every other people, including that most foundational of rights, namely the right to self-determination: to decide for themselves how they will live and organize, politically, socially, economically, in accordance with and subject to international law. As Professor Hersch Lauterpacht put it in 1945, in the language of another age, freedom means "the right of self-government through rulers chosen by and accountable to him," and equality "demands an equal opportunity of self-government and cultural development."

*Third*, ... [that] right includes but is not limited to: the right to control their own land and natural resources; the right to be free from demographic manipulations by any third party; and the right to determine their own political status, economic development, their own futures.

<sup>9</sup> Riad Malki, Palestinian Minister for Foreign Affairs and Expatriates (State of Palestine), Opening Address at the International Court of Justice, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem Advisory Opinion, Public Hearing, 19 Feb. 2024, Verbatim Record, 52-57 at 53.

<sup>10</sup> UNC, Preamble.

<sup>11</sup> UNC, art. 1(2).

been violated so brutally, along with the human rights of their citizens, by the Axis powers — Nazi Germany, Fascist Italy and the Japanese Empire — under the doctrine of *Lebensraum* and its equivalents, *spazio vitale* and 八紘一宇 (*Hakkō ichiu*). However, in parallel with the struggle to overturn the assumption that only white people possessed a rationality developed enough to escape what Hannah Arendt described as the ‘dark background of mere givenness’ and enter into the ‘political’ sphere in which ‘civilized’ man can realise his ‘natural’ freedom by ‘build[ing]’ a common world, together with his equals and only with his equals,<sup>12</sup> the struggle against colonialism was also underway. The assertion on the part of colonised populations that ‘the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, [and] is contrary to the Charter of the United Nations’ and that ‘[i]mmediate steps shall be taken, in ... all ... territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom’, eventually crystallised, in the 1950s and 60s, into a new customary right of peoples, articulated most famously in the General Assembly’s Colonial Declaration of December 1960.<sup>13</sup>

For Rancière this process of gradual and consensual inclusion within the sphere of rights is the very essence of politics; for ‘[p]olitics, before all else, is an intervention in the visible and the sayable.’<sup>14</sup> It is an effort on the part of the ‘supplementary’ part of the *demos* — the part that is not (yet) represented among the ‘actual groups defined by differences in birth, and by the different functions, places and interests that make up the social body’ — to make itself visible and audible and in this way to alter the ‘distribution of the sensible.’<sup>15</sup> The ‘political subject’ is s/he who attempts this by staging a ‘dissensus,’ the ‘demonstrating (manifestation) of a gap in the sensible itself,’ achieved by ‘plac[ing] one world in another’ and thereby ‘mak[ing] visible that which had no reason to be seen.’<sup>16</sup> Within Rancière’s framework, therefore, the ‘demos’ refers, not only to the citizens of a particular state but also to those excluded from citizenship whether in full or in part. Unlike

<sup>12</sup> Hannah Arendt, *The Origins of Totalitarianism*, new ed., A Harvest Book HB244 (New York: Harcourt Brace Jovanovich, 1973), 301.

<sup>13</sup> UN General Assembly, ‘Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 (XV)’ (United Nations, 14 December 1960), paras. 1, 5 and 7.

<sup>14</sup> Rancière, ‘Ten Theses on Politics,’ 37. See Helena Chavez Mac Gregor, *Insistir en la política. Rancière y la revuelta de la estética* (Mexico City: Instituto de Investigaciones Estéticas-UNAM, 2018).

<sup>15</sup> Rancière, 36.

<sup>16</sup> Rancière, 37–38.

the ‘body politic’ understood as the collected citizens of any state, the *demos*, for Rancière, is necessarily underpinned by a radical sense of equality, ‘the equality of speaking beings without which inequality itself is inconceivable.’ ‘Democracy’, therefore, is not just ‘one of the possible constitutions which define the ways in which people assemble under a common authority’ but ‘the very institution of politics itself.’<sup>17</sup>

The work of the ‘For Freedoms’ collective in the United States offers a good illustration of this process. Formed by artists Hank Willis Thomas, Eric Gottesman, Michelle Woo and Wyatt Gallery in the fraught run-up to Donald Trump’s victory in the 2016 US presidential election with the aim of ‘expand[ing] what participation in a democracy looks like.’<sup>18</sup> In one project in particular, the group — now, according to its website, ‘the largest community for creative civic engagement in the United States’ — has restaged Norman Rockwell’s famous 1943 quadriptych of paintings in which Rockwell rendered, in notoriously white, heteronormative terms, the ‘four essential human freedoms’ articulated by Franklin D. Roosevelt (fig. 1). In one such restaging, *Freedom of Speech*, for example, a woman of colour rather than a white man intervenes in a public debate. In another, *Freedom from Fear*, in place of a white woman tucking a child into bed as a white man stands by, a same-sex couple put their child to bed together. ‘What we’ve done,’ Thomas explains, is to ‘come together and paint a new picture of 21<sup>st</sup> century America.’ Rockwell’s paintings have been ‘re-imaged and re-imagined’ to be more ‘truthful and representative of America today.’<sup>19</sup>

Conceived at the height of the Black Lives Matter protests in the context of an emboldened American far-right, these images can readily be understood as acts of political resistance within Rancière’s framework of dissensus. And yet the question that neither they nor Rancière appears to answer is why such resistance is still required. In a world in which virtually every one of the nearly eight billion human beings is now, at least in a formal sense, inside the frame, why do the institutions of democracy and the rule of law seem to display this propensity to foster a politics that is predicated on their destruction? Why do such horrifying episodes of racist, if not genocidal violence, continue to break out so regularly and why does the effort to call it out seem to have so little effect? Is this simply a problem of enforcement — of the violation of rights that, if respected, would deliver a world of true equality and freedom? Or is there some hidden cost associated with the ‘choice’ of once excluded actors to fit themselves inside a

<sup>17</sup> Rancière, 32–33.

<sup>18</sup> For Freedoms, ‘About,’ at <https://www.forfreedoms.org/about>.

<sup>19</sup> For Freedoms, ‘Our Four Freedoms,’ *For Freedoms* (blog), 2018, <https://www.forfreedoms.org/activations/four-freedoms-pictures>.





Fig. 1. Mural of Norman Rockwell's *The Four Freedoms*, in Silverton, Oregon. The paintings were originally in the *Saturday Evening Post* across four consecutive weeks in 1943. Image: photographer unknown, 2020. Licenced under the Creative Commons.

frame that was originally constructed by and for someone else; a cost that cannot be seen without taking the picture off the wall? In order to examine these questions, the following pages will attempt to juxtapose a range of sometimes unlikely iterations of the social contract against one another, beginning with the clashing constitutionalisms of January 6<sup>th</sup>, 2021.

### 1. *Of bananas and citadels*

In the 3.2 years since Trump reluctantly left office, barely a day has gone by without this most provocative of presidents making it into the headlines in one way or another. Leaving aside those cases that have already concluded (including his record-breaking two impeachments), as well as numerous civil suits (his \$350 million fraud case, for example), Trump is currently facing 91 criminal charges including sexual assault, defamation, falsification of business records, payment of hush money, wilful retention of national-



security information, obstruction of justice, withholding of documents and false statements (fig. 2).<sup>20</sup> The ones that have generated by far the biggest public outcry, however, are those connected to his involvement in the events of 6<sup>th</sup> January 2021.

This was, of course, the day on which a 2 000-strong ‘army’ of Trump supporters broke into the Capitol Building in Washington DC in the attempt to prevent the 2020 election result from being certified, generating some \$2 734 783 worth of damage, multiple injuries, five fatalities and over 950 arrests.<sup>21</sup> Clearly visible among the protesters were prominent members of several white supremacist, conspiracist and/or far-right groups including Oath Keepers, the Three Percenters and, perhaps most notoriously, the Proud Boys (mandatory drinking toast: ‘[T]o the parasites both on the streets and in the White House who want to attack us and take what we earn. To the trespassers who want to sabotage our culture our family and our way of life. You want a war? Well you’ve got one ... Bring it on!’)<sup>22</sup> These protestors made abundantly clear before, during and after January 6<sup>th</sup> that they were acting in response to Trump’s allegations that the election had been ‘stolen.’ Trump repeated these allegations only two hours before the break-in in an address to the ‘Save America’ rally in the Ellipse, insisting that it was he, and not the Democratic candidate Joe Biden, who had in fact won the election in November, and that his supporters therefore only had one more chance to ‘save democracy’ from the ‘radical left democrats’ and the ‘fake news media’ who were trying to ‘steal’ the election from the American people.<sup>23</sup>

As events at the Capitol Building began to spiral out of control on the afternoon of January 6<sup>th</sup>, public figures of all stripes leapt for their phones, tweeting out condemnation after condemnation of what was widely interpreted as an attempted ‘fascist coup.’<sup>24</sup> Numerous Republicans broke

<sup>20</sup> See David A. Graham, ‘The Cases Against Trump: A Guide,’ *The Atlantic*, 15 February 2024.

<sup>21</sup> As of January 2023. ‘24 Months Since the January 6 Attack on the Capitol,’ *United States Attorney Office, District of Columbia* (blog), 4 January 2023, <https://www.justice.gov/us-ao-dc/24-months-january-6-attack-capitol>. See also Graham, ‘The Cases Against Trump: A Guide.’

<sup>22</sup> ‘Proud Boys Meet Up: Stations of the Congregation,’ Document 643-1, *United States of America v Enrique Tarrío et al* (‘Proud Boys’ Rule-Book’), No. 605 F. Supp. 3d 73 (D.D.C. 2022) (27 May 2022).

<sup>23</sup> Donald Trump, ‘Address to “Save America” Rally’ (The Ellipse, Washington D.C., 6 January 2021), <https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>.

<sup>24</sup> Ewan Palmer, ‘Protests Demanding End to Trump’s “Fascist Coup” to Take Place Nationwide,’ *Newsweek*, 7 January 2021, <https://www.newsweek.com/protest-trump-coup-refuse-fascism-washington-capitol-1559682>.



