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# Exterritories and Camps.

## Juridical-Political Spaces in the "War on Terrorism"

**An Architektur**

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The US Naval Base Guantánamo Bay on Cuba became well known around the world in early 2002, when international media reported on suspected Taliban fighters and Al-Qaida members interned there.

The pictures of shackled prisoners in orange overalls with eyes and ears covered led to worldwide protests by human rights organizations against the prison conditions and raised questions about the status of the prisoners and the application of international law at the military base.

Guantánamo Bay is a territory under the control of the United States, but where US law does not apply. It is particularly the legal special status of this exterritorial area on Cuban territory that is instrumentalized by the USA in the "War on Terrorism". This makes it possible to deny the prisoners the status of legal subjects.

If one considers the history and changing functions of this naval base that has existed since 1903, then it is clear that this use is the

current specific instance in a series of respectively differing logics of space.

In 1902, following the US victory in the Spanish-American War, Spanish colonial rule in Cuba ended with the occupation of the island by the USA. Even after the end of military rule, Cuba still found itself in quasi-colonial dependency on the USA. The USA was thus able to dictate a constitution for Cuba, which granted the US the possibility of military intervention and the establishment of coal loading station and naval bases, among other things. Under these unequal terms, a lease was signed in 1903 for the area of the US Naval Base Guantánamo Bay.

The naval base, the position of which on the south coast of Cuba enables the USA to control the Caribbean region, was set up as a militarily strategic location for the US navy and mercantile marine. In this way, Guantánamo Bay served the interventionist policies of the United States until 1934: from this vantage point, the US surveilled the Panama Canal under its sovereignty and also prepared invasions into future US protectorates such as Mexico, Nicaragua and Haiti.

In the period thereafter, the military strategic significance of the naval base decreased. During the pro-American Batista regime, it still served as a center of logistic support, and with the start of the Cuban revolution in 1959, Cuba was monitored and infiltrated from here. With the "Cuban Crisis" of 1962, however, the function of the military base changed. Guantánamo Bay attained a new significance as a located symbol of the USA on enemy communist territory. It became the place of the direct confrontation between two systems, where the respective claims to power were staged. This was expressed on the one hand in a reinforcement of the border, which became one of the best guarded in the world, but on

the other hand it was also expressed in the rhetoric of the respective governments: the Kennedy government used the naval base as a possible security in the conflict with the Soviet Union, whereas Castro spoke of Guantánamo Bay as a threat to Cuba, as a place where US aggressions against Cuba were carried out. The Cuban government regarded the US American presence in Guantánamo as an illegal occupation, as a violation of Cuba's territorial integrity and sovereignty. Since the revolution, Cuba has ceased to receive payment for the lease and has been demanding the return of the territory. In the Cuban constitution of 1976, the contract for the naval base was finally declared retroactively illegal.

In the early nineties, when Cuba lost its most important ally and major trade partner in consequence of the downfall of the Soviet Union, the significance of Guantánamo changed again. Although the naval base continued to serve the USA as a military training ground, it now became useful primarily because of its exterritorial status and concomitant legal status. In a certain sense, the United States functionalized the illegality of the naval base that was asserted by the Cuban side. The lease contract for Guantánamo Bay in fact gives the United States control over Cuban territory, but allows it to suspend US law at the same time, since according to the argumentation, the territory is subject to Cuban sovereignty. The special legal status was first intrumentalized by the United States in the early nineties, when Haitian and Cuban boat people attempting to reach the USA were picked up and brought to Guantánamo. Between 1994 and 1996, 50,000 refugees were held in camps at the military base. Since Guantánamo Bay in not located on US American territory, the refugees had no right to apply for asylum in the United States here and were deported.

