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## POTENTIALITY, SOVEREIGNTY AND BARE LIFE

### A CRITICAL READING OF GIORGIO AGAMBEN

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#### ABSTRACT

This article presents a critical account of Agamben's understanding of the logic of sovereignty and of the notion bare life, particularly Agamben's approach to the paradox of sovereignty and its relation to Aristotle's metaphysical category of potentiality. With regards to bare life, it brings together an analysis of the figure of the *homo sacer* with an account of Agamben's use of paradigms as methodological tools. The first part of the paper argues that Agamben ontologises sovereignty by dramatising the paradox of its structure as im-potentiality. The second part claims that even though an account of Agamben's methodology serves to respond to the different critiques that his notion of bare life has raised, Agamben's notions of sovereignty and of bare life ultimately rely on Schmitt's decisionism.

*Keywords:* G. Agamben, bare life, biopolitics, sovereignty.

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## POTENCIALIDAD, SOBERANÍA Y NUDA VIDA UNA LECTURA CRÍTICA DE GIORGIO AGAMBEN

### RESUMEN

El artículo hace un recuento crítico de la forma en que Agamben entiende la lógica de la soberanía y la noción de nuda vida, particularmente su abordaje de la paradoja de la soberanía y su relación con la categoría metafísica aristotélica de la potencialidad. Con respecto a la nuda vida, combina el análisis de la figura del *homo sacer* con un recuento del uso que hace Agamben de los paradigmas como herramientas metodológicas. En la primera parte del ensayo, se argumenta que Agamben ontologiza la soberanía al dramatizar la paradoja de su estructura como im-potencialidad. En la segunda, se afirma que aunque la descripción de la metodología de Agamben sirve para responder a las diferentes críticas suscitadas por su noción de nuda vida, sus nociones de soberanía y de nuda vida dependen, en última instancia, del decisionismo de Schmitt.

*Palabras clave:* G. Agamben, nuda vida, biopolítica, soberanía.

## POTENCIALIDADE, SOBERANIA E VIDA NUA UMA LEITURA CRÍTICA DE GIORGIO AGAMBEN

### RESUMO

Este artigo apresenta a versão crítica do entendimento de Agamben sobre a lógica da soberania e da noção de vida nua. Em particular, a aproximação de Agamben para o paradoxo da soberania e da sua relação com a categoria metafísica da potencialidade de Aristóteles. No que diz respeito à vida nua, reúne uma análise da figura do *homo sacer* com uma explicação do uso de Agamben de paradigmas como ferramentas metodológicas. Na primeira parte deste artigo, argumenta-se que Agamben ontologiza a soberania dramatizando o paradoxo de sua estrutura como im-potencialidade. Na segunda parte, será alegado que, apesar de uma explicação da metodologia de Agamben ter servido para responder às diferentes críticas que sua noção de vida nua tenha levantado, em última análise, duas noções da soberania e vida nua de Agamben dependem do “decisionismo schmittiano”.

*Palavras-chave:* G. Agamben, vida nua, biopolítica, soberania.

Agamben opens a provocative line of research that provides insightful links connecting the politisation of death and the biopolitical activity of the sovereign power by focusing on the correlation between modernity and sovereignty. However, it will be argued that in the cause of taking to the extreme this correlation through an excessive dramatisation of the paradox of sovereignty, Agamben entrenches himself in an ontological position that, while achieving its intention of criticising sovereignty as a whole, ends up in naturalising it as an omnipresent figure that produces the camp as an inescapable zone of indistinction.<sup>1</sup>

The first section of this article presents an account of Agamben's theory of the state of the exception and the structure of sovereignty, in order to subsequently call into question Agamben's invocation of Aristotle's metaphysics in his analysis of constituting and constituted power. Here, my central argument is that, in Agamben, the de-centering of sovereignty is only achieved through its ontologisation as im-potentiality,<sup>2</sup> that is to say, Agamben takes one step away from Schmitt (and only one) at the expense of constructing sovereignty as an omnipresent figure. Instead, I suggest that the retreat of sovereignty corresponds to the dislocation of the state of exception and of the law as the privileged categories that inform the political production of bare life.