Fig. 2. 'We Stand United' Rally, New York City, 19 January 2017 (the night before Trump's Inauguration). Image: Mathias Wasik, 2017. Licenced under the Creative Commons.

ranks with Trump, including former President George W. Bush. 'This is how election results are disputed in a banana republic — not our democratic republic,' he announced.<sup>25</sup> On the Democrat side commentators expressed unreserved outrage, including of course Biden himself. Describing himself as 'shocked and saddened that our nation — so long the beacon of light and hope of democracy — has come to such a dark moment,' Biden condemned the 'assault on the citadel of liberty' by a 'lawless' 'mob' of 'extremists' who 'do not represent who we are.'<sup>26</sup> The mayor of Washington Muriel Bowser described the break-in as an 'affront on our American democracy.'<sup>27</sup> Former Secretary of State Hillary Clinton said: 'domestic terrorists [have] attacked a foundation of our democracy: the peaceful transfer of power

<sup>25</sup> Marcos Tejeda, 'Bush: This Is How Election Results Are Disputed in a Banana Republic — Not Our Democratic Republic,' *The Sun Post*, 7 January 2021, <https://thesunpost.com/2021/01/07/bush-this-is-how-election-results-are-disputed-in-a-banana-republic-not-our-democratic-republic/>.

<sup>26</sup> @JoeBiden, 7 January 2021, <https://twitter.com/JoeBiden/status/1346928275470299142>

<sup>27</sup> Ben Doherty, 'Woman Shot and Killed in Storming of US Capitol Named as Ashli Babbitt,' *Guardian*, 7 January 2021, <https://www.theguardian.com/us-news/2021/jan/07/ashli-babbitt-woman-shot-and-killed-in-storming-of-us-capitol-named>.

following free elections. We must re-establish the rule of law and hold them accountable.’<sup>28</sup> Within the mainstream of the NGO/civil society community, Nicole Austin-Hillery’s response, as executive director of US Human Rights Watch, was typical. ‘The mob that occupied the US Capitol,’ she said, was ‘the culmination of a reckless campaign by the president and his enablers to undermine democratic processes and the rule of law.’<sup>29</sup>

The international reaction to the riots was likewise one of shock and horror right across the board. Perhaps the most impassioned response came from France’s President, Emmanuel Macron — under intense pressure from the far-right himself in the run-up to new presidential elections in France. In a statement released the following day, he said:

On January 6 ... a few violent individuals forced their way into the secular temple of American democracy: the Capitol.

A woman was killed.

When, in one of the world’s oldest democracies, supporters of an outgoing president take up arms to challenge the legitimate results of an election, a universal idea — that of ‘one person, one vote’ — is undermined.

Since the 18th century, the United States of America and France have shared a commitment to freedom and democracy ...

[T]he United States stood with France during two World Wars, whenever its independence, its freedom, were threatened.

Today France stands strongly, fervently and resolutely with the American people and with all people who want to choose their leaders, determine their own destinies and their own lives through free and democratic elections. And we will not yield to the violence of a few individuals who want to challenge that.

It is the choice we have made over the course of several centuries to place human dignity, peace, respect for others, and the recognition of freedom above all else that is now under threat in our democracies.

That is why this evening I want to express our confidence in the strength of American democracy.<sup>30</sup>

<sup>28</sup> @HillaryClinton, 6 January 2021, <https://twitter.com/HillaryClinton/status/1346947444664369152>

<sup>29</sup> ‘US: Trump’s Actions Fuel Capitol Riot,’ *Human Rights Watch*, 6 January 2021, <https://www.hrw.org/news/2021/01/06/us-trumps-actions-fuel-capitol-riot>.

<sup>30</sup> Emanuel Macron, ‘What Happened Today in Washington DC Is Not America, Definitely,’ *Élysée (Office of the French President)*, 7 January 2021, <https://www.elysee.fr/en/emmanuel-macron/2021/01/07/what-happened-today-in-washington-dc-is-not-america-definitely>.

But similar outrage was expressed by numerous other public figures. NATO's Secretary General Jens Stoltenberg denounced the 'shocking scenes in Washington, D.C.' UN Secretary-General Antonio Guterres stressed the need for 'respect democratic processes and the rule of law.'<sup>31</sup> For Brazilian Supreme Federal Court Judge Luís Roberto Barroso regretted 'supporters of fascism [had] showed their real face.' New Zealand's Prime Minister, Jacinda Ardern, warned that '[d]emocracy — the right of people to exercise a vote, have their voice heard and then have that decision upheld peacefully — should never be undone by a mob.'<sup>32</sup> Former Bolivian President Evo Morales denounced the 'racist and fascist violence' of an administration that was not 'interested in democracy.'<sup>33</sup> Even on the right, India's Prime Minister Narendra Modi described himself as 'distressed' by the 'rioting' and declared that '[t]he democratic process cannot be allowed to be subverted through unlawful protests,' while Israeli Prime Minister Benjamin Netanyahu and the British Prime Minister Boris Johnson expressed outrage at the 'rampage at the Capitol, characterising it as a 'disgraceful act' that 'must be vigorously condemned.'<sup>34</sup>

In the wake of January 6<sup>th</sup> and of the failure of the Senate to convict Trump of the charge brought at his second impeachment, the United States House Select Committee to Investigate the January 6th Attack. On the basis of an 18-month investigation, including ten livestreamed public hearings, the January 6<sup>th</sup> Committee referred Trump to the Department of Justice.<sup>35</sup> Trump was duly indicted on charges of racketeering and electoral interference and is also facing cases challenging his eligibility for re-election in over 30 American states.<sup>36</sup>

January 6<sup>th</sup>, then, has been the scandal that keeps on scandalising. And as one might expect, given the magnitude of the crisis, it remains an article of faith for most 'mainstream' analysts of US history and politics that when it comes to terrible American presidents, 'Trump's attempt to steal the 2020

<sup>31</sup> 'World Reaction to the Storming of the US Capitol,' *AP News*, 7 January 2021, <https://apnews.com/article/donald-trump-international-news-angela-merkel-democracy-1723fd372b9c-280cfc39fbc43e0145e>.

<sup>32</sup> "World Reaction to the Storming of the US Capitol."

<sup>33</sup> 'Capitolio: Evo habla de "autogolpe" y Samuel lo compara con Trump por "crear violencia",' *Tarija Al Día*, 7 January 2021, <https://tarijaaldia.com.bo/capitolio-evo-habla-de-autogolpe-y-samuel-lo-compara-con-trump-por-crear-violencia/>.

<sup>34</sup> Johnson said that he 'unreservedly condemn[ed] encouraging (sic) people to behave in the disgraceful way that they did' on January 6 and insisted that 'democracy' should prevail. 'World Reaction to the Storming of the US Capitol.'

<sup>35</sup> United States House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report* (Washington, DC: 117th Congress Special Session, 2022).

<sup>36</sup> See Graham, 'The Cases Against Trump: A Guide'.

election put him in a class of awfulness all by himself.<sup>37</sup> And yet the same cannot be said of voters. On the contrary, the more illegal Trump's activities are confirmed to be, the more loyal his supporters appear to become. In spite of, or perhaps because of his contempt for democracy and the rule of law, Trump has (just, at the time of writing) been nominated as the Republican Party's candidate for the upcoming 2024 presidential election, having demolished his only viable opponent in the primaries, and judging by the polls is highly likely to win that election fair and square.<sup>38</sup>

## 2. *Of post-truths and self-evident truths*

There is much that could be said about the reaction of the political establishment, both domestic and international, to the events of January 6<sup>th</sup>. For a start, there is the unabashed hypocrisy of those — particularly in the United States and Europe — for whom the truly 'disgraceful' thing about January 6<sup>th</sup> was apparently not the assault rifles, metal bars or pipe bombs wielded by the 'mob,' or racist the slogans ('Camp Auschwitz,' '6MWE,' 'Civil War: January 6, 2020,' etc) that had adorned their sweatshirts, or indeed their Confederate flags, Nationalist Social Club patches and Kekistan banners, but rather the reputational damage they had inflicted on 'American democracy' by treating with such 'third world' recklessness. As the global majority could hardly forget, it was, after all, fully-functioning 'American democracy' that negotiated into being the conditions that allowed US multinationals like the United Fruit Company with brutal systematicity to undermine the democratic process in Guatemala, Honduras and the other so-called 'banana republics.' It was also fully-functioning 'American democracy' that later funded, armed and orchestrated the relentless series of far-right coups and insurrections that, in the name of freedom, systematically destroyed

<sup>37</sup> Ben Naftali, 'The Worst President in History,' *The Atlantic*, 19 January 2021, <https://www.theatlantic.com/ideas/archive/2021/01/trump-worst-president-history/617730/>. The results of the Presidential Greatness Expert Survey, conducted by the *LA Times* and released in February 2024, for example, indicate that it was Trump's 'radical departure from political, institutional and legal norms' that caused the 525 respondents (scholars of political science and related fields) to rank him 'dead last, trailing such historically calamitous chief executives as James Buchanan and Andrew Johnson.' Justin Vaughn and Brandon Rottinghaus, 'Opinion: We Know How Voters Feel about Trump and Biden. But How Do the Experts Rank Their Presidencies?,' *Los Angeles Times* (18 February 2024), <https://www.latimes.com/opinion/story/2024-02-18/trump-biden-presidents-day-ranking-poll-election-2024>.

<sup>38</sup> According to a poll conducted in 2 March 2024. See <https://projects.fivethirtyeight.com/polls/president-general/2024/>

the democratic process in states across the Global South during the Cold War.<sup>39</sup> Whether inside or outside the United States, this global majority did not need to see footage of spear-carrying ‘QAnon shamen’ Jake Angeli — covered in red, white and blue ‘war paint’, Yggdrasil, Mjolnir and Valknut tattoos and sporting a faux-Native American buffalo-horned, coyote-skin hat (seemingly a reference to the ‘Indian disguise’ worn by the ‘Liberty Boys’ during the ‘Boston Tea Party’, their celebrated pro-liberty, anti-tax rampages of 1773)<sup>40</sup> — howling ‘FREEEEEDOOMMMMMM’ for the cameras in front of a bust of Richard Nixon to be reminded that the foundations of the ‘citadel of liberty’ are anchored conquest, displacement, genocide, ecocide, slavery, eugenics, rape and racial supremacism. From blatantly racialised patterns of police brutality, incarceration, access to healthcare and income distribution within the US to the latter’s expansive production, mobilisation and supply of armed drones for use in ‘counterterrorism operations’ against suspected ‘Islamic terrorists’ in majority-Muslim occupied territories and Global South states but not against suspected Zionist or White Nationalist terrorists anywhere in the world, the structural reverberations of those foundations are felt every day by that majority, regardless of who gets to keep their toothbrush White House.<sup>41</sup>

The Black Lives Matter Global Network Foundation made this point succinctly in a statement on January 7<sup>th</sup> in which it pointed to the muted police preparation for and response to the outrages of the previous day, as compared with the brutal violence and rhetoric planned and deployed against BLM protestors throughout Trump’s presidency:<sup>42</sup>

<sup>39</sup> See eg William I. Robinson, *Promoting Polyarchy: Globalization, US Intervention, and Hegemony*, Cambridge Studies in International Relations 48 (Cambridge [England] ; New York: Cambridge University Press, 1996).

