
When Police Kill the Homeless

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1. Homo sacer

In Western politics, bare life has the peculiar privilege of being that whose exclusion founds the city of men.

— Giorgio Agamben *Homo Sacer*

Homo sacer (“the accursed/sacred man”) is an obscure figure from ancient Roman law whom anyone can kill without committing a crime, but who may not be sacrificed: an outlaw. *Homo sacer* thus inhabits the threshold of the political realm

by being included within the law only by being abandoned by both profane and divine law. In his extensive study of this archaic figure, the Italian philosopher Giorgio Agamben sees remnants of the original foundation of the Western political sphere in which political life (Aristotle's *bios*) is constituted by excluding the "bare life" (*zoe*) of the home.

The other limit of the political sphere is the mirrored figure of *homo sacer*: the sovereign whose inclusion in the law consists of the exclusive ability to suspend the law by declaring a state of emergency (the "sovereign exception"). Insofar as subjects are exposed to legal homicide (such as extra-judicial executions) under the state of exception, sovereign power produces bare life. "*The sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life—that is, life that may be killed but not sacrificed—is the life that has been captured in this sphere.*" (83)

In his book *Citizens Without Shelter*, Leonard Feldman presents a theory in which the homeless body is seen as an example of *homo sacer*. Through readings of U.S. case law on anti-homeless ordinances (those municipal codes which forbid begging, public feeding, sitting on sidewalks, sleeping outdoors, etc.) he shows that the courts have constructed homeless life as bare life. The homeless life, even when lived in the very center of the city, is included by the law only through its exclusion from political life.

Homeless life shares similar ambivalence as the sacred life of *homo sacer*: private and public, disgust and august, reviled and romanticized, criminal and victim, excluded and included. In recognizing homeless life as sacred life, Feldman has done well in following Agamben's directive: "*We must learn to recognize this structure of the ban in the political relations and public spaces in which we still live. In the city, the banishment of sacred life is more internal than every internality and more external than every extraneousness.*" (111)

Even anti-authoritarian or pacifist utopians might concede the benefit of a professional peacekeeping organization whose members, authorized in the use of violence, are dedicated to defending victims and seeking out and providing comfort to the hurting. But in the parlance of actually existing cities, 'peace officer' is synonymous with 'police officer,' who is often dedicated to enforcing the interests of the strong against the weak and to making cities into safe, clean spaces for *bios*—for capitalists and their worker-shoppers—by excluding bare life (and relegating the activities of bare life as much as possible to the sphere of the home).

If the production of homeless life within the cities of global capitalism can be seen as an instance of (or at least an approximation to) the production of bare life by sovereign power, then the sovereign counterpart to the sacred life of the homeless is the professional policeman (who shares the same, if mirrored, ambivalences as the homeless: respected and reviled, defender and criminal, public and private, human and animal, etc.).

In a quotable line from his *Homage to Catalonia*, George Orwell emphasized the role professional police play in maintaining property and class relations when he called the policeman the "natural enemy" of the worker. But a more diametric contrast would be between the policeman and the unemployed [non]worker: those unwilling or unable (or just too unlucky) to fit into capitalist society, including the ill and homeless.

In downtowns throughout the world, the homeless beg outside of skyscrapers which are guarded by police and full of financial workers allocating and reinvesting immense concentrations of wealth. Visible on these homeless bodies, refugees with no camp (or whose camp is the streets in the business district of the city), living without homes in the hearts of cities which have banned homeless life, is not only the ancient foundation of political life itself but also the extreme contradictions which characterize life under global capitalism today.

The interactions between the police and the homeless sometimes show the relation between homeless life and sacred life as more than mere approximation. When the police kill the homeless, they often do so with impunity. Below, I highlight four recent examples of police in the United States needlessly killing homeless men in plain sight of the public and video cameras. In all four cases it is undisputed that the police directly ended the life of the victim, and in three cases the state (local) jurisdiction determined that no crime was committed while carrying out the killing (in the other case, it was a jury which made that determination). Each of the cases reached national attention in part due to street protests following the announcements that officers would not be charged with criminal homicide.

In some of the cases below, the Department of Justice (DoJ) and the Federal Bureau of Investigation (FBI) are still conducting their own review of the incidents. Even if those investigations reveal violations of constitutional or federal law, however, it seems unlikely that the individual police officers who carried out the killings will be indicted for homicide by the federal government.