In the "War on Terrorism", Guantánamo's legal status has attained a significance that goes beyond the Caribbean region. Since January

2002, the USA has been holding suspected Taliban fighters and Al-Qaida members interned at the military base. The prisoners were originally detained in the so-called "Camp X Ray", a temporary outdoor camp. This consists of rows of cage-like cells, 2.4 meters by 1.8 meters in size, surrounded by chainlink fencing and covered with a metal roof. In April 2002, construction began on a new, better secured camp with expanded capacities. At a distance of roughly five miles from "Camp X Ray", "Camp Delta" was built on the south coast of the base in an area, where Haitian and Cuban refugees had already been detained in 1993. In late April, the prisoners from "Camp X Ray" were relocated there. "Camp Delta" is currently being enlarged to a capacity for up to 2000 prisoners.

Simultaneously with the construction of the new prison camp, the so-called "Camp America" was built for the US military police units responsible for guarding the prisoners. Whereas the control personnel for "Camp X Ray" was accommodated in tents on a hill near the camp, the military is quartered here in wooden houses equipped with air conditioning and warm water. The grounds, which are designed for a longer period of use, have telephone and Internet connections, as well as sports and leisure facilities. The new prison camp has nothing more of the provisional character of the old camp either. In "Camp Delta", not only were provisions made for an unlimited period of internment of the prisoners, but also for their more effective control: the individual cells, which are smaller than in "Camp X Ray, are separated by three permanent walls. The better sanitary equipment with toilets and running water also means that the prisoners no longer need to leave their cells. The better fortification of the cells in Camp Delta also results in a decrease in possibilities for the prisoners to communicate among themselves. In addition, it is hardly possible to see into the

camp from the outside. Like "Camp X Ray", the area of the new camp is enclosed with barbed wire fences and surrounded by wooden watchtowers. However, the outermost fence also has a view shield, which prevents the prisoners from seeing out and possible observers from seeing in. Journalists are only permitted to approach "Camp Delta" up to a distance of 180 meters away from it, so that they can only see the roofs of the cells.

In the meantime, the number of prisoners interned at "Camp Delta" is about 650. They are afforded neither the status of prisoners of war, nor of civilians. The USA circumvents the Geneva Convention and thus international law by defining the prisoners arbitrarily as "Unlawful Enemy Combatants", for whom no constitutional rights are recognized: the prisoners have no right to legal representation nor to a fair trial, and they are held for an unspecified period with no review of remand in custody. Guantánamo Bay's spatial-legal special status enables the USA to newly interpret and redefine law here. Guantánamo becomes recognizable as a location, of which the conventional military strategic significance has decreased, but which still continues to serve the strategic interests of the USA. In Guantánamo Bay, a parallel legal system is created, initially limited to the prison camp there, but which is meanwhile also applied outside this territory.

**Giorgio Agamben: State of Emergency and Camp**

"A reflection is needed on the paradoxical status of the camp in its character as a space of exception: it is a partial piece of a territory located outside the normal order of law, but which is not therefore simply an exterior space. What is excluded from it [...] is included by virtue of its own exclusion. What is primarily fixed in the order

in this way, however, is the state of emergency. The camp is thus the structure, in which the state of emergency, the jurisdiction over which is the foundation of sovereign power, is permanently realized."
(Giorgio Agamben, Mittel ohne Zweck, p. 43)[1]

In conjunction with Giorgio Agamben's investigations of the relationship between sovereignty, state of emergency and camp[2], the significance of Guantánamo Bay within a changing political order becomes clear. Agamben analyses exactly this new political space, which opens up when the political system of the nation-state enters a crisis, and he examines changes in the way power functions in this space. A redefinition of the relation between sovereignty and territory and the relationship between law and space is taking place. The former structure of the nation-state, which is based on the functional conjunction of three elements - the legal order of the state, the correlative territory and the affiliation of citizens to their respective nation - , is dissolving. From an investigation of this process, Agamben develops a model of power that unites not only the juridical-institutional model of power, in other words the conception of sovereignty and state, but also the biopolitical model of power, the disciplining of the body. What is central to this is the constitutive connection between the state of emergency as a legal category and the camp as its spatial concretization.