<sup>40</sup> Kim Kelly, ‘Is the “QAnon Shaman” From the MAGA Capitol Riot Covered in Neo-Nazi Imagery?’, *Rolling Stone*, 8 January 2021, <https://www.rollingstone.com/culture/culture-features/qanon-shaman-maga-capitol-riot-rune-pagan-imagery-tattoo-1111344/>.

<sup>41</sup> Targeted killing increased massively under the presidency of Barak Obama, who authorised 542 drone strikes during his two terms in office, killing an estimated 3,797 people, including 324 civilians, primarily in Yemen, Pakistan, and Somalia. Micah Zenko, ‘Obama’s Final Drone Strike Data,’ *Council on Foreign Relations* (blog), 20 January 2017, <https://www.cfr.org/blog/obamas-final-drone-strike-data>.

<sup>42</sup> Compared with none on January 6<sup>th</sup>, despite ample warning of potential violence, 5,000 National Guards were called out to protect the White House in the wake of the murder of George Floyd, in the context of which Trump issued his notorious Tweet: ‘...These THUGS are dishonoring the memory of George Floyd, and I won’t let that happen. Just spoke to Governor Tim Walz and told him that the Military is with him all the way. Any difficulty and we will assume control but, when the looting starts, the shooting starts. Thank you!’ @realDonaldTrump, 29 May 2020: <https://twitter.com/realDonaldTrump/status/1266231100780744704>



When Black people protest for our lives, we are all too often met by National Guard troops or police equipped with assault rifles, shields, tear gas and battle helmets. When white people attempt a coup, they are met by an underwhelming number of law enforcement personnel who act powerless to intervene, going so far as to pose for selfies with terrorists.<sup>43</sup>

No wonder a hint of *Schadenfreude* could be detected in the response of certain Global South leaders — or in some cases even more than a hint. Fresh from his fifth presidential election defeat, for example, Nigeria's former Vice-President, Atiku Abubakar suggested that there was 'a lesson to be learnt' from 6<sup>th</sup> January: 'that strong institutions and not strong personalities are the bulwark of a rich democratic culture.'<sup>44</sup> Or as Iraqi MP Hakim al-Zamili tweeted: 'The world considered America as a successful model of democracy, but we have witnessed the chaos, the assault against congress members and the looting. Same as third-world countries!'<sup>45</sup>

There is, however, another peculiar aspect of the discourse associated with the January 6<sup>th</sup> riots that may be worth attending to — namely, the curious degree of alignment displayed by the arguments on all sides of this extremely divisive and polarised debate when viewed side by side. Virtually every public figure who condemned the riots, whether on the Left or Right, or from the North or South, characterised them in almost exactly the same way — namely as a 'lawless' 'mob' of 'fascists' who sought to 'subvert' and 'undermine' the 'universal idea' of 'freedom and democracy.' As Bennie Thompson, Chair of the January 6<sup>th</sup> Committee, put it in the Committee's Final Report:

White supremacists. Violent extremists. Groups that subscribe to racism, anti-Semitism, and violent conspiracy theories... These are people who want to take America backward, not toward some imagined prior greatness, but toward repression...

We can never surrender to democracy's enemies... We can never go backward in the progress we have made through the sacrifice and dedication of true patriots. We can never and will never relent in our pursuit of a more perfect union, with liberty and justice for all Americans.<sup>46</sup>

<sup>43</sup> Aaron Morrison, 'Race Double Standard Clear in Rioters' Capitol Insurrection', *AP News*, 7 January 2021, <https://apnews.com/article/congress-storming-black-lives-matter-22983dc91d16bf949efbb60cdda4495d>.

<sup>44</sup> 'World Reaction to the Storming of the US Capitol'.

<sup>45</sup> 'World Reaction to the Storming of the US Capitol'.

<sup>46</sup> United States House Select Committee to Investigate the January 6th Attack on the United States Capitol, *Final Report*, xiii.

But not only that; as we have already seen, the counter-critique articulated by Trump and his ‘army’ of supporters was — and remains — almost identical. Responding to the news of his second impeachment, for example, Trump’s campaign team said: ‘The lawlessness of these persecutions of President Trump and his supporters’ was ‘reminiscent of Nazi Germany in the 1930s.’<sup>47</sup>

Unfortunately, once again, although it might have been ‘shocking’ to watch the defilement of the ‘citadel of liberty’ in real-time, the events of January 6th were hardly unique — and nor was the discourse surrounding them. As the scale and scope of xenophobic violence continue to escalate right across the world, against a backdrop of rising support for the extreme right, the vocabulary of critique is rising to the top of the casualty-list.

Compare, for example, the copycat coup attempted in Brazil in the wake of the 2022 presidential elections by Jair Bolsonaro in response to false allegations of vote-rigging and other electoral irregularities circulated by the outgoing president and his campaign team.<sup>48</sup> Characterising their activities as a ‘fight for democracy for all,’<sup>49</sup> the Bolsonaristas stormed the Supreme Federal Court, National Congress Building and Presidential Palace in Brasilia, replicating the events of January 6th almost at the letter. And as on January 6th, their actions were widely criticised as ‘an assault on democracy’ perpetrated by ‘fascists’ and ‘far-right extremists’ by figures from across the global political establishment ranging from Italy’s Georgia Meloni on the right, to Mexico’s Andrés Manuel López Obrador on the left, to Biden, Macron, Guterres, Germany’s new Chancellor Olaf Scholz, Organization of American States Secretary-General Luis Almagro and numerous other familiar figures from the centre.<sup>50</sup> Many of the voices in this chorus of condemnation are, of course, familiar from January 6th, among

<sup>47</sup> Quoted in Sarah Fortinsky, ‘Trump Team’s Comparison of Indictment, Nazi Germany Is “Shameful”: Anti-Defamation League,’ *The Hill*, 8 January 2023, <https://thehill.com/regulation/court-battles/4132385-trump-teams-comparison-of-indictment-nazi-germany-is-shameful-anti-defamation-league/>.

<sup>48</sup> Simone Preissler Iglesias and Andrew Rosati, ‘Bolsonaro Wages Trumpian Campaign to Sow Doubts About Voting,’ *Bloomberg News*, 11 July 2021, <https://archive.ph/j2R3W#selection-3197.2-3209.13>.

<sup>49</sup> Mauricio Savarese, ‘After Last Year’s Riots, Latin America’s Most Populous Democracy Tries to Piece Itself Together,’ *AP News*, 7 January 2024, <https://apnews.com/article/brazil-bolsonaro-riots-anniversary-one-year-b49854a5bc0c3ee82aefca6b719c51b1>.

<sup>50</sup> “‘Lula Is Not Alone’: World Reacts to Brazil Invasion,” *Al Jazeera*, 9 January 2023, <https://www.aljazeera.com/news/2023/1/9/lula-is-not-alone-world-reacts-to-brazil-invasion>. Steph Halasz, ‘Germany’s Olaf Scholz Calls Brazil Capital Attack “an Assault on Democracy”,’ *CNN*, 9 January 2023, [https://edition.cnn.com/world/live-news/bolsonaro-supporters-riot-brazil-congress-01-08-23/h\\_b85775b106cce2c0d6e1d234f0f967d7](https://edition.cnn.com/world/live-news/bolsonaro-supporters-riot-brazil-congress-01-08-23/h_b85775b106cce2c0d6e1d234f0f967d7).

them that of India's Prime Minister Narendra Modi. And yet even as he voiced his 'distress' at the violent 'subversion' of democracy in Brazil and the United States, Modi's Bharatiya Janata Party (BJP) dominated government was — and still is — facing a constitutional crisis of its own, following the introduction in 2019 of a controversial amendment to India's citizenship rules with clearly discriminatory implications for Muslims.<sup>51</sup> In the riots that broke out in response, and in the lynchings that have continued since, widely condemned by public figures on the left as evidence of Modi's India's status as 'a Hindu-fascist enterprise',<sup>52</sup> dozens of Muslims have been shot, knifed, beaten and/or set on fire by Hindu nationalist groups loyal to the BJP, often with the collusion of an equally loyal police force.<sup>53</sup> During a state visit to India in 2020, during some of the worst of the violence, President Trump praised Modi's 'democratic' and 'tolerant' leadership of India, and congratulated him for 'working closely with the minorities'.<sup>54</sup>

These are only a few illustrations of the increasing scale, scope and frequency of far-right violence, and of the alacrity with which efforts to condemn it run aground. But what, if anything, can this coincidence of violent racial supremacism and rhetorical deadlock reveal about the world we inhabit and the way we organise it? Given the historically unprecedented degree of institutionalised normative uniformity that has come to characterise national and international life in the formally post-fascist, post-colonial, post-soviet world we now inhabit? What are we to make about the fact that 'enemies' of this universalist and now quasi-universal model are speaking exactly the same language as its (purported) 'friends,' or that the activities of its 'friends' seem to be increasingly difficult to distinguish from those of its 'enemies'? Have these two seemingly diametrically opposed positions — law/democracy (good) on the one hand, and violence/fascism (evil) on the other — really got mixed up and jammed each other's gears, and if so how are we supposed to disentangle them?

<sup>51</sup> Citizenship (Amendment) Act (CCA), 2019, Parliament of India, 11 Dec 2019. Among other things, the amendment puts in place an expedited process for Indian citizenship applications submitted by Hindus, Parsis, Sikhs, Buddhists, Jains and Christians who fled to India to escape religious persecution in Muslim-majority Afghanistan, Bangladesh and Pakistan before 2014 while excluding Muslim immigrants from the right to take advantage of this process.

<sup>52</sup> See eg Arundhati Roy, 'India Is Becoming a Hindu-Fascist Enterprise,' *Al Jazeera*, 17 June 2022, <https://www.aljazeera.com/opinions/2022/6/17/india-is-becoming-a-hindu-fascist-enterprise>.

