In the 1980s, the decade that began with *Filártiga v. Peña-Irala*, a range of discursive experiments was conducted by the neoconservative community to formulate a new type of praedo. This new praedo was no longer characterized by institutional belonging, and thus he allowed a use of the hostis humani generis fiction in law that was not vulnerable to the construction of essentialist, totalitarian, and paranoid thinking as all being synonymous. The praedo that emerged from this quest, the international terrorist, was a deliberately old-fashioned figure. The international terrorist’s properties in the discourses of the 1980s explicitly referred back to the origins of the hostis humani generis fiction in early modern European law. Citing the Mediterranean example, this new praedo represented not a totalitarian state but Islam as a hostile, Other cultural realm. At the same time, the Mediterranean constellation was updated in significant ways: the barbarian represented by this terrorist praedo was not a specific political entity such as the Barbary state; rather, Islam was understood as an ideology that, like the other relevant ideologies of the time, had a spatial equivalent derived from the Cold War compartmentalization of the world. If the First World of the West constituted frontier civilization, and the Second World of the Eastern bloc under the leadership of the Soviet Union represented totalitarianism, the Third World would come to be associated with a barbarian interpretation of Islam in these neoconservative discourses.

For the terrorist figure to be used as a praedo to represent Third-World Islam, it was first necessary to arrive at a new understanding of terrorism. The most prominent terrorist groups of the 1970s, such as the Irish Republican Army or the German Red Army Faction, were nationally organized, and defense against them was satisfactorily covered by national criminal law. The conventional understanding of terrorism in the 1970s was thus affected by the same discursive restrictions as the assigning of inherent evil to the
counterculture movement or impoverished African Americans: one could not disregard the national context, and thus a sense of potential institutional complicity and responsibility, in any analysis of such evil groups and their emergence. Moreover, terrorism in a national context always raised the question of the perpetrators’ potential status as freedom fighters—a question that continues to rage on an international level, especially since the introduction of the international terrorist as the epitome of illegitimacy in US discourse after 9/11 (Barnidge, Non-State Actors, 32–33).

International terrorism was at first a subject of marginal interest to researchers—chiefly neoconservatives—in the United States. They experienced an analytical and political breakthrough in the 1980s, when Palestinian violence against Israel was increasingly systematically framed not as a negotiable conflict over access to territory, but as an essentialist conflict between civilization and its inherent Other. The administration of President Ronald Reagan was particularly important for the rediscovery of the essentialist interpretation of hostis humani generis in the United States. In terms of space, “the policy of the Reagan administration against Middle Eastern terrorism can be considered as predominantly ‘globalist,’ meaning one that relied on the global conceptual frameworks of the Cold War to understand regional events and to take [sic] decisions” (Toaldo, “Reagan Administration,” 3). When it came to acts of nonstate violence against representatives of the West, which were now explicitly framed as acts of terrorism, “the [Reagan administration] viewed terrorist attacks as illegitimate acts by the Soviet Union’s proxies who were intent on undermining the West” (Wills, First War, 22). Emphasizing the representative dimension of legitimate intervention, “Reagan was . . . very concerned for the fate of individual [innocent] victims of terrorism” (ibid., 24). In short, the Reagan administration “did not start a comprehensive new policy against terrorism [but] experimented with tools and ideas that later were incorporated into Bush’s War on Terror” (Toaldo, “Reagan Administration,” 2). These experiments notably included a rereading of the hostis humani generis legal fiction via the example of international terrorist as a quasi-Mediterranean corsair.

The first explicitly public connection that was made between terrorism and the legal fiction of hostis humani generis was occasioned by the Achille Lauro incident. In the fall of 1985, members of the Palestine Liberation Front hijacked a cruise ship, the Achille Lauro, to force the freeing of fifty-one Palestinians from Israeli prisons (Wills, First War, 143). With only one death, this incident was “remarkable less for what actually happened than for the new trends in international relations it revealed” (Cassese, Politics, 17).

The perpetrators in the Achille Lauro incident could not be described as pirates by the standards of 1985. During the course of a single criminal act,
they moved into various national jurisdictions as well as international waters and airspace, which made it impossible to use the territorial definition of piracy offered by the Harvard Draft, which had been adopted without changes into the 1982 United Nations Convention on the Law of the Sea (UNCLOS). It was mainly because of the UNCLOS definition of piracy that international legal scholars overwhelmingly regarded the incident as an act of terrorism. The Reagan administration did not immediately follow suit. Instead, US officials suggested that the perpetrators were pirates—not pirates as defined by UNCLOS, but by analogy “modern pirates” (Cassese, Politics, 68–70).