The capacity to decree a state of emergency, i.e. the temporary suspension of the legal order, represents the basis of sovereign power. The sovereign decides not only on the valid legal system, but also on its suspension. The suspension of law - the state of emergency - is thus already part of the legal order by means of the sovereign's power of decision. Lawlessness is not only inherent to law and power, it is their precondition. The state of emergency as

an abstract legal dimension, however, requires a place, in which it becomes concrete. For Agamben, this is represented by the camp. In the camp, the state of emergency, which was essentially a temporary suspension of order, is given a permanent spatial location. Camps are exceptional areas within a territory, which are located outside the area, in which the law applies. In addition, the camp is the place, in which the biopolitical dimension of power becomes visible. Here it takes hold of the interned subjects. By denying them - for example, in the refugee or prison camp - any legal or political status, it reduces these subjects to their purely physical existence. The camp is the place of total legal arbitrariness and the absolute power of decision of the sovereign power. By explaining that this temporary or spatially limited state of emergency becomes the new standard, however, Agamben also describes the camp as a place, from which new law is created from the lawlessness there. It is a kind of catalyst, which transfers the suspension of order to a new permanent spatial and legal order.

Guantánamo Bay can be regarded as a paradigm of this new political space of the state of emergency and the camp. It is effective in the twofold way described by Agamben: as a juridical space, in which the temporary suspension of order is transferred to a new legal order, and as the physical location of the camp, in which the legal situation of a spatial arrangement becomes concrete. Based on Agamben's argumentation, however, it is clear that Guantánamo Bay as an exterritory can no longer be simply described as an exterior space. Guantánamo Bay is, in fact, a territory outside the state territory and the legal order of the USA, which enables the suspension of legal order with relatively little contradiction. Nevertheless, it is integrated in the decision-making authority of the sovereign power within the United States' area of power. Thus it is also possible that Guantánamo Bay serves the

USA as a testing ground for an extension of the parallel legal system tested in the prison camps there. The legal redefinition of the "Unlawful Enemy Combatant" introduced there and the concomitant deprivation of the prisoners' rights is to be applied in the future outside Guantánamo as well.

With Guantánamo, an example was created for how a political system no longer orders legal standards and forms of living in an established territory, but instead employs exterritoriality as a constitutive element in maintaining power. As a spatial category, exterritoriality designates locations such as Guantánamo Bay, which are outside a state territory and its jurisprudence, but which are still controlled by the respective sovereign power. The suspension of order is transformed from a provisional measure to a permanent technique of ruling. Through the increase in the power of the executives acting as sovereign power, this results not only in the loss of the traditional separation of constitutional forms, but also makes the deprivation of rights a constitutive element of the new legal order. The state of emergency, which is manifested in the various forms of exterritoriality, becomes the new regulator of the political system. Alongside state, territory and nation, it becomes the fourth element of political order.

**Military Order**

"The fundamental significance of the state of emergency as an original structure, in which law encloses life itself through its own suspension, became strikingly clear through the military order decreed by the president of the United States on November 13, 2001."
(Giorgio Agamben, in Lettre International[3])

Two months after the attacks on the World Trade Center and the Pentagon, this "Military Order" on the "Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism" extended the power of authority of the executive branch and strengthened its sovereignty. As early as September 14, 2001, both houses of congress granted the president wide-ranging special powers for military measures with the joint resolution, the "Authorization of Force Resolution". Appealing to these extraordinary powers, in the security policies backlash following 9/11, the Bush administration took recourse to the rhetoric of the national and global state of emergency to legitimize the suspension of the basic rights of freedom anchored in the US Constitution. With this military order, the US government places non-US citizens suspected of terrorism under the jurisdiction of a special court of law that has yet to be created, outside the range of civil law. This involves so-called Military Commissions, which seriously limit the rights of the accused in a shortened trial. The sovereign, whether this is the executive or the sovereignly acting US military, can now decide on the status of persons that it deems a threat to national security - regardless of their location. In any case, however, suspected terrorists face unlimited imprisonment until the "War on Terrorism", and thus the state of emergency formalized by the "Military Order", is declared over.