<sup>53</sup> Jeffrey Gettleman et al., 'How Delhi's Police Turned Against Muslims,' *New York Times*, 15 September 2021, <https://www.nytimes.com/2020/03/12/world/asia/india-police-muslims.html>.

<sup>54</sup> Ellis Ellis-Petersen, 'Delhi Rocked by Deadly Protests during Donald Trump's India Visit,' *Guardian*, 25 February 2020.

There is, of course, a common-sense response to this, according to which the problem here is simply matter of mis/comprehension. Characteristic in this sense is the didactic impulse by which many of those who reprimanded the January 6<sup>th</sup> protestors appear to have been seized to attach a kind of textbook summary of the meaning and importance of the rule of law to their condemnations. The objective appears to have been either to (re)educate the rioters by explaining the meaning of the norms which they had inexplicably failed to understand in the simplest possible terms (as in ‘domestic terrorists [have] attacked a foundation of our democracy: the peaceful transfer of power following free elections’), or to hold up a mirror in which the protestors would be forced to see the futility of their efforts, as a tiny clique of hooligans led by a malicious megalomaniac (the ‘reckless... president and his enablers,’ etc) to twist the meaning of a truly universal set of norms.

More generally, several historians have made the point that the kind of gaslighting displayed by Trump, Bolsonaro, Modi, Netanyahu and other far-right politicians ‘comes straight out of the Nazi playbook’: ‘Fascists always deny what they are and ascribe their own features and their own totalitarian politics to their enemies.’<sup>55</sup> Others have gone further, arguing that this propensity for deadlocked ‘you’re a fascist; no you are’ mudslinging is a sure sign that we have entered the ‘post-truth’ era, in which a resurgent far-right, in a social media age, now has the means as well as the will to bend any fact, and any norm, to signify almost anything at all.<sup>56</sup> The historian Timothy Snyder, for example, made this argument in ‘The American Abyss,’ an op ed published in the *New York Times* three days after the January 6<sup>th</sup> riots: ‘*Post-truth* is pre-fascism, and Trump has been our post-truth president. When we give up on truth, we concede power to those with the wealth and charisma to create spectacle in its place. Without agreement about some basic facts, citizens cannot form the civil society that would allow them to defend themselves.’<sup>57</sup>

And yet in a context in which (at the time of writing) Trump’s 2024 presidential bid is showing every sign of success, and in which the ‘international community’ is struggling to persuade Israel to allow so much as a trickle of aid into Gaza, let alone to commit to a cease-fire that is not

<sup>55</sup> Federico Finchelstein, ‘Jair Bolsonaro’s Model Isn’t Berlusconi. It’s Goebbels,’ *Foreign Policy* (blog), accessed 26 November 2018, <https://foreignpolicy.com/2018/10/05/bolsonaros-model-its-goebbels-fascism-nazism-brazil-latin-america-populism-argentina-venezuela/>.

<sup>56</sup> Matthew D’Ancona, *Post Truth : The New War on Truth and How to Fight Back* (London: Ebury Press, 2017).

<sup>57</sup> Timothy Snyder, ‘The American Abyss,’ *The New York Times*, 9 January 2021, <https://www.nytimes.com/2021/01/09/magazine/trump-coup.html>.

predicated on unconditional annexation, can the arguments of the ‘lawless mob’ really be dismissed so easily? For a start, there is the awkward fact that the ‘enemies of democracy’ can vote. Clinton, for example, found this out the hard way in the run-up to the US Presidential elections of 2016 when she described Trump’s supporters as ‘you know, the racists and the haters, and the people who are drawn because they think somehow he’s going to restore an America that no longer exists.’ As she elaborated: ‘...you could put half of Trump’s supporters into what I call the basket of deplorables... They’re racist, sexist, homophobic, xenophobic, Islamophobic — you name it ... Now, some of those folks — they are irredeemable, but thankfully, they are not America.’<sup>58</sup>

Seized upon by her opposition (as Trump told his supporters at an Iowa rally shortly afterwards, “[w]hile my opponent slanders you as deplorable and irredeemable, I call you hard-working American patriots who love your country”) to the point at which Team Trump is still marketing ironic ‘deplorable’ merchandise to its fan-base, this phrase is widely seen as the turning point in Clinton’s presidential bid; the ‘moment... when it all changed.’<sup>59</sup> Nor is this simply an issue of ‘voter base.’ In a legal system in which legitimacy is grounded (in the words of the American Declaration) in the ‘self-evident’ truth ‘that all men are created equal’ and ‘endowed by their Creator with certain unalienable Rights’ including ‘Life, Liberty and the pursuit of Happiness,’<sup>60</sup> the effort to expose the ignorance or malice of the far-right can backfire. It was, after all, the ballot box operating under conditions of universal suffrage that delivered Modi, Netanyahu, Milei, Bolsonaro, Meloni, Orbán, Joko Widodo and which may well deliver Trump twice. It was also the ballot box that delivered Hamas, at least in 2007.<sup>61</sup>

<sup>58</sup> *Covenant of the League of Nations* (Versailles, 1919), Art. 22.

<sup>59</sup> Election consultant, quoted in Roxanne Roberts, ‘Hillary Clinton’s “Deplorables” Speech Shocked Voters Five Years Ago — but Some Feel It Was Prescient,’ *Washington Post*, 31 August 2021, <https://www.washingtonpost.com/lifestyle/2021/08/31/deplorables-basket-hillary-clinton/>.

<sup>60</sup> *The Unanimous Declaration of the Thirteen United States of America* (4 July 1776).

<sup>61</sup> The 2007 elections in Palestine from which Hamas emerged victorious were judged by international observers to have been better organised and more legitimate than elections in several EU states. Dimitris Bouris, *The European Union and Occupied Palestinian Territories: State-Building without a State* (New York, NY: Routledge, 2014), 54. Elections have not, however, been held since. In February and March 2021, Fatah and Hamas reached an agreement which included, among other things, commitments adhere to international law, to establish a state within the 1967 borders with East Jerusalem as its capital, to the transference of the separate government in the Gaza Strip to the Palestinian Authority, and to the holding of presidential and legislative elections, within the framework of the Oslo Accords, on 28 November 2023. According to Menachem Klein, however, Mahmoud Abbas, Fatah’s leader and President of the Palestinian Authority, eventually cancelled these elections under ‘heavy pressure’ from Israel and the United States — one of triggers in

Efforts to dismiss ‘far-right’ arguments as either weak or deliberately twisted are also complicated by the fact that far-right figures are not the only ones willing to stoop to the level of strategic psychological projection. In this context, a series of apt illustrations can be found in the debate surrounding Operation Cast Lead, the war of reprisal unleashed on the Occupied Palestinian Territories, and in particular on Gaza, by Israel’s far-right coalition government, headed by another vocal supporter of democracy and the rule of law, Benjamin Netanyahu. Israeli officials have not hesitated to draw a parallel between the attacks of October 7<sup>th</sup> (in which 1,139 individuals, including 764 civilians, were killed by Hamas, an Islamic party in control of an occupied territory roughly two-thirds the size of Berlin — 365 km<sup>2</sup>) and the Jewish Holocaust (in which an estimated six million Jews were murdered by Nazi Germany, one of the most brutal and powerful states in history, which including those territories occupied at the height of its power covered an area of almost 1,000,000 km<sup>2</sup>). In January 2024, for instance, Israel’s finance minister, Bezalel Smotrich, described the population of Gaza as ‘two million Nazis in Gaza who want to destroy us when they get up every morning’;<sup>62</sup> to which opposition party leader Ahmad Tibi retorted: ‘This is how the Nazis spoke about the Jews. And when it sounds Nazi, looks Nazi, it’s neo-Nazi. Even if the minister is Jewish.’<sup>63</sup> But Netanyahu himself has regularly described Hamas as ‘the new Nazis,’ perhaps most notoriously while standing shoulder to shoulder with the German Chancellor Olaf Scholz at a press conference on October 17<sup>th</sup>.<sup>64</sup> Three months later, Netanyahu appeared on television attack the genocide case brought by South Africa at the International Court of Justice as proof that ‘many in the world have learned nothing from the Holocaust,’ waving

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response to which the ‘Al-Aqsa Brigades, Hamas’ military wing, began conceiving and planning... the murderous assault of October 7 [2023].’ Menachem Klein, ‘Israeli Arrogance Thwarted a Palestinian Political Path. October 7 Revealed the Cost,’ *+972 Magazine*, 28 November 2023, <https://www.972mag.com/hamas-fatah-elections-israel-arrogance/>.

<sup>62</sup> Press conference with German Chancellor Olaf Scholz. Jenifer Bowers Bahney, ‘Jake Tapper Blasts “Racist Comments” by Netanyahu Cabinet Minister Who Called All Gazans “Nazis”,’ *Mediaite*, 7 January 2024, <https://www.mediaite.com/news/jake-tapper-blasts-racist-comments-by-netanyahu-cabinet-minister-who-called-all-gazans-nazis/>.

<sup>63</sup> Sam Sokol, ‘Arab Lawmaker Accuses Government of “Legitimizing” Genocide against Gazans, Citing Minister’s Comments,’ *Times of Israel*, 8 January 2024, [https://www.timesofisrael.com/liveblog\\_entry/arab-lawmaker-accuses-government-of-legitimizing-genocide-against-gazans-citing-ministers-comments/](https://www.timesofisrael.com/liveblog_entry/arab-lawmaker-accuses-government-of-legitimizing-genocide-against-gazans-citing-ministers-comments/).