The international legal community remained unconvinced, and the United States finally agreed that the Achille Lauro incident constituted an act of terrorism. Still, the attempt to define the hijackers as pirates draws attention to an interpretive pattern. Even before the Achille Lauro incident, officials of the Reagan administration had been extremely vocal in trying to define terrorism as a separate new variation of the hostis humani generis fiction that discontinued its use with the slave trade and crimes against humanity (Cassese, Politics, 69). Instead, the terrorist was going to be an explicit successor to the maritime pirate of early modernity, and the arguments made here unambiguously refer to William Blackstone’s definition of hostis humani generis in their understanding of terrorism. This effectively meant a reversal of the fiction’s groundbreaking legal reinterpretation in the twentieth century that had informed the Nuremberg trials, the Eichmann trial, and Filártiga v. Peña-Irala. The reading of terrorists as hostes humani generis constituted nothing less than an attempt to reestablish an imperial interpretation of the legal fiction that identified the enemy of all humankind in the margins of states rather than underneath them—as the attackers of random victims rather than of humanity’s essence.

In the 1980s, the international legal realm was the most important stronghold of the frontier interpretation of hostis humani generis. The Reagan administration’s attempt to legally redefine both hostis humani generis and terrorism constituted a full-on assault not just on the frontier interpretation of hostis humani generis, but also on the legal realm as the most influential institutional interpreter of violence as legitimate or illegitimate. Unsurprisingly, a debate of such magnitude did not long remain restricted to the legal sphere. In the year after the Achille Lauro incident, two books were published in the United States that may illustrate the shifting grounds of the debate on legitimate violence.

The anthology edited by Benjamin Netanyahu, Terrorism: How the West Can Win (1986) constitutes the first concerted public attempt to define international terrorism by the use of the legal fiction of hostis humani generis in the United States. The anthology consists of forty-one very brief chapters
by different authors that were assembled to form a single coherent argument. Netanyahu was Israel’s ambassador to the United Nations at the time, and the anthology was a result of the second international conference organized by the ultraconservative Jonathan Institute in 1984. This institute organized only two major conferences, the first in Jerusalem and the second in Washington, D.C. These locations indicate that government officials were the main target audiences; indeed, the Terrorism anthology, published in the United States, was designed to serve as a policy recommendation for US officials. More than half of Terrorism’s forty-one contributors were high-ranking US conservatives from the realms of academia, politics, law, and the media. As the editor of the volume, Netanyahu provides an overarching definition of terrorism that all contributors share in their articles:

What distinguishes terrorism is the willful and calculated choice of the innocent as targets. When terrorists machine-gun a passenger waiting area or set off bombs in a crowded shopping center, their victims are not accidents of war but the very objects of the terrorists’ assault.

I am prepared, at the risk of belaboring the point, to offer a formal definition, the one adopted in Jerusalem in 1979 [during the first international conference organized by the Jonathan Institute]: Terrorism is the deliberate and systematic murder, maiming, and menacing of the innocent to inspire fear for political ends. (Netanyahu, “Defining Terrorism,” 9)

In this passage, Netanyahu defines a very specific terrorist figure (rather than the totalitarian state) as the invader of the innocent. The definition directly draws on the work of Claire Sterling, a contributor to the anthology (“Unraveling the Riddle”), who had written what may be called the authoritative study on international terrorism in 1981—The Terror Network: The Secret War of International Terrorism. Although the book has been highly controversial ever since it was published, it has informed most political and scholarly understandings of international terrorism in the West. In the book, she traces the emergence of terrorism back to “a significant change in the Russians’ unofficial foreign policy” that expressed itself in “an avuncular interest in terrorist ‘adventurers’ of every alarming shade” and a resulting spate in Soviet funding of terrorist groups (Sterling, Terror Network, 13). Sterling’s definition of terrorism is based on a clear distinction between terror states and terror groups, a distinction that is adopted throughout the Terrorism anthology, albeit with variations regarding these entities’ specific relationship to each other.