As a further measure in the declared War on Terrorism, on October 26, 2001, six weeks after the attacks, George W. Bush signed the "USA Patriot Act"[4]. This is a domestic policy measure that equally affects citizens, tolerated but illegal residents in the USA, and immigrants. Through the "USA Patriot Act", the powers of the government have been extended and the possibilities for control through courts and congress limited at the same time. The national anti-terror law not only enables a stricter surveillance

of persons and new gathering of information in the name of national security, but also the arbitrary detention of suspected terrorists. The constitutional guarantees of "due process" rights and the right to liberty defined in the First Amendment of the Constitution can thus be suspended.

This new orientation of the political space of the USA internally and externally also includes the relocation of institutions of incarceration to areas outside the USA and the exclusion of prisoners from the jurisdiction of US courts of law, which have both been tested in Guantánamo Bay. Since September 11, 2001, roughly 3000 alleged Al Qaida members and Taliban fighters have been arrested around the world. Of these, only about 650 are imprisoned at Guantánamo Bay.[5] Hardly anything is known about the whereabouts of the rest of the prisoners.

Because of its history and geographical proximity to the USA, as well as reports in the media, Guantánamo Bay is a relatively public place. US representatives, journalists and the International Red Cross Committee have been granted limited access here. For this reason, human rights organizations and journalists think that only those persons are detained at the US naval base Guantánamo Bay, to whom no great importance in conjunction with the "War on Terrorism" is attributed by security experts and the military, or those who have already been interrogated. Other suspected terrorists, who are suspected of having important information, are meanwhile being detained and interrogated at more remote and secret locations.

These are places like the worldwide facilities of the US military or allied secret services, which are largely removed from public control. Through reports from former prisoners and the US military, however, it has become known that prisoners are currently

being detained and interrogated in a closed off zone at the air base Bagram in Afghanistan. Bagram is one of several prison centers, in which the rules of American jurisprudence for fair trial do not apply, and where there is additionally a possibility to apply more aggressive methods of interrogation than in Guantánamo Bay. Information is also available about similar uses of the so-called "Camp Rhino" in Afghanistan, the US base on Diego Garcia and the battleship "USS Peliliu". In addition, the United States turns over prisoners to the secret services of states such as Morocco, Jordan and Egypt, where torture is used. Through these procedures, which the USA calls "rendering", they avoid a direct participation in brutal methods of interrogation, yet still secure the results of these methods. Some prisoners are even confronted with a concrete list of questions, which the US investigators want to have answered through the security services of third states. The United States also plans to establish four permanent military bases in Iraq[6]. This corresponds to the strategy of a long-term expansion of the network of strategic exterritorial locations.

**USS Peliliu, Bagram, Diego Garcia**

At the beginning of the Afghanistan operation "Enduring Freedom" in October 2001, when the USA had not yet reorganized the US naval base Guantánamo Bay and other locations as prison camps, the US administration took recourse to the paradigm of the exterritory: the warship. This has no fixed position and this does not represent any firmly located territory in the sense of the nation-state with borders and an identity, but rather can be flexibly deployed anywhere by the US military.

According to the "International Convention on High Seas" from 1958, in international waters "warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State."[7] US warships are thus subject only to the sovereignty of the US military. If the USA captures suspected terrorists in the "War on Terrorism" and takes them to warships for detention or interrogation, these prisoners are subject exclusively to the jurisdiction of the US military.

Another prison camp of the United States that is completely closed off to the public is located at the US military base Bagram in Afghanistan, 40 km north from Kabul. The military airport Bagram was built in the 1970s by the Soviet army. During the Soviet occupation of Afghanistan from 1979 - 1989, it served as a base for troops and provisions and provided air support in battles. In late 2001, the USA conquered the airport that the Taliban and the Northern Alliance had been fighting over for years. All that was left at that time from the period of Soviet occupation, aside from the 3 km long landing strip, were three large hangars, a tower and several storehouses.