<sup>64</sup> Sarah Fortinsky, ‘Netanyahu Labels Hamas “the New Nazis” alongside Germany’s Scholz,’ *The Hill*, 17 October 2023, <https://thehill.com/policy/international/4261308-netanyahu-labels-hamas-the-new-nazis-alongside-germanys-scholz/>.



around as he did so what he claimed was an Arabic translation of *Mein Kampf* that had been seized in Gaza by Israeli troops.<sup>65</sup>

In the face of such shameless efforts to instrumentalise one Holocaust to justify another, one might expect that public figures in Germany would rush to set the record straight. Far from it, however. Scholtz, for example, has been vocal about the dangers posed to Germany's post-war reputation as a champion of equal rights by the anti-immigration stance of the far-right Alternative for Germany party, warning recently that '[l]earning from [Nazi] history is about more than lip service.'<sup>66</sup> In his view, however, Germany's 'responsibility arising from the Holocaust, makes it a perpetual task for us to stand up for the security of the state of Israel,' regardless of what that might cost in terms of Palestinian 'collateral damage.'<sup>67</sup> Notwithstanding the copious evidence presented to the ICJ by South Africa in January of Israel's multiple violations of the Genocide Convention of 1948, or the Court's preliminary 'provisional measures' decision on the basis of that evidence, moreover, Scholz's response has been one of straightforward denial. The allegation of genocide, he claims, has 'no basis in fact' — and not only that; in his view Germany's history gives it a special authority to interpret the Genocide Convention which South Africa cannot hope to match.<sup>68</sup> Domestically, meanwhile, Scholz's government overseen a systematic and often violent crack-down on expressions of pro-Palestinian solidarity and on pro-Palestinian demonstrations.<sup>69</sup>

But there is also a third, and perhaps even more fundamental problem with the effort to position the racism and violence of the 'far-right' as the uninformed and residual external enemy of a universal trend towards 'democracy and the rule of law' — the same problem that allows figures like Netanyahu, Scholz and Modi to be democracy's 'friend' before breakfast

<sup>65</sup> Tovah Lazaroff and Tal Spungin, 'Netanyahu Holds up Mein Kampf to Protest ICJ Ruling, Calls Hamas "New Nazis",' *Jerusalem Post* (blog), 27 January 2024, <https://www.jpost.com/israel-hamas-war/article-783989>.

<sup>66</sup> Ashifa Kassam, 'Scholz Urges Unity against Far Right after Mass Deportation "Masterplan" Revealed,' *Guardian*, n.d., <https://www.theguardian.com/world/2024/jan/11/germany-far-right-mass-deportation-masterplan-meeting-olaf-scholz-condemns>.

<sup>67</sup> 'Germany Offers Israel Military Help and Promises to Crack down at Home on Support for Hamas,' *AP News* (blog), 12 October 2023, <https://apnews.com/article/germany-scholz-israel-aid-hamas-b38a3cf34895fbfc0c966bb27413886f>.

<sup>68</sup> Jacob Magid and Jeremy Sharon, 'Germany Says Will Intervene at The Hague on Israel's Behalf, Blasts Genocide Charge,' *Times of Israel* (blog), 12 January 2024, <https://www.timesofisrael.com/germany-says-will-intervene-at-the-hague-on-israels-behalf-blasts-genocide-charge/>.

<sup>69</sup> Cathrin Schaefer, 'German Police Crack down on Pro-Palestine Rallies, Raising Alarm,' *Al Jazeera*, 10 November 2023, <https://www.aljazeera.com/news/2023/11/10/germany-gaza-protests-crackdown>.

and its 'enemy' after lunch. This is the problem that, however differently they might interpret it, both the 'far-right' and the centre — and indeed much of the left — anchor the legitimacy of their claims in the same 'universal' norm of individual freedom. As the authors of the French *Declaration of the Rights of Man and Citizen* of 1789 laid this norm out a few years after the American Declaration of Independence of 1776:

1. Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.
2. The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression.
3. The principle of any Sovereignty lies primarily in the Nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it.
4. Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law.
5. The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain.
6. The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes.<sup>70</sup>

In this familiar contractarian vision, the equal freedom of all 'men' — stemming from the Aristotelian assumption as to the distinctive rationality of 'mankind' — that anchors the legitimacy of the law, understood as the 'collective will,' and along with it the legitimacy of the state's authority to use violence to enforce the rights in which that freedom finds its concrete expression.

The French Declaration helps to illustrate the essential quality of freedom understood in this formal or legal sense. In its most essential or 'universal' sense, individual freedom is negative (not positive); it is predicated on a formal (not material) vision of equality; and it is, as it were, double-scaled. That is to say, the micro legal subject — the individual 'born... free and equal in rights' — finds its analogy at the macro-level analogy

<sup>70</sup> *French Declaration* (1789), Arts. 1-3.

in the nation-state, understood as the individual subject of international law. However differently they might have interpreted the idea of individual rights or the relationship between the citizen and the state, it is this double-scaled understanding of freedom that underpins the constitution of every one of the world's states.<sup>71</sup> The reason for this is, in (European) legal terms, straightforward. The relationship between collective authority and individual liberty is, both historically and juridically, what defines a constitution *as* a constitution according to the originally Western European normative system invoked by the term 'rule of law.' And a constitution — understood as the formal embodiment of the mythical social contract — is, in turn, what in legal terms defines a state *as* a state.<sup>72</sup> From the (European) legal perspective — the perspective that informs every aspect of the work of governments, police and border forces, courts, armies, regulatory bodies, intergovernmental organisations and banks like the United Nations, the World Trade Organisation and the International Monetary Fund and, indeed, all the public bodies which define the parameters of our individual decisions and/or make decisions on our behalf — the sovereign state as a subject of international law is analogous to the equally free human subject of domestic law.<sup>73</sup> Returning to Rancière, we could say that the struggle for visibility within the 'distribution of the sensible' is the struggle for legal subjectivity — for 'real rights.'<sup>74</sup>

To take an example, when the Mexican Constitution of 1824 characterised the 'Mexican nation' as 'for ever free and independent of the Spanish government and of every other power' and called upon the duties of the 'Sovereign Congress of the Nation ... imposed upon it by its constituents in order to fix their political independence, to establish and consoli-

<sup>71</sup> *French Declaration* (1789), Arts. 1-3.

<sup>72</sup> According to customary international law, as articulated in Article 1 (a) of the *Montevideo Convention* of 1933, 'The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.' *Inter-American Convention on the Rights and Duties of States* (Montevideo, 1933). Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance*, Cambridge Studies in International and Comparative Law (Cambridge: Cambridge University Press, 2019), <https://doi.org/10.1017/9781108655118>.

<sup>73</sup> The difference between them hinges on the social contract, which on the one hand anchors the legitimacy of the state's authority to the fundamental norm of individual freedom, while on the other also limiting the freedom of the individual (who is bound, consensually, to respect the state's mandate to execute and enforce the will of the collective) in a way that has no equivalent regarding the state's sovereignty on the international plane. Since the very idea of a super-sovereign would be a contradiction in terms within the formally egalitarian framework of European law, the axiom of international law is that sovereign states can be bound only by that to which they consent.

<sup>74</sup> See Jacques Rancière, 'Who Is the Subject of the Rights of Man?', in *Dissensus: On Politics and Aesthetics*, ed. Steve Corcoran (London-New York: Continuum, 2010), 60-75.

date their liberty and to promote their prosperity and glory'; and when the 1917 Constitution that succeeded it in the wake of the Revolution declared that 'national sovereignty is vested, originally and essentially, in the people' and that '[i]n the United Mexican States, all individuals shall be entitled to the human rights granted by this Constitution,' which '[a]ll authorities ... are obliged to promote, respect, protect and guarantee ... in accordance with the principles of universality, interdependence, indivisibility and progressiveness,' their conception of legitimacy is grounded on the same fundamental norm of individual equality.<sup>75</sup> Along with its revolutionary insistence that the rights of the legal subject should be predicated on a material rather than a solely formal vision of equality, the current Mexican Constitution is also unusual in its recognition of the right of Indigenous peoples within Mexico to '[a]pply their own legal systems to regulate and solve their internal conflicts.'<sup>76</sup> Own its own, this acknowledgement throws into relief just how remarkable it is that the world we inhabit today, unlike the world of 1789, 1924, 1917 or even of 1960, recognises only one law as valid when it comes to organising the relations between human communities, human individuals and their non-human 'environment.' And yet, even when they receive formal acknowledgement, Indigenous and other non-state conceptions of law are always, as in Mexican Constitution goes on to specify, 'subjected to the general principles of th[e] Constitution' of the state.<sup>77</sup>

But when the debate between democracy's 'friends' and 'enemies' is stripped back to the normative axiom of individual freedom, the effort to characterise the 'far-right' as the antithesis of democracy and the rule of law also becomes more difficult. When Netanyahu describes Israel's ongoing assault on Gaza as 'a test for all of humanity' and as 'a fight between the Iran-Hezbollah-Hamas axis of evil and the forces of freedom and progress,' for example, his language might be violent but his normative framework is only too familiar.<sup>78</sup> As Netanyahu said, addressing the nation on 25 October 2023:

<sup>75</sup> *Constitución Federal de los Estados Unidos Mexicanos* (Ciudad de México, 1824), Preamble.; *Constitución Política de los Estados Unidos Mexicanos* (Santiago de Querétaro, 1917), Arts. 39, 1.

<sup>76</sup> 2017 Constitution, Art. 2a, paras. i-ii.

<sup>77</sup> On the 'domesticization' of Indigenous law and Indigenous subjectivity, see Miguel Alfonso Martínez, 'Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations,' *UNESCO Commission on Human Rights, Final Report of the Special Rapporteur on the Rights of Indigenous Peoples* (E/CN.4/Sub.2/1999/20), 22 June 1999.

<sup>78</sup> Benjamin Netanyahu, *Address of the Prime Minister to the [Israeli] Nation* (Tel Aviv, 2023), <https://allisrael.com/full-text-here-is-the-address-that-prime-minister-netanyahu-delivered-tonight-to-the-israeli-people>.

Citizens of Israel, even amidst the storm of battle, we do not forget for a moment the immense pain of the loss of over 1,400 of our brothers and sisters who were massacred in cold blood and who heroically fell in battle against the bloodthirsty monsters who have risen up to destroy us ... I send them a heartfelt, loving and consoling embrace from the entire nation....

As Prime Minister, I am responsible for ensuring the future of the country, and at present it is my responsibility to lead the State of Israel and the people to a crushing victory over our enemies.<sup>79</sup>

It is tempting to dismiss such efforts as mere posturing on the part of far-right politicians seeking to give their activities some semblance of legitimacy. And yet the prevalence of precisely the same normative framework in the same arguments wielded by groups with little investment in the institutions of the rule of law and hence little to gain from the legitimacy they might confer. For an illustration, we could look here to the Proud Boys — the ‘far-right fight club’ whose leader, Enrique Tarrio, was recently convinced — along with four others — on charges including seditious conspiracy for his role in the January 6<sup>th</sup> riots and is now facing 22 years in prison.<sup>80</sup>

The Proud Boys *Rule-Book*, which came to light during the course of this trial, is probably the closest thing to a Proud Boys constitution we can find. For many years a closely-guarded secret, the *Rule Book* took social media platforms by storm after it became public in January 2023 over the course of this trial. Of its many ‘unhinged’ elements, some of the most ridiculous include the secret handshake; the mandatory ironic rendition of the Disney song, *Proud of your Boy*;<sup>81</sup> the initiation rite combining a pledge of ‘Western Chauvinism,’ physical assault and intermediate-level breakfast cereal expertise; and, of course, the famous ‘No Wanks’ pledge.<sup>82</sup> If this were all we had to go on, it would be easy to mistake the Proud Boys for a group of sugared-up ten-year-old boys after too any episodes of *Power Rangers*. Below this

<sup>79</sup> Netanyahu.