In the footnotes I provide at least one link to video of each incident. Most of these videos, and other videos of each incident, are available from several locations on the Internet.

1.1. Marvin Booker

On July 9, 2010, five Denver Sheriff's deputies held, beat, and shocked Marvin Booker to death in the waiting area of Denver's Van Cise-Simonet Detention Center. Booker, a 56-year-old homeless street preacher, was being held on charges of possession of drug paraphernalia. The incident was witnessed by tens of people and captured on several surveillance cameras.¹

¹[YouTube video ID: vG7Mjt_j8Cs](#). Footage from the surveillance cameras is available elsewhere on the web, [including the Denver Post website](#)

Just as sacred life is excluded from legal sanctions against homicide, “The coroner ruled that Booker’s death was caused by homicide, meaning he died at the hands of others. But the deputies were cleared by a criminal investigation which found they had not broken any laws.”²

In 2012, the FBI announced that it would investigate the slaying, but it’s been two years and no report has been released yet.³ In November, 2014, a federal civil suit found the deputies to have used excessive force. The City of Denver paid a record \$6 million to Booker’s family.⁴

1.2. Kelly Thomas

On July 5, 2011, officers in Fullerton, California, confronted Kelly Thomas, an unarmed homeless man whom they incorrectly suspected of breaking into cars. Thomas became impatient with the policemen’s questions and did not immediately comply with all of their demands. A digital recording device carried by the police captured one of the officers, Manny Ramos, calmly make the following statement to Thomas after putting on some white latex gloves, “You see my fists? They are getting ready to fuck you up.”⁵

Two officers then began striking Thomas with their batons and tackled him to the ground. Once on the ground, backup officers arrived who helped to restrain, shock, and beat him. Thomas began apologizing repeatedly, complained he couldn’t breathe, called for help, begged for mercy, screamed in pain, and cried out “Dad! Help me, Dad! They’re killing me, Dad” before losing consciousness.

²Tom McGhee, [“No discipline for deputies in Marvin Booker’s death at Denver jail.”](#) *The Denver Post*, May 9, 2011.

³Tom McGhee, [“FBI looking into Marvin Booker’s 2010 death at Denver jail.”](#) *The Denver Post*, February 21, 2013.

⁴Noelle Phillips, [“Denver to pay \\$6 million in Marvin Booker jail death settlement.”](#) *The Denver Post*, November 26, 2014.

⁵[YouTube video ID: KU0lmk2Bstg](#). Witnesses with a cellphone also captured [video](#)

When paramedics arrived, they were directed to treat an officer's minor injury while Thomas lay dying in his own blood on the street.⁶ In the eyes of the police officers at the scene, the bare, biological life of Kelly Thomas was excluded not only from the protections of law, but from also from medicine. Five days after the beating, Thomas was removed from life support and died.

An unusual element of this case is that (after significant public protest) three of the six officers involved were actually charged with crimes: officer Ramos was charged with murder in the second degree, and the other two officers were charged with involuntary manslaughter. A jury found the first two officers (including Ramos) not guilty, and the charges against the third officer were dropped.

The city of Fullerton agreed to pay Thomas' mother \$1 million in order to avoid civil litigation.⁷

1.3. Milton Hall

On the morning of July 1, 2012, members of the Saginaw Police Department in Michigan responded in force to an aggressive man suspected of stealing a cup of coffee and being impolite to the owner of a convenience store.⁸ The police confronted Milton Hall, a 49-year-old black man, in a parking lot. Hall was armed with a three-inch folding pocket knife — hardly a deadly weapon. The confrontation was witnessed by passing motorists and captured on video

⁶Eileen Frere, [“Kelly Thomas Trial: Forensic Expert, Paramedic Testify.”](#) ABC7 Eyewitness News, December 4, 2013.

⁷[Richard Winton, “Homeless man’s mother settles with Fullerton over his death.”](#) *Los Angeles Times*, May 16, 2012.

⁸David Ariosto, [“Prosecutors: Police won’t face criminal charges in Michigan death.”](#) CNN, September 13, 2012.

by both police dashboard cameras and a witness's cellphone camera.⁹

The dashboard cam videos were shown during a news conference and are available on the MLive website.¹⁰ The videos show that eight police officers (including a K9 unit) formed a semi-circle around Hall. Six of the officers had firearms, both pistols and rifles, trained on Hall who was squatting in a defensive position with the small knife in his hand. At one point, the K9 handler backed up, apparently deciding not to sic the dog on Hall. In response, Hall seemed to relax, took a few steps backward and then two steps to his right. But when Hall appeared to take a step back toward the police line, all six officers opened fire, discharging 46 rounds in a few seconds and killing Hall.