Since then Bagram has been used by the US military, British units and other coalition troops and has been further developed into a permanent military base. Accommodations have been built for 10,000 US soldiers and the landing strip has been improved. Whereas there were just 500 US soldiers at Bagram in early 2002, by June of the same year there were already 7,000 US soldiers and multinational armed units in the operation "Enduring Freedom" stationed there. The soldiers are quartered in tent camps. The base also has a canteen, a post office, a laundry, a telephone tent, leisure and sports facilities and several shops. The tower from the Soviet era has been expanded into an administration center, in addition to its original function. Earth dams, mine fields and fences have been

built to protect the base. A heavily guarded security zone one to three kilometers wide has additionally been drawn around the base to protect it. All the settlements and villages within a 15 to 20 km radius - this distance corresponds to the range of missiles and mortar fire - have been militarily secured and are controlled by regular patrols.

In addition to its use as a military base, however, the Bagram air base also serves the United States as a prison camp that is removed from any public control. Even the International Red Cross Committee was not granted access. Bagram is considered one of the most important interrogation centers of the USA.[8] At this time, there are probably between 40 and 60 prisoners being detained in various places on the base. Released prisoners have reported[9] being subjected to so-called stress and duress techniques during detention. This form of torture consists, for example, in sleep deprivation for days, uninterrupted noise or the denial of necessary medication. The prisoners are held in rooms with permanent bright light or complete darkness. They have to remain in fatiguing physical positions and are beaten. In December 2002 it became known that two of the prisoners being detained for interrogation at the Bagram air base died. Nothing more is known about these persons or the circumstances of their death.[10]

On Diego Garcia, a small island in the Indian Ocean under British protectorate, prisoners suspected of terrorism are being detained at a US military base and interrogated. The island is completely isolated: there is not another bit of land within a radius of over 1,500 km.

The uninhabited 16 km long coral atoll was discovered in the 16th century by the Portuguese and later annexed by the British colonial empire. The colonial power brought workers to the island to

cultivate coconuts. In 1960, when Diego Garcia was to be turned over to military use, the British relocated the inhabitants at that time to the island of Mauritius, about 2,000 km away. In 1965, when many of Great Britain's former colonies in the Indian Ocean gained independence, the islands remaining with Great Britain, including Diego Garcia, were gathered under the name "British Indian Ocean Territory." Legally, the island is therefore British territory. A representative of the British government has sovereignty over local administration and is the supreme judge for all matters subject to British law. Under him are the customs officials, police officers, and a unit of the Royal Marines, which is responsible for the protection of the entire "British Indian Ocean Territory".

In 1971 the USA began building military facilities on the island. The legal foundation for this is a gratuitous lease contract provisionally limited to 2016 between the UK and the USA. This enables the United States to erect a naval base and communication facilities on a part of the island. Initially, only the construction of a radio station, a dock and a small runway were planned. Later another building for personnel was built, along with several hangars and storehouses. The US soldiers were quartered in tents in so-called "Camp Justice" or on freight ships in the lagoon of the island. Up until the 1980s, the facilities, access to which was limited exclusively to US military personnel, were continuously expanded: the harbor area was enlarged and the runway extended to 4 km. Meanwhile, Diego Garcia has been developed into one of the main naval bases of the USA. As a so-called "Footprint of Freedom", the base is highly important for military operations in the Indian Ocean and Arab region. During the first Gulf War in 1990/91 the number of military personnel stationed at Diego Garcia doubled, and the island was used intensively for war

operations. Diego Garcia was the only US base, from which direct air strikes were flown. In recent years, the island has also repeatedly served as a base for war operations, for example against Iraq in 1998 and against Afghanistan in 2001.