In Sterling’s original study, as in Terrorism, the ultimate terror state is identified as the Soviet Union, characterized by totalitarian communism. Terror groups, in contrast, are characterized by a separate allegiance to a militant, fanatic, and antimodern Islam. “Communist totalitarianism and
Islamic radicalism” is a phrase used by various contributors to *Terrorism*, and these two barbarous ideologies correspond with the twin threat of “anarchy and tyranny” against which democracy has to be defended inside and outside national borders (see, for example, P. Johnson, “Cancer,” 31; Shultz, “Challenge,” 19). The legal fiction of hostis humani generis is explicitly evoked as the basis for a legitimate defense against this twin threat (Kirkpatrick, “Totalitarian Confusion,” 57; Leiser, “Enemies of Mankind,” 155–56).

In these arguments, Islam is introduced as a category of inherent illegitimacy that originates outside of civilization (meaning that it originates in the Third World). Compared to the secular totalitarian regime that necessarily operates from within representative statehood and thus remains an illegitimate element of an international order based on nation-states, the terror group is described as an even more inherent Other. The fundamentalist terror group as a nonstate Other is not identified along Cold War state lines, but with the help of a “discursive-intellectual binary that lines up [Judeo-] Christianity, secularism, reason, tolerance, free thought and speech on one side, and Islam, fundamentalism, submission, intolerance, restricted thought and speech on the other” (W. Brown, introduction, 14). In *Terrorism*, the terror groups’ ideological outlook, and their corresponding use of violence, are constructed as too extreme and inhuman to be fully reducible to a pursuit of rational political interest, even by totalitarian states—hence the terror groups’ direct association with anarchy throughout the anthology, and their specific construction as hostes humani generis in the context of an imperialist tradition that foregrounds the defense of innocent citizens against brutish, irrational, marauding nonstate actors (see especially Kirkpatrick, “Totalitarian Confusion,” 57; Leiser, “Enemies of Mankind,” 155–56).

Netanyahu’s editorial definition of terrorism relies on precisely this distinction between terror groups and any kind of state, legitimate or illegitimate. Terror groups are specifically singled out as the most dangerous invaders of the innocent. As in the arguments of the Reagan administration related to the *Achille Lauro* incident, the characterization of terror groups in *Terrorism* clearly refers to Blackstone. If Islam is the unifying ideological reference of terror groups, the representation of Islam is by definition—indeed, by argumentative necessity—a cultural allegiance that arrests representatives in a state of nature similar to that associated with Native Americans in colonial times. Now, however, it is not the American continent that must be civilized by settlers, but the whole world, especially the Third World, that must be civilized in a way to ensure that it neither remains Muslim nor becomes communist. To protect the innocent in this way, the First World representative of civilization acts as if he existed in the state of nature, which enables him to match the inhumane anarchy that informs the
illegitimate acts of his new opponent, the Third World praedo in representation of Islam.

Blackstone had legitimized unrestricted imperial violence on the assumption that there was a racialized outside to civilization in Locke (Mills, “Racial Liberalism,” 1382). However, belonging to that racialized outside is a dividing line that is relevant only for violent agents. The innocent are generally not racially determined—only their defender and their invader are. In this vein, Terrorism implicitly defines the representative of civilization as white and Western, and the praedo as the racialized representative of Islam. They may, however, harm or protect any innocent, regardless of the innocent’s race, which allows their essentialist conflict to be a truly globalist one.

These characterizations of terror groups simultaneously anticipate two predictable qualifications that informed—and continue to inform—debates on the definition of terrorism (Barnidge, Non-State Actors, 69, 101, and 125). The central emphasis on the innocent as the victims of terrorism discourages counterarguments based on the truism that one person’s terrorist is another person’s freedom fighter. Since the freedom fighter arguably operates on behalf of the innocent against an invasive oppressor, Netanyahu suggests, the terrorist as an invader of the innocent cannot by definition be considered a freedom fighter. Furthermore, by explicitly focusing on terror groups, the definition conveniently excludes any consideration of state violence’s effect on noncombatant innocents.

This latter point especially has occasioned the criticism of Noam Chomsky in Pirates and Emperors, Old and New: International Terrorism in the Real World, an essay collection also published in 1986. In the collection, Chomsky pointedly critiques the definition of the innocent exemplified by Terrorism and uses the Augustinian anecdote to make his argument understood. The Augustinian anecdote, Chomsky writes,

captures with some accuracy the current relations between the United States and various minor actors on the stage of international terrorism: Libya, factions of the PLO [Palestine Liberation Organization], and others. More generally, St. Augustine’s tale illuminates the meaning of the concept of international terrorism in contemporary Western usage, and reaches to the heart of the frenzy over selected incidents of terrorism currently being orchestrated, with supreme cynicism, as a cover for Western violence.