<sup>80</sup> The group’s leader, Enrique Tarrio, was convicted on charges including seditious conspiracy and sentenced to 22 years in prison, with the other four facing sentences of between 10 and 18 years. Hannah Rabinowitz, ‘Proud Boys Leader Enrique Tarrio Sentenced to 22 Years in Prison, Longest for a January 6 Defendant,’ *CNN*, 5 September 2023, <https://edition.cnn.com/2023/09/05/politics/enrique-tarrio-sentencing-proud-boys-seditious-conspiracy/index.html>.

<sup>81</sup> ‘Proud of Your Boy,’ *Aladdin: Original Broadway Cast Recording* (Walt Disney, 27 May 2014).

<sup>82</sup> See eg Zoe Strozewski, ‘Proud Boys “Rule Book” Revealed in Trial Sparks Flurry of Jokes, Mockery,’ *Newsweek*, 23 January 2023, <https://www.newsweek.com/proud-boys-rule-book-revealed-sparks-jokes-mockery-1775926>.

infantile surface, however, lies a familiar set of principles.<sup>83</sup> In the *Rule-Book*, for example, the Proud Boys claim to be ‘a multi-racial group that is socially liberal,’ ‘welcomes gay members’ and ‘disavow[s] Nazis ... and racists.’<sup>84</sup> The group’s commitments include eliminating ‘welfare’ and encouraging free enterprise (‘glorify the Entrepreneur’); reducing government ‘to the absolute minimum’ (no-one else should ‘handle our freedom and determine our destiny’) and cutting taxes (which ‘rob us of our hard-earned wages’); promoting the traditional family (‘venerate housewives’ and ‘stop rewarding single mothers’ because ‘with fathers comes discipline’ and ‘less crime’); clamping down on immigration (‘close the borders’ and ‘encourage assimilation’); and (‘arguably our most important cause’) protecting free speech because without it ‘fascism thrives.’<sup>85</sup> The Proud Boys are even committed to the abolition of prisons on the grounds that ‘we need to... recognize the people we are putting in cages are human beings.’<sup>86</sup>

This is a disturbingly familiar, quasi-constitutional vision, grounded, once again, in the relationship between individual freedom and state sovereignty. But there are two elements to it that seem, at least at first, to set the Proud Boys apart. One is their explicit encouragement and celebration of ‘private’ violence in a normative context in which, as we have seen, the legitimate use of violence is understood to be limited, by the social contract, to its ‘public’ use for the purpose of law-enforcement. The restriction of top-tier membership only to those who have engaged in violent assault is characterised as ‘engaging in a major conflict for the cause’ is one example.<sup>87</sup> And yet even here, the use of violence tends to be articulated — if not necessarily practiced — in ‘civil’ terms. The principle of ‘give everyone a gun,’ for instance, claims to be about arming the ‘good guys’ — in order to ‘help prevent crime.’<sup>88</sup> What really distinguishes Proud Boy constitutionalism as far-right constitutionalism, however, is of course ‘cause’ itself — the ‘good’ of ‘taking our civilization back’ and ‘rebuilding the patriarchy,’ as the *Rule-Book* puts it, for which violence can and should be employed.<sup>89</sup> According to this narrative, ‘America was not stolen from the Indians and it was not built on slavery. European and Britain were not built on colo-

<sup>83</sup> *Proud Boys ‘Rule-Book’*. These principles are drawn largely from a post entitled ‘Ten Ways to Save America’ by Gavin McInnes, founder of the Proud Boys and co-founder of Vice, and ‘one of hipsterdom’s primary architects’ (Douglas Haddow, ‘Hipster: The Dead End of Western Civilization,’ *Adbusters*, 29 July 2008).

<sup>84</sup> *Proud Boys ‘Rule-Book’* at 8-10.

<sup>85</sup> *Proud Boys ‘Rule-Book’* at 8-10.

<sup>86</sup> *Proud Boys ‘Rule-Book’* at 8-10.

<sup>87</sup> *Proud Boys ‘Rule-Book’* at 8-10.

<sup>88</sup> *Proud Boys ‘Rule-Book’* at 8-10.

<sup>89</sup> *Proud Boys ‘Rule-Book’* at 8-10.



nization. We fought hard to be #1 and we won. All other cultures are not merely different from us. They are worse.’<sup>90</sup>

If these principles are examined using the lens of Rancière’s ‘distribution of the sensible,’ it would be difficult to deny that the objective of the Proud Boys is that of making an ‘intervention in the visible and the sayable.’ What is distinctive about it is that this is a *dissensus* in reverse — not a demand for visibility coming from the ‘supplementary’ part of the *demos* but rather a demand coming from those already inside the frame to re-exclude newcomers — those (women, African-Americans, members of Indigenous communities, immigrants) who have already demanded, and received, their place inside it. It is in this sense that the Proud Boys and ‘brothers’ seek to ‘take America backward.’ Membership of the Proud Boys is aimed explicitly at white, male, bourgeois, heterosexual men — individuals who, had they been around in the 1940s, could easily have provided the models for Norman Rockwell’s original illustrations of the ‘four freedoms.’ The Proud Boys, in other words, is a group formed by and for the most privileged class of citizens within of ‘one of the oldest democracies in the world.’ These were not just the first to make it inside the frame; the frame was built around them — and yet their ‘cause’ of excluding newcomers is not only worth fighting for, but worth spending decades in jail for.

The spectacle of a group of ‘hipster fascists’ drawn from the most privileged segment of society in the world’s largest economy in ‘one of the world’s oldest democracies’ insisting, as though in the playground, that ‘we’ are ‘the best’ and everyone else is ‘worse’, is certainly pathetic. When placed in this context, however, it appears as one that requires to be taken seriously. What it shows us, crucially, is that the possession of rights is not, on its own, sufficient to realise the ‘natural’ freedom of ‘all men’ — especially as the frame becomes more crowded. As we have seen, the legal framework leaves material questions like the distribution of wealth, power, pleasure and pain firmly out of the picture — and yet it does so in silent acknowledgement that it is in competition for such objects that the law sets its subjects up as free. Without them, rights such as ‘Liberty, Property, Safety and Resistance to Oppression’ would make no sense. From here, the possibility emerges that what commentators found and find so ‘disgraceful’ about the behaviour of the Proud Boys and other such ‘lawless mobs’ was not so much their ‘lawlessness’ but rather their willingness to bring law’s more sordid side into the picture — that is to say, their lack of ‘grace.’ Or, to put it differently, the possibility emerges that, far from being democracy’s external ‘enemy,’ the ‘far-right’ is better characterised as an embarrassing but powerful family-member who sometimes cannot be prevented from

<sup>90</sup> Proud Boys ‘Rule-Book’.

exposing, embracing and parading around in public a brutal reality for which formalism provides the fig-leaf. This is the brutal reality that individual freedom is predicated on an ongoing process of violent appropriation; that the 'natural and imprescriptible' liberty of the legal subject cannot be realised without a constant and unlimited supply of objects for that liberty to be exercised *on*. The right of individual freedom appears, from this viewpoint, as a right to regard everything that is *not* a fellow-subject — everyone that has not managed to force themselves into the frame — as an object. The purpose of 'law,' in turn, becomes that of investing its macro-subjects (sovereign states) with the right to use unlimited violence to protect the unlimited freedom of its micro-subjects (citizens) to treat everything that is *not* a subject in this sense as an unlimited reservoir of object-resources, there to be 'freely' appropriated, accumulated, transformed, consumed, exchanged and discarded any restrictions whatsoever, other than the duty to respect the right of fellow-subjects to do the same.

Whether we look at Rockwell's original paintings or at the For Freedom collective's 're-imagined' versions, this static representation of legal subjectivity seems to be misrepresenting what is essentially a dynamic historical process. Not only is the 'historical' violence of colonisation, enslavement and legalised patriarchy framed out of the picture; so too is the dynamic violence — the struggle for the 'survival of the fittest' into which all humans and human communities have gradually come to be force, in a context in which the only option to avoid objectification is to fight for — and hang on to — a place inside the frame. After all, if the liberty of the legal subject is indeed dependent upon a supply of legal objects for its essential nourishment, this legal system confronts a problem. The more the surface of the earth comes to be covered in states rather than empires and their 'overseas territories' — and, within them, by citizens exclusively, rather than slaves, 'natives,' 'wives' and so on — the more limited the supply of objects necessary to the exercise of that freedom becomes.

If this is correct then a more accurate representation of legal subjectivity as compared with the 'Fo(u)r Freedoms' images might be found in the menacing male figure that forms the subject of *Unique Forms of Continuity in Space* (1913, fig. 3), the famous sculpture by Umberto Boccioni, one of Italian Futurism's foremost artists. As Mark Antliff has shown,<sup>91</sup> with the 'force-forms' and 'force-lines' pushing outwards from this striding figure, Boccioni sought to represent a 'fourth dimension in painting and sculpture,' understood in Bersonian terms as the 'potential unfolding' of an

<sup>91</sup> Umberto Boccioni, *Pittura e scultura Futuriste (Dinamismo plastico)* (Milano: SE, 1997 [1914]).