A video obtained and broadcast by CNN was captured by a witness across the street and shows the incident from a different angle and with audio.¹¹

An investigation by the Saginaw County Prosecutor's Office and the Michigan State Police into whether the shooting was justified concluded that "Criminal charges aren't warranted."¹² The Department of Justice and the FBI then conducted their own investigation and likewise determined that "this tragic event does not present sufficient evidence of willful misconduct to lead to a federal criminal prosecution of the police officers involved."¹³

⁹[YouTube video ID: YC3OAMi9kjY](#). The cellphone video obtained by CNN is also available on [LiveLeak: "Saginaw Police Shoots Homeless Man \(Milton Hall\) 46 time in 5 Seconds."](#)

¹⁰Bob Johnson, "[Video: Police cruiser footage shows events that led to Milton Hall police shooting.](#)" MLive, September 13, 2012.

¹¹Jason Carroll and Sheila Steffen, "[Video captures Michigan man's shooting by police.](#)" CNN, August 17, 2012.

¹²Bob Johnson, "[Saginaw officers who shot and killed Milton Hall won't face federal charges.](#)" MLive, February 25, 2014.

¹³Department of Justice, "[Justice Department Announces Results of Investigation into the Death of Milton Hall.](#)" February 25, 2014.

Milton Hall's mother, Jewel Hall, described the shooting as "a firing squad dressed in police uniforms."¹¹ It is worth noting, however, that while the police presented themselves to Milton Hall as executioners and ended his life with an extreme degree of overkill reminiscent of a firing squad, the killing was not carried out according to any legal ritual or due process. Like *homo sacer*, Milton Hall's homeless life was exposed to death by being excluded from both legal prohibitions against homicide and from sacrificial rites.

1.4. James M. Boyd

Jewel Hall is a retired public school teacher and community organizer in the Albuquerque, NM, area. In a tragic coincidence, at the time her son was killed by police in Saginaw, she was working to get the federal government to investigate an alarming pattern of shootings and use of force by the Albuquerque Police Department. In 2011 she wrote an opinion piece for the *Albuquerque Journal* urging "a full investigation by the Department of Justice."¹⁴ A year and a half after her son's death, a similar shooting unfolded on the outskirts of her hometown in which police with a K9 unit shot an uncooperative homeless man to death.¹⁵

On March 26, 2014, members of the Albuquerque Police Department (APD) approached and attempted to frisk 38-year-old James M. Boyd based on the suspicion that he was camping without a permit in the Sandia foothills just east of town — he was suspected, in other words, of getting his *zoe* all mixed up with the city's *bios*. Boyd, who was homeless with no private place where he could legally sleep, refused to cooperate. The situation escalated into an hours-long standoff including a tactical team and a State Police liaison. Home

¹⁴Jewel Hall, "[APD Protects a Culture Out of Control](#)," *Albuquerque Journal*, November 23, 2011.

¹⁵I'm not the only one to notice the connections between the Hall and Boyd shootings: "[Michigan police shooting similar to ABO case](#)," *Albuquerque Journal*, April 8, 2014.

video aired by KRQE News 12 shows six regular uniformed officers holding Boyd at gunpoint even before the APD Crisis Intervention Team arrived.¹⁶

Boyd remained defiant. He armed himself with two small knives, and at one point he warned the officers that “I would have the right to kill you right now because you’re trying to take me over. Don’t get stupid with me.”¹⁶

The APD has released video footage from the helmet camera of one of the officers on scene which clearly shows how the standoff came to an end.¹⁷ Boyd, who had apparently had enough of the negotiations, began gathering up his belongings to leave the scene. One of the officers called out, “Do it!” and a flashbang grenade detonated a few feet in front of Boyd. Simultaneously a dog was released which appeared to bite Boyd’s hand, and both the dog’s handler and an officer with a rifle moved toward him. Boyd dropped his bags and put his arms up to his side (while still holding at least one knife.)