The term “terrorism” . . . has come to be applied mainly to “retail terrorism” by individuals or groups. Whereas the term was once applied to emperors who molest their own subjects and the world, now it is restricted to thieves who molest the powerful—though not entirely restricted: the term still applies to enemy emperors, a category that shifts with the needs of power and ideology.
Extricating ourselves from such practices, we use the term “terrorism” to refer to the threat or use of violence to intimidate or coerce (generally for political, religious, or other ends), whether it is the terrorism of the emperor or the thief.

The pirate’s maxim explains the recently evolved concept of “international terrorism” only in part. It is necessary to add a second feature: an act of terrorism enters the canon only if it is committed by “their side,” not ours. (*Pirates and Emperors*, vii)

Chomsky’s assessment is a fair summary of the strategic benefits of the essentialist interpretation of hostis humani generis in the late Cold War, especially since, as he observes, the essentialist definition of “the innocent” tends to be translated as “the Western citizen” in practice (*Pirates and Emperors*, 39). Indeed, in the arguments that he attacks, defensible civilization is present in the national territory of Western states as a matter of course, but not only in the territory: it is also present in the body of each citizen, each box of cargo, each institutionalized stream of command and information that moves through the world at large—it is present in all “representatives of Western power wherever they might be” (Gage, “Terrorism,” 90; see. also Policante, *Pirate Myth*; Thorup, *Intellectual History*). Every manifestation of Western influence can be actualized as a manifestation of civilization as soon as it is violated—which means, in practice, that harmed Westerners can be retrospectively characterized as innocent by default. It follows that any Western state’s intervention on behalf of harmed Westerners anywhere on the globe is legitimate, even if a claim to sovereign self-defense cannot be made (Cassese, *Politics*, 67).

Throughout *Pirates and Emperors*, Chomsky argues that the concentration on Westerners as the innocent victims of terrorism hides the fact that Western states, too, rely on strategic cooperation with “terrorist ‘adventurers’ of every alarming shade” (Sterling, *Terror Network*, 13; see also, for example, Chomsky, *Pirates and Emperors*, 83 and 115). The United States itself, Chomsky concludes, can be considered a “terror state” in *Terrorism*’s sense—not reducible to the inherent Otherness represented by terror groups, but certainly implicated by association.

Chomsky is nevertheless careful to avoid any suspicion of endorsing those states and groups already identified as terrorist by the Reagan administration. Instead, he endorses his opponents’ claim that the victims of terrorism are innocent but adds that other victims, invaded by Westerners and their allies, are innocent as well. To understand what Chomsky does not do, it is helpful to compare his arguments with those of critics like Seumas Miller. Miller analyzes the antidemocratic implication of imperial constructions of Western “innocents” (*Counter-Terrorism*, 36) and suggests that Western civilians who fall victim to terrorism may never be innocent “in the required
sense” (ibid., 38) because they are citizens rather than subjects. After all, the construction of the innocent as inherently Western automatically renders the citizens of democracies—which all Western states are to some degree—the state’s innocent subjects instead. It is because of the antidemocratic implications of the category of innocence that Miller rejects the notion of the innocent as a workable centerpiece in definitions of anti-Western terrorism (ibid., 36–42). In Pirates and Emperors, however, Chomsky affirms the imperial construction of Western citizens of democracies as innocents who are wrongfully subjected to violence and simply extends this definition to every human being. Chomsky rhetorically embraces the construction of Western “emperors” and their complementary antagonists of terror states and terror groups (“enemy emperors” and “retail terrorists”). Only in this way is he even able to use the terminology of terrorism introduced by Sterling and then normalized in the debates on international terrorism exemplified by Terrorism. The acceptance of this basic constellation is the price to pay for being able to point out the “hypocrisy” of conceptualizing the innocent as inherently “Western,” and the enemy of all humankind as anyone on the globe who attacks “the West” anywhere (Chomsky, Pirates and Emperors, x).