At present, the United States is holding suspected Taliban fighters and Al Qaida members prisoner. According to reports from human rights organizations, brutal interrogations measures are used there, similar to interrogations in Bagram. Because the island belongs to the territory of the UK, however, Human Rights Watch demands that the British government ensure that no human rights violations take place there through the USA. In a letter to Tony Blair, Human Rights Watch argues that the British government's obligation to prevent, investigate and prosecute any case of torture according to International Law applies to the entire territory subject to British jurisdiction.[11]

Guantánamo Bay, Bagram and Diego Garcia each have a history of their own as exterritorial US military bases. What these places have in common, however, is that they were initially useful to the USA primarily because of their military and geostrategical potential, although their use today for *conventional military operations* varies. What particularly distinguishes them, though, is that because of their exterritoriality they are currently constitutive components of a new political order. In these exceptional places, what Agamben describes as the suspension of legal order is manifested. The fact that they are not part of the state territory of the USA and their resultant special status in US law is crucial for the United States in relation to the use of these military bases as prison camps and interrogation centers in the "War on Terrorism". As manifestations of the state of emergency, in other words specifically because of their exceptionality, these internment camps represent places that are outside the US American territory and which thus redefine the

space of the USA. Largely removed from public control, they become places of externalization and exclusion. These exterritories are instruments of sovereign power, with which the hegemony of the USA is not only expressed, but its sphere of influence is even expanded.

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[1] Giorgio Agamben: Mittel ohne Zweck, Diaphanes, Freiburg/ Berlin, 2001 (Engl. Translation: Giorgio Agamben, Means without End, Notes on Politics (Theory Out of Bounds, V. 20) transl. by Vincenzo Binetti, Cesare Casarino, Univ of Minnesota Press, 2000)

[2]We refer here primarily to Giorgio Agamben: Homo Sacer: Sovereign Power and Bare Life, transl. by Daniel Heller-Roazen, Meridian (Stanford, Calif.), 1998

[3]Giorgio Agamben: Vom Ausnahmezustand, in: Lettre International, 61/2003

[4]The term stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism".

[5] Lawyers Committee For Human Rights: Imbalance of Powers: How Changes to U.S. Law & Policy Since 9/11 Erode Human Rights and Civil Liberties, New York 4/2003 http://www.lchr.og/

[6]**Thom Shanker and Eric Schmitt:** Pentagon Expects Long-Term Access to Four Key Bases in Iraq,The New York Times, 20. April 2003

[7]Article 8, Paragraph 1; cf. http://www.oceanlaw.net/texts/genevahs.htm

[8]"Bagram, which reportedly has a capacity of 40 to 80 detainees, has clearly become a key processing centre for US interrogation." Peter Symonds: Detainee dies during US interrogation in Afghanistan, World Socialist Web Site, 11.12.2002, http://www.wsws.org/."

[9]Dana Priest, Barton Gellman: U.S. Decries Abuse but Defends Interrogations, Washington Post 26.12.2002
Amnesty International AI Index: AFR 27/003/2003, 23 January 2003, http://www.amnesty.org/
Center for Constitutional Rights: CCR provides further Specific Evidence of Torture and Other Inhuman and Degrading Treatment of Prisoners by the United States, New York 6.4.2003, http://www.ccr-ny.org/
Human Rights Watch: Reports of Torture of Al-Qaeda Suspects, New York 27.12.2002, www.hrw.org

[10] BBC News: Prisoners "killed" at US Base, http://news.bbc.co.uk, 2003/03/06

[11] "The treatment of detainees on Diego Garcia also implicates the legal obligations of the British government. As a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), your government should not turn a blind eye to the practices of U.S. personnel on Diego Garcia. The U.K. government's duty to prevent, investigate and prosecute any case of torture applies to all land subject to British jurisdiction" in: Human Rights Watch: Letter to Prime

Minister Tony Blair - British Territory Must Not Be Used for Torture, New York 28.12.2002, www.hrw.org