Fig. 3. Umberto Boccioni, *Forme uniche della continuità nello spazio* (*Unique Forms of Continuity in Space*, 1913). Image (of the bronze cast, made posthumously in 1949, on display at the Museo de Novecento, Milan): Paolobon140. Licensed under the Creative Commons.

object through time.<sup>92</sup> But this was a political project as much as it was an aesthetic experiment. As Antliff explains, ‘Boccioni assimilated this spatial concept into the Futurists’ highly politicized campaign to renew Italy’ — a campaign that was, of course, explicitly aligned with the fascist politics with which Futurism co-emerged. ‘[t]he Futurist correlation of the fourth dimension with a Bergsonian spatial-temporal flux made up of “force forms” and “force lines” unfettered by the limitations of three-dimensional space or measured ‘clock’ time’ were fused explicitly with ‘a political program premised on intuition and an antimaterialist call for national regeneration and imperialist expansion,’<sup>93</sup> to which such works of art would contribute explicitly to ‘awaken[ing] the beholder’s intuitive capacities and actively transform[ing] consciousness.’<sup>94</sup> As this ever-expanding, relentlessly advancing male figure, usually cast in bronze, is designed to make clear, the ‘choice’ confronting those in its path is a choice between assimilation or annihilation.

<sup>92</sup> Quoted in Mark Antliff, ‘The Fourth Dimension and Futurism: A Politicized Space,’ *The Art Bulletin* 82, no. 4 (2000): 720–33 at 724.

<sup>93</sup> Antliff, ‘The Fourth Dimension and Futurism’: 720.

<sup>94</sup> Antliff, ‘The Fourth Dimension and Futurism’: 727.

### 3. *Of diamonds and puertos*

As we have seen, despite a sustained effort to characterise ‘far-right’ politics as the fringe ideas of a bunch of ‘fanatics with assimilation fantasies’ (as Scholz recently described the AfD<sup>95</sup>), the universalisation of ‘democracy and the rule of law’ has always been accompanied by the racialised and gendered violence and discrimination that are difficult to distinguish from their outlawed ‘fascist’ equivalents. Indeed, until very recently, it was obvious to the leaders of all those communities that had either started off as or managed to become sovereign states that the ‘natural resources’ of any sovereign territory could not be expected to satisfy the growing demands of an increasingly healthy, prosperous and (therefore) numerous population of ‘free’ subject-citizens; or, at least, not unless large swathes of human beings were either relegated, like non-humans, to the status of legal objects and/or simply liquidated. This expansionist dynamic set in motion by the ‘natural and imprescriptible rights of man’ was an obvious problem of statecraft, regularly discussed in parliaments across the world, not least in the imperial — and democratic — metropolises and settler states of Europe and the Americas.

Take, for instance, the example of the British statesman Cecil Rhodes, Prime Minister of the Cape Colony between 1890 and 1896. In the final decades of the nineteenth century, Cecil not only founded De Beers, South Africa’s diamond monopoly (still in rude health today); with the help of his British South Africa Company, a corporation empowered by charter from the British Government to govern, police and conclude treaties wherever Rhodes deemed it necessary in an area running from the Limpopo to the Great Lakes, he also seized control of vast areas of land in what is now South Africa, Zambia and Zimbabwe, founding the colony of Rhodesia through the prosecution of wars, such as the First Matabele War (1893–94), in which tens of thousands of individuals were slaughtered and entire kingdoms levelled to the ground.<sup>96</sup> Imperial expansion, according to Rhodes, was ‘bread and butter question.’ The ‘forty million inhabitants of the United Kingdom’ could be saved ‘from a bloody civil war,’ he declared

<sup>95</sup> .Kassam, ‘Scholz Urges Unity against Far Right after Mass Deportation “Masterplan” Revealed.’

<sup>96</sup> For example, the Battle of Shangani River of 1893 — the opening battle of First Matabele War (1893–1894) — the 700 strong volunteer force of the British South Africa Company confronted the Emperor Lobengula’s relatively well armed and trained army of Ndebele (Matabele) warriors. In a matter of hours, half — some 1,500 — of Lobengula’s forces had simply been gunned down by the BSAC’s Maxim guns — the first ever use of the machine gun in battle — a cost of just seven company men. Niall Ferguson, *Empire: The Rise and Demise of the British World Order and the Lessons for Global Power* (New York: Basic Books, 2004), 187.

in 1895, only if ‘we colonial statesmen’ can ‘acquire new lands for settling the surplus population’ and ‘provide new markets for the goods produced in factories and mines.’<sup>97</sup> The extraordinary violence which that process of ‘provision’ would necessarily entail was so far beyond the point that it was not even worth mentioning in relation to the Cecil’s expansionist logic. Evidently the possibility that British citizens, as free and equal subjects, might one day experience some kind of curtailment in their access to land, housing, goods, services, markets and other objects upon which to exercise their liberty and that their otherwise healthy competition for such objects might descend into civil war was, for Cecil, a violence which the British state had an obvious duty to prevent by way of colonial expansion. By contrast, the violence that would be involved in implementing that preventative solution — the killing, terrorising and displacement of millions Africans; the destruction of entire societies, ontologies and ecologies — was not just a necessary cost, from the perspective of Cecil and the (democratic, constitutional) British state. That violence simply did not count as violence in the same sense as Cecil’s imagined ‘bloody civil war’ in Britain, for as Cecil explained to the Cape House Parliament on the occasion of the second re-reading of his *Glen Grey Act* of 1894,<sup>98</sup> ‘the natives are children. They are just emerging from barbarism. They have human minds...’ and were, thus, ‘in a sense citizens, but not altogether citizens.’<sup>99</sup>

As Cecil explained in speech introducing the *Glen Grey Act*, which set in motion the process that would ensure that by 1913, white settlers would be in physical and statutory control of 97% of the Cape’s land,<sup>100</sup> having ac-

<sup>97</sup> V. I. Lenin, *Imperialism: The Highest Stage of Capitalism* (New York: International Publishers, 1939), 79.

<sup>98</sup> Aiming at the suppression of ‘vagrancy,’ ‘overcrowding,’ ‘loafing’ and polygamy and meeting the rising ‘demand for black labour at Kimberley and Johannesburg,’ the *Glen Grey Act* introduced a new system of individual land ownership and succession that limited African land ownership to ‘one man, one [ten acre] plot,’ inheritable only by the ‘eldest son of the head wife,’ and imposed a ‘labour tax’ on every landless ‘male native’ who could not offer proof of waged employment. Violet R. Markham, *South Africa, Past and Present; An Account of Its History, Politics and Native Affairs* (London: Smith, Elder & Co., 1900), 288–91.

<sup>99</sup> Cecil Rhodes, Speech to the Cape House Parliament on the Second Rereading of the *Glen Grey Act*, 30 July 1894, in Vindex (F. Vershoyle), *Cecil Rhodes: His Political Life and Speeches, 1881–1900* (London: Chapman & Hall, 1900), 383, 380.

<sup>100</sup> To give two examples, Rhodes’s *Glen Grey Act* of 1894 replaced the Cape Colony’s pre-existing communal land tenure system with a system of individual system of land tenure and instituted a labour tax aimed at forcing Xhosa men into employment on white-owned commercial farms and other industries, while at the other end of this 20 year process the *Natives Land Act* of 1913, also with Rhodes’s involvement, limited African ownership to an area constituting 7 per cent of the colony’s territory while at the same time outlawed sharecropping and rent tenancy, thereby eliminating the last remaining possibility for ‘African people to congregate on some land and to defend a relatively

cess to the land and labour of individuals that were ‘not altogether citizens’ placed the Cape Colony at a distinct advantage when compared with the ‘old states.’ Comparing the ‘labour troubles’ occurring within the European and settler states among their newly enfranchised ‘masses,’ he said:

When I see the labour troubles that are occurring in the United States ... I feel rather glad that the labour question here is connected with the native question...

This is... going on in the older countries on account of the masses... getting what they term their rights, or, to put it into plain English, those who have not, trying to take from those who have...

[I]f the whites [in the Cape] maintain their position as the supreme race, the day may come when we shall all be thankful that we have the natives with us in their proper position. We shall be thankful that we have escaped those difficulties which are going on amongst all the old nations of the world.

If we fast-forward half a century, this comparison helps to show how dramatically the international situation had changed in terms of its distribution of legal subjects and objects. In 1895, there were hundreds of acres of ‘virgin’ territory still to be explored and appropriated from communities considered insufficiently ‘civilised’ to be the bearers of rights and duties.<sup>101</sup> By the 1920s and 30s, by contrast, there was almost no part of the map that had not either been coloured in, having been annexed by imperial powers, handed over to their delegated authority under the League of Nations ‘mandates system,’ claimed as the sovereign territory of one of the new states that had been created on the rubble of the defeated Ottoman, Hapsburg or (in particular) German Empires after 1918. Unlike the Cape Colony but like the United States of the 1890s to which Cecil compared it (where the expropriation of Indigenous land and the abolition of slavery had been brought to an end by the 1860s with the passage of the Homestead Act and the Thirteenth Amendment), the relatively new and/or post-imperial states of the 1930s did not have access to an abundant supply of legal objects. Lacking an unlimited quantity of untitled ‘territory easily be expropriated from its objectified ‘native’ occupants — and lacking, for the same

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independent existence as smallholders with some choice on the labour market.’ William Beinart and Peter Delius, ‘1913 Land Act: A Longer History of Dispossession,’ *Mail & Guardian*, 14 June 2013, <https://mg.co.za/article/2013-06-14-00-1913-land-act-a-longer-history-of-dispossession/>.

<sup>101</sup> See eg Vasuki Nesiah, ‘Placing International Law: White Spaces on a Map,’ *Leiden Journal of International Law* 16, no. 1 (2003): 1–35, <https://doi.org/10.1017/S0922156503001006>. Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge, UK; New York: Cambridge University Press, 2005), <https://doi.org/10.1017/CBO9780511614262>.



reason, a burgeoning supply of objectified and therefore excessively cheap human labour capable of extracting ‘natural resources’ like diamonds or oil from such territory at the kind of wages to which the enfranchised ‘masses’ of Europe would never submit — many public figures in the relatively new European states considered their populations to have been placed at a clear competitive disadvantage in relation to the ‘old nations of the world.’ For the leaders that emerged during this period on a promise to address the thwarted scope of their citizens’ ‘natural and imprescriptible’ liberty, such as Mussolini, Hitler, Baron Hiroshi Ōshima, Boris III of Bulgaria, Hungary’s Miklós Horvát and the Croatian leader Ante Pavelić, there was, in effect, only one option (unless, of course, they were willing to abandon the social contract altogether). Territory and resources would have to be seized from existing states, and from existing citizens (including their own) — something that could only be justified if they could be portrayed as unworthy of their status as legal subjects. In short, according to the fascist logic developed in the 1930s, as echoed in the ‘far-right’ logic of everyone from Netanyahu and Modi to the Proud Boys today — the ‘distribution of the sensible’ would have to be altered in the opposite directly from the one envisaged by Rancière.