It is obvious from Netanyahu’s definition of terrorism alone that the charge of totalitarianism against Western states is something that representatives of the essentialist interpretation have understood as an unavoidable element of their opponents’ rhetoric, and as a problem of legitimacy that they have argumentatively moved past with their new focus on terror groups. By using the Augustinian anecdote and thus equating “retail terrorists” with pirates, Chomsky falls victim to his opponent’s greater argumentative sophistication on this point, as Chomsky unwittingly affirms the very claims that his opponents make so aggressively in the first place—namely, that it makes analytical sense to render terrorists and early modern maritime pirates equivalent, and that international terrorists must be seen as collectives directly in the tradition of the early modern interpretation of hostis humani generis.

The fact that Chomsky’s critique is ineffective at this level indicates that in the arguments of the contributors to Terrorism the relationship between terror state and terror group is not one of praedo and renegade pirata, as the notion of state-sponsored terrorism might suggest at first glance; instead, twentieth-century concepts of totalitarian states as illegitimate orders are used by neoconservative critics as a springboard to suggest a conceptualization of the racialized terror group as an Other of more inherent organizational and normative difference. The definition of the terror state may very well implicate the United States as one such state, but the terror group’s potential for the formulation of claims to legitimate violence lies precisely in the idea that such a group does not actually represent any state at all.
Still, Chomsky’s tacit acceptance of the pirate-emperor constellations is not naive. It serves a purpose of its own, which is, essentially, to claim legitimacy for his own voice as a critic. An element of his argument that merits closer attention is the demand that everyone on the globe ought to be recognized as innocent in Terrorism’s sense. To be able to render the United States an illegitimate “emperor” rather than a representative of civilization, Chomsky makes a significant difference between the “emperor,” who is the US administration and its national counterparts in other Western states, and a planetary us, who are all of these emperors’ innocent and misrepresented subjects. This argumentative move is consequential in its own right.

In my discussion of the Augustinian anecdote in the Free Prince speech, I drew attention to the fact that the rich did not misrepresent civilization in ways that could be remedied through reform, but that they were as inherently illegitimate and alien to civilization as pirates. This radical externalization of the rich as an equivalent to the Augustinian emperor caused a dilemma, since both illegitimate agents had to be replaced by a more legitimate one—a successor that never in fact materialized. In Chomsky’s argument, we are presented with a similar problem. If even the United States, a democratic state, is defined as a totalitarian emperor in the language of the Augustinian anecdote, the other two figures of the Augustinian anecdote—the legitimate ruler and the innocent—emerge as potential alternative sources of political legitimation. Even though Chomsky’s use of the Augustinian anecdote endorses neoconservative positions about the emerging figure of the international terrorist as an early modern pirate, his argument has some interesting implications because, according to his logic, the legitimate ruler and the innocent are the same people—namely, the citizens of a democracy (Pirates and Emperors, viii). Correspondingly, the legitimate successor to all violent states and groups worldwide is the collective of the planetary innocent, violated by pirates and misrepresented by emperors.

Any leap from this argument toward a vision of anti-imperial revolution would be hasty, however, since the innocent in this argument is still the innocent—a figure that is defined by its function of being represented. Most of the representative legitimacy lent by a planetary population of victimized innocents is absorbed by the effort of lending legitimacy to the critical voice itself—in this case, Chomsky’s. After all, how can the critic claim to live (and argue) legitimately within the very structures of an imperial state that he charges with totalitarian madness and evil? In Chomsky, we the people who represent the true values of American democracy are rendered inherently innocent by a totalitarian regime structuring our lives—moreover, we share this fate with all others on the planet. We are without agency and cannot voice our position. This is why critics like Chomsky (in Pirates
and Emperors), by drawing attention to our perilous situation, can assume legitimate representative agency over us. Such critics represent us and our civilizational values at the paradoxical price of affirming and reinforcing the idea that Western democratic citizens cannot in practice act in the role of the legitimate ruler of state institutions because their legitimacy stems from the fact that they are innocent.

Chomsky is not, of course, the only critic who represents the underrepresented innocent in this way. After the Cold War, this paradoxical construction of the innocent as the central resource of legitimate scholarly intervention has been pursued by a large number of critics. For example, Giorgio Agamben’s critical self-position in his influential study Homo Sacer (1998) is in large measure interchangeable with that of Chomsky in Pirates and Emperors (see Schillings, “Privateering Critic”).