Boyd then turned to walk away, which is when two officers with rifles fired six live rounds at his back, striking him at least once. Boyd fell forward to the ground. Mortally wounded and lying prone, he was apparently unable to move his hands. The officers demanded that he drop the knife that was still clutched in his left hand. Boyd replied, “Please don’t hurt me. I can’t move.” Instead of moving to render aid, officers repeatedly ordered him to drop the knife while firing three beanbag rounds into his back from a shotgun. After some deliberation, officers then released the dog a second time. Boyd was unresponsive as the dog chewed at and pulled on his leg. Officers finally moved in, stepped on one of his hands, removed the knife from his other hand, and handcuffed him.

¹⁶Chris McKee, [“APD: Officer involved shooting was justified.”](#) KRQE News 13, March 21, 2014.

¹⁷[YouTube video ID: dgRkkLyZMKM](#). A slightly edited version of the helmet camera video (as released by KRQE) is available on [LiveLeak: “Police helmet camera captures fatal shooting of James Boyd armed with a knife as he’s turning away”](#) (though the YouTube video has better audio)

Boyd died from his gunshot wounds in the hospital the next day. At a news conference several days later, APD Chief Gordon Eden announced that the officer-involved shooting was justified.¹⁶

In January of 2015, in an exceptional move which brings a challenge to the sovereignty of the police, Bernalillo County District Attorney has brought murder charges against the two officers who shot Boyd.¹⁸ The charges came in the wake of almost six months of large protests across the nation after district attorneys in several jurisdictions failed to indict police officers who shot and killed unarmed black men. Whether the charges will result in a criminal trial depends on the outcome of the preliminary hearing which will be held in a few months — at which point the charges may be downgraded or dropped.

1.4.1. Department of Justice Investigation

At the time of Boyd's shooting, the Civil Rights Division of the Department of Justice was already investigating the APD for its large number of shootings (37 since 2010) and apparent pattern of other uses of excessive force during arrests. After the video of Boyd's death was released, and after hundreds of riotous protesters demanded reform to the police department,¹⁹ Albuquerque Mayor Richard Berry wrote a letter to the DoJ requesting that they expedite their investigation.²⁰ The DoJ complied, and on April 10, 2014, about 17 months after the investigation began, it released its findings in the form of a 46-page letter to the mayor.

The findings did not address the Boyd shooting because it is still under criminal investigation. It did, however, refer to

¹⁸["Officers in Boyd shooting charged with murder."](#) KRQE News 13, January 12, 2015

¹⁹Elizabeth Barber, ["Albuquerque protest over police shootings turns to 'mayhem' \(+video\)."](#) *The Christian Science Monitor*, March 31, 2014.

²⁰Anna Velasquez, ["Mayor asks DOJ to fast-track review of APD."](#) KOAT Albuquerque, April 2, 2014.

Chief Eden's comments at the press conference as evidence "that more work is needed to change the culture of APD." (4)

According to the findings letter, the DoJ found "that the department engages in a pattern or practice of using excessive force during the course of arrests and other detentions in violation of the Fourth Amendment" stemming "from systemic deficiencies in oversight, training, and policy." The report also noted that "A significant amount of the force we reviewed was used against persons with mental illness and in crisis." (9-10)

Those and similar findings from the DoJ investigation reveal how members of the Albuquerque Police Department routinely constitute themselves as little sovereigns acting in *de facto* states of exception by suspending the constitutional rights of their victims, especially those subjects with mental illness and in crisis who misfit within and are excluded from the political life of the city.

As a final illustration of how both police (who are excepted from the normal prohibitions of the law) and homeless (who are excepted from the normal protections of the law) share in what Agamben calls the "relation of exception," here is an account from the DoJ findings letter of an incident in which police confronted an angry 75-year-old homeless man named "Ben" who depends upon a cane to walk:

The incident happened in September 2012 after officers responded to a bus station because Ben refused to leave. When officers arrived, they offered to take Ben to a homeless shelter and also called a Crisis Intervention Team officer to assist. Ben sat on a bench and told officers that he was not going to leave peacefully and that he was angry with the bus company for refusing to let him board. After officers tried to convince him to leave for about an hour, Ben threatened bus company employees and reached for his cane. Officers

ordered him to put his cane down, but he refused. As Ben was trying to stand up using his cane (presumably for support), the CIT-trained officer shot Ben in the abdomen with his Taser. He did so even though the threat from Ben was minimal: Ben had trouble walking on his own, a sergeant and three officers were standing around him, and there were no indications that bystanders were near Ben. The sergeant on the scene found the Taser use reasonable, as did other supervisors. One supervisor praised the officers' conduct as “**exceptional.**” (18, emphasis added)

2. References and Notes

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