One notorious elaboration of this logic can be found, if one has the stomach, in *Mein Kampf*, Hitler’s rambling Nazi blueprint for the ‘Third Reich.’ As he explained his concept of ‘living space’ or *Lebensraum*:

The foreign policy of a People’s State must first of all bear in mind the duty of securing the existence of the race which is incorporated in this State... by establishing a healthy and natural proportion between the number and growth of the population on the one hand and the extent and resources of the territory they inhabit, on the other. That balance must be such that it accords with the vital necessities of the people.... Only a sufficiently large space on this earth can assure the independent existence of a people.<sup>102</sup>

Just as for Cecil, the state’s duty to provide *Lebensraum* was anchored — at least in theory — not in a sadistic and unapologetic lust for brutality but in the constitutional duty of the state to protect the individual rights of ‘the race’ or ‘the people’ (two terms Hitler used interchangeably). For example, attacking the Weimar Republic, Hitler wrote:

It is a piece of impudent falsehood for the present regime to speak of ‘free citizens.’ Only the old Germany could speak in that manner. The present

<sup>102</sup> Adolf Hitler, *Mein Kampf* (1925) (London, New York: Hurst & Blackett Ltd, 1939).

Republic is a colony of slaves at the service of the stranger. At best it has subjects, but not citizens...

We, National Socialists, would reverse this formula and would adopt the following axiom: A strong national Reich which recognizes and protects to the largest possible measure the rights of its citizens both within and outside its frontiers can allow freedom to reign at home without trembling for the safety of the State.<sup>103</sup>

For Mussolini, likewise, it was also evident to all of them that the legitimacy of the state's monopoly on the use of violence, to the end of protecting the rights and duties of its individual citizens, could and should be employed for expansionist purposes in order to maximise the liberty of those citizens. Though contemptuous of the kind of bread-and-butter logic exemplified by 'liberal' colonial statesmen like Cecil, Mussolini in the early twentieth century had arrived at an almost identical conclusion via a different arrangement of the same normative axioms. The state, as Mussolini wrote in 1934, in an article published in English in the journal *International Conciliation*, 'is not only a living reality of the present, it is also linked with the past and above all with the future, and thus transcending the brief limits of individual life, it represents the immanent spirit of the nation.'<sup>104</sup> Where Cecil emphasised the commercial implications of the freedom of the individual, of which the competition for resources and markets were an inevitable consequence, Mussolini emphasised the 'spiritual' freedom of the nation, in which the freedom of all Italians would be sublimated, immortalised and thereby extended beyond the confines of any merely material limitation. It followed that '[f]or Fascism, the growth of empire, that is to say the expansion of the nation, is an essential manifestation of vitality, and its opposite a sign of decadence'; and that (in a phrase copied almost word by word from the Futurist Manifesto of 1909): 'War alone brings up to its highest tension all human energy and puts the stamp of nobility upon the peoples who have the courage to meet it.'<sup>105</sup>

However, the differences between the colonial and fascist iterations of the social contract are also instructive. Whereas 'civil war' — conflict between legal subjects — was something to be avoided, colonial brutality inflicted upon 'native' individuals and communities was, for Cecil, nothing more than additional cost to be factored into the supply chain upon which the demands of 'free' and 'equal' citizens depended. The necessity of co-

<sup>103</sup> Hitler, 434.

<sup>104</sup> Benito Mussolini, 'The Political and Social Doctrine of Fascism,' *International Conciliation* 16 (35 1934): 14.

<sup>105</sup> Mussolini, 16; 7.

lonial expansion consisted in its function as a pressure valve, capable of placating the ‘masses’ in a manner that did not threaten the resources of the wealthy when necessary. For Mussolini and Hitler, by contrast, there was little to distinguish colonial violence from ‘real’ international warfare or, indeed, from violence inflicted domestically on a group whose status had been downgraded from that of ‘citizen’ to ‘subhuman.’ Whereas for Cecil, the necessity of violence was a burden, something messy and tedious but thankfully far-away and therefore a topic that could be avoided in polite conversation, from the fascist perspective, the necessity of violence was something vital, invigorating; a natural part of life to be celebrated. Genocidal violence was, indeed, the apotheosis of individual freedom.

### *Conclusion*

From a (European) legal perspective, there is and can be no connection between colonialism and fascism on the one hand, and democracy and the rule of law on the other — or, more accurately, such a possibility lies well outside the frame. For someone like the poet Aimé Césaire, by contrast, this connection is all too obvious. As the descendants of slaves originally abducted from what is now Nigeria, born in the French colony of Martinique, which like many of France’s overseas territories took a firmly Vichy line during the War, Césaire’s life had been defined as much by French fascism as it had been by French colonialism. And as he pointed out by 1950, the continuity between the two was undeniable, however vociferously it continued to be denied. Fascism, he wrote, was none other than the ‘terrific boomerang effect’ of European colonial violence returning home to smack its architects in the head (fig. 4).<sup>106</sup> And, just as we saw on January 6<sup>th</sup>, whenever it does:

People are surprised, they become indignant. They say: ‘How strange! But never mind — it’s Nazism, it will pass!’ And they wait, and they hope; and they hide the truth from themselves, that it is barbarism, the supreme barbarism, the crowning barbarism that sums up all the daily barbarisms; that it is Nazism, yes, but that before they were its victims, they were its accomplices; that they tolerated that Nazism before it was inflicted on them, that they absolved it, shut their eyes to it, legitimized it, because, until then, it had been applied only to non-European peoples; that they have cultivated that Nazism,

<sup>106</sup> See Robert Knox, ‘Boomeranging Imperialism? Race, Accumulation, Fascist International Law’ (Fascism and the International Project, Workshop #1, Mexico City, June 2018), <https://www.fascismandtheinternational.com/audio-visual>.



Fig. 4. A Cowboy with a Boomerang at Tex Morton's Cowby Roadshow, Sydney, February 1938. Image: Sam Hood, 1938, courtesy of the State Library of New South Wales. Licensed under the Creative Commons.

that they are responsible for it, and that before engulfing the whole edifice of Western, Christian civilization in its reddened waters, it oozes, seeps, and trickles from every crack.

Today, of course, conquest, colonialism, genocide and apartheid have all been categorically outlawed, ruling them out — or at the very least making them unlawful — for all of the 193 states and their ‘free’ and ‘equal’ individual citizens. It is this that makes it possible for Macron, for example, to admonish the January 6<sup>th</sup> protestors by declaring, without a hint of irony, that ‘[s]ince the 18th century, the United States of America and France have shared a commitment to freedom and democracy,’ as demonstrated by the steadfastness with which the ‘United States stood with France during two World Wars, whenever its independence, its freedom, were threatened.’ The fact that slavery remained perfectly legal in parts of both states until 1865 and 1848 respectively,<sup>107</sup> or that it was to the collaborationist Vichy France — and not to the Free French forces who resisted the Nazi occupation — that the US had offered its support during the Second World War, is ignored.<sup>108</sup>

And yet, in spite of all this ‘progress’ away from fascism and colonialism — or, rather, because of it — the problem of how the world’s mac-

<sup>107</sup> *Décret d'abolition de l'esclavage dans les colonies françaises*, 27 April 1848; Amendment XIII to the Constitution of the United States of America,

<sup>108</sup> See eg Michael S. Neiberg, *When France Fell: The Vichy Crisis and the Fate of the Anglo-American Alliance* (Cambridge, Massachusetts: Harvard University Press, 2021).

ro-subjects are to meet their social contractual obligation to provide their burgeoning populations of micro-subjects with a never-ending supply of objects remains. Indeed, the more the micro/macro legal subject comes to be universalised, the more acute that problem becomes. The point is not simply that fetishizing the procedural helps to erase the substantive continuity of white supremacism, dispossession and violent discrimination, rendering uncontroversial, if not completely invisible. The point is also that, in a legal system that is anchored in the norm of individual liberty, 'democracy' will inevitably resurface as 'fascism' at a certain point.

If the images and footage coming out of Gaza were not enough to bring this point home, another work of art that might allow us to sense — emotionally, if not physically — the endlessness of the violence associated with the 'natural and imprescriptible rights of man': *The Great Silence* (2014), a video installation by the Puerto Rican artists Jennifer Allora & Guillermo Calzadilla, working in collaboration with the science fiction writer Ted Chiang.<sup>109</sup> On one screen, the installation offers footage of the world's largest single aperture radio telescope, located in Arecibo Observatory in Puerto Rico, which was built in 1963 for the purpose of sending messages into outer space in search of intelligent life. On another, we see footage of the inhabitants of a nearby bird sanctuary in which the last community of *Amazona vittate*, a species of parrot that once thrived in the surrounding Rio Abajo forest, is now on the verge of extinction (figs. 5-6). Over this footage, a parrot speaks in subtitles, alerting us to the bizarreness of a species that — in its current 'universal' configuration — so fixated on accumulating more than it has already that it has invested billions in the effort to contact 'alien' life-forms, even as it treats the diminishing number of domestic 'aliens' with which it shares its everyday life as so many irrational objects to be consumed or swept aside. As this installation forces us to realise, there is in fact nothing to anchor assumption of the distinctive and superior rationality of 'man' from which the latter's 'natural and imprescriptible rights' derive other than the assumed rationality of that assumption itself. After all, having failed to acknowledge as equal, let alone communicate with, any such alternative rationalities, 'man' has ensured that there is nothing to compare it with. Instead of encountering what is 'alien' as a source of knowledge, the universe of legal subjects has dedicated itself to reproducing its legitimacy by continually excluding and objectifying everything and everyone that cannot or will not participate in this struggle for survival. It must be as obvious to a parrot in Puerto Rico as it was to Cecil or Mussolini that the flipside of liberty is *Lebensraum* — if there are still any left.

<sup>109</sup> Jennifer Allora & Guillermo Calzadilla, *The Great Silence*, video installation ('Making Nature', Wellcome Collection, early 2017).





Fig. 5. Aerial view of the Arecibo Observatory in 2005.  
Image: NAIC Arecibo Observatory, a facility of the NSF (2005).  
Licensed under the Creative Commons.



Fig. 6. Three residents at the Puerto Rican Parrot Aviary,  
Rio Abajo State Forest. Image: Preston Keres (2023). Licensed under  
the Creative Commons.