First published in 1995 and translated into English by Daniel Heller-Roazen in 1998, Homo Sacer participates in the debate between Francis Fukuyama and Samuel Huntington, which pertained to the role of the United States as the sole remaining superpower after the dissolution of the Soviet Union in 1991. While Fukuyama envisioned a planetary transformation in the spirit of liberal democracy and the human rights regime (End of History, 334–38), Huntington envisioned a “clash of civilizations” with Islam as the main new adversary of Judeo-Christian civilization (Clash of Civilizations, 247–52). Agamben challenges both positions, insofar as he attacks their shared assumption that the United States represents civilized order (Homo Sacer, 38, 176–77, and 187). Instead, he suggests that any planetary order that relies on institutions exhibits inherent totalitarian underpinnings (ibid., 176). His book is explicitly devoted to a discussion of “the bare life of the citizen” (ibid., 9; emphasis added).

Agamben affirms Chomsky’s reading of “the [American] emperor” as external to the civilization he claims to represent and identifies a no man’s land of oppression that exposes any institutional sovereignty as an illegitimate emperor (Homo Sacer, 161). The homo sacer is, according to Agamben’s definition, a figure locked in this no man’s land, as he is trapped between the states of political and biological death.Echoing the assumptions of analyses of torture, the irrevocable defamiliarization from civilization is central to the status of the homo sacer. For instance, in Agamben, such status can be assigned to the surviving devotee; a person on death row; the comatose patient; and, most importantly, the concentration camp inmate. Andreas Vasilache has argued that the homo sacer, far from being a biopolitical entity in Foucault’s sense, is subjected to a violence that is “exclusively breaking and not at all strategic or productive” (“‘Homines sacri,’” 59; my translation). Indeed, Agamben insists on the homo sacer as a polar opposite to the sover-
eign, even to the extent that the homo sacer can be so broken that he moves beyond the transformative reach of the sovereign (Homo Sacer, 184–85).

Agamben’s construction of the homo sacer as the epitome of innocence produced by violence is important for this book because he describes in detail a claim that was only sketched by Chomsky in the 1980s—namely, that only illegitimate totalitarian Leviathans and homines sacri can exist in a planetary order based on nation-states. Agamben’s sovereign is understood as expansionist but replaces a “taking of land” with a “taking of the outside” of the law (Homo Sacer, 19). Because the totalitarian planetary hegemon is conceptualized as a single coherent body, violence on its behalf can be conceptualized as a removal of threats to the integrity of the Agambian Leviathan, a notion familiar from classic constructions of totalitarianism (see Arendt, Totalitarianism, 460–65; Evans, Rituals, 633, 649–50, and 696–709).

In the first part of his argument in Homo Sacer, Agamben cites a range of historical examples to help equate sovereignty and Hobbesian representative agency (105–6). This somewhat rough and sweeping equation is needed to establish the premises of the argument’s second part, which constitutes the core of Agamben’s argument. Here, he discusses the totalitarian state and its specific production of the homo sacer, since he conceptualizes the sovereign as an entity characterized by the refusal to acknowledge any representative entities other than itself. The totalitarian will becomes the only relevant representative will. The politicization of biological life, in this sense, subjects not only the citizens of the concerned state but potentially everyone on the planet to the representative claim of a totalitarian sovereign (ibid., 83–84 and 188). One vehicle used to enforce such a sovereign’s claims to universal violent outreach may be the notion of universal jurisdiction against the enemy of all humankind. This specific development of Agamben’s argument is made by Heller-Roazen in The Enemy of All and, in part, by Amedeo Policante in The Pirate Myth.

A different integration of the homo sacer constellation into a discussion of hostis humani generis is possible, though, and a historical example—that of American prisoners of war during the First Gulf War—may help illustrate how and why this can be done. After the Vietnam War, soldiers who were missing in action (MIA) had gained legendary significance as figures that retrospectively helped argue for a legitimate American cause in Vietnam. Their case provided a counternarrative to the increasingly widespread charge against the United States as an illegitimate invader that committed crimes against humanity, and against individual soldiers as hostes humani generis even in their own self-descriptions (Engelhardt, Victory Culture, 226). After the Vietnam War, references to soldiers who were MIA in films such as Missing in Action (1984) and Rambo II (1985) were crucial for retrospectively repositioning the United States as a good, legitimate force in Vietnam (Pease,
Exceptionalism, 62–63). Because of this importance of these soldiers in America after the war, Tom Engelhardt notes that all US soldiers in the First Gulf War were conceptualized in the spirit of those MIA in Vietnam before they even saw combat. The troops at large were framed as “America’s innocent soldier boys” and as traumatized victims rather than adult agents of war (Boose, “Techno-Muscularity,” 593, see also 610–11; see also A. Hunt, The Turning, 55–76). In a footnote, Engelhardt includes an interesting aside:

Because the troops were already imagined as hostages, there was confusion about how to handle the small number of military personnel captured by the Iraqis during hostilities (a few of whom were shown, looking battered, on Iraqi TV). Were they heroes simply for being there or cowards for saying a few words? Either way, once released, the POWs [prisoners of war] seemed like awkward presences. In the end, they rode in a few parades and then were largely ignored. [In contrast to the Vietnam POWs, their memoirs were not requested. Miniseries were not produced. It was as if, on returning, they went MIA in America. (Victory Culture, 288)

The ghostlike, “awkward presences” of these First Gulf War veterans who “went MIA” can be conceptualized as the presence of surviving devotees as homines sacri in Agamben (Homo Sacer, 97), and they point to homo sacer as a concept of exclusion that requires the broader conceptualization of innocence to become persuasive. As Engelhardt suggests, had the Gulf War troops not been conceptualized from the start as the innocent quasi prisoners of war, it would have been as easy to conceive of the victimization of actual prisoners of war in Iraq as it had been in Vietnam. In Vietnam, POWs had moved from a status of legitimate representation of civilization to the nonstatus of the innocent. But because the status of innocence was preemptively assigned to soldiers in the First Gulf War, POWs who were victimized in even more radical ways than exposure could no longer be made comprehensible according to the logic of representative agency. Therefore, they became homines sacri—a position that referred solely to their lack of any status, even that of innocents. Theirs was essentially the reverse of the traditional dilemma of the pure woman who violently prevents her own rape.

One may indeed argue that the concept of homo sacer in general describes a reverse pure woman paradox, and that this new paradox deviates from the older one in interesting and helpful ways. In its traditional form, the pure woman paradox makes the oppression of the prepolitical family visible and problematizes the construction of natural innocence by endowing the innocent with properties of agency. As Wendy Brown and Judith Butler argue, the rule of the paterfamilias is conventionally legitimated because he uses violence to protect the innocent from illegitimate violence. While the
legitimacy or illegitimacy of violence is thus examined in every encounter between the two representative men, the pure woman exposes the fact that both the legitimate paterfamilias and the illegitimate free agent rely on the innocents’ oppression. By rising from oppression and committing defensive (and therefore legitimate) violence, the pure woman radically renegotiates the sources of legitimacy because she questions the righteousness of her oppression; in this way, I have argued, she can evolve into a foundational pirata figure.

The homo sacer concept may well be called a reverse pure woman paradox because it is the homo sacer’s very passivity, his brokenness by violence, that is theorized to be the source of his disturbing and disquieting presence. I have indicated at several points of this book that in the twentieth century, the tables are turned in terms of oppression and violence. Whereas oppression becomes a hotly debated issue that distinguishes a legitimate rule of law from an illegitimate totalitarian rule, the violence that maintains the institutions of both forms of rule is depoliticized, just as oppression is in the traditional pure woman paradox (Cover, “Violence,” 203–4). The homo sacer exposes this fact.

In his construction of the homo sacer constellation, Agamben draws attention to the fact that physical violence against populations is still used by both forms of rule to establish and maintain power over populations—and, as in the original pure woman paradox, a solution to the paradox is virtually impossible to formulate from within the institutional structures whose inner logic is thus exposed. The Gulf War example highlights the fact that modern rule always relies on the violent subjection of human beings. Just as the pure woman radically questions the legitimacy of her oppression by the paterfamilias, the externalization of the homo sacer questions the legitimacy of violence in the name of any cause—even including the removal of oppression.

The radical rejection of violence as a neutral resource for formulating a transformative intervention into territorial or institutional space, as postulated by the reverse pure woman paradox in Agamben, seems at first glance to leave no feasible options for change. The traditional pure woman could become a foundational pirata because she was, after all, a new agent—but the homo sacer is a human being stripped of the capability to act in any way.

However, one figure remains as a potential source of legitimate agency: the critic who, in producing a text that draws on the hostis humani generis constellation, draws attention to the dilemma in the first place. The concept of the homo sacer suggests that no violence is ever legitimate but postulates (by posing as an expressly legitimate act of critique) that speaking itself can show a way out of the dilemma. Since the homo sacer is a mute entity and the critic assumes legitimacy by speaking on his behalf, it becomes interesting to interrogate how the act of critical speaking may actually relate to the problem of legitimate violence after the Cold War.