Section two is devoted to Agamben's notion of bare life and his treatment of the figure of the *homo sacer* as a paradigm that attempts to make intelligible a broader historical-problematic context (cf. 2009 9). After an analysis of the notion of bare life (in terms of Agamben's reading of Benjamin) and of the figure of the *homo sacer*, I present a recapitulation of Agamben's use of paradigms as methodological instruments. With this in mind, I consider two critical remarks that the figure of the *homo sacer* has raised. Firstly, the critiques that revolve around the *homo sacer* as a figure that captures only one of the possibilities of being "outside" the law, and secondly, the problematisation

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1 This is also one of the conclusions of Jacques Rancière who claims that for Agamben, "Any kind of claim to rights or any struggle enacting rights is [thus] trapped from the very outset in the mere polarity of bare life and the state of exception" (2004 301).

2 To be precise, the ontologisation of sovereignty will be understood as the process through which Agamben assigns to the structure of the sovereign ban the notion of potentiality, which is, in turn, connected to a particular reading of Heidegger and an account of language. This move, however, should be located within Agamben's search for the ontological foundation of Western politics. In this sense, in Agamben, the ontologisation of sovereignty is not the ontologisation of the political but rather it is the return to sovereignty after a politisation of ontology has been displayed.

of the concept of bare life as referring interchangeably to two different figures, to *zoēas*, simply the biological life of human beings, and to the figure of the *homo sacer*, as he who may be killed but not sacrificed.

To conclude this part, I argue that an account of Agamben's methodology provides a ground to respond these critiques. However, given Agamben's insistence on Schmitt's decisionism (2004), I suggest, as a conclusion of this enquiry, that a double movement is necessary: to rethink the decentering of sovereignty as the determinant political category, not via the dramatisation of the paradox of sovereignty but via its de-ontologisation. And secondly, to reconstruct the notion of bare life by deactivating the residues of Schmitt's decisionism within Agamben's framework.

### The Paradox of Sovereignty and Potentiality

Antonio Negri traces the concept of sovereignty through that of a crisis, discussing the necessity to "escape the fetish of sovereignty as the concept of government in modernity" (2010 209). After locating different perspectives within postmodern thought that sustain this crisis (from the biopolitical transformation of the concept of sovereignty to its modification in the light of international law), Negri poses a cardinal question for this enquiry:

If, in the current post-modern climate, the principle of sovereignty is dissolving, could it however be rebuilt –stripped of every spurious characteristic– abstracted into an unambiguous definition of "exceptionality"? ... This is what some legal-philosophical positions rather ambiguously –and very abstractly– propose, sometimes claiming that the strength of the exception restores the entire process of the production of law under the auspices of sovereignty, at others recognising in the emergence of the exception a new figure of sovereign command .... But it is a process so abstract (and teleological or –as Kant put it– terroristic, that is, armed with a radical ethical pessimism, based on a metaphysics of transcendence) as to become instrumental in too many theoretical positions and indifferent to too many ideological standpoints. When a key opens too many doors it can only be a lock-pick. (2010 208)

Giorgio Agamben's critique of sovereignty represents precisely a threshold in the totalisation of sovereignty through a re-composition of its abandonment in the category of the exception. Indeed, following Schmitt, Agamben claims that sovereign power is undoubtedly situated within and above the law (*cf.* 1998 15), coinciding with different thinkers from a wide range of intellectual traditions –*e.g.* Rousseau, Derrida, Deleuze, Kafka– by affirming that there is a fundamental paradox at the core of sovereignty (*cf.* Connolly 2007 24), which con-

sist in the fact that the sovereign is outside and inside the juridical order (cf. Agamben 1998 15). Unlike Rousseau, who, in *On the Social Contract*, comprehended the paradox of sovereignty<sup>3</sup> to thenceforth negotiate its terms and resolve it through the figure of the wise legislator<sup>4</sup> and the appeal for a unified nation, Agamben's reading of sovereignty discloses deeper paradoxes that could only be resolved by rejecting or transcending its logic altogether, a task that becomes unachievable once the paradox of sovereignty is taken to a point at which it is no longer possible to tell apart modernity and sovereignty.

For Agamben, and certainly for Schmitt, this paradox lies in the fact that the sovereign, having the legal power to decide if the juridical order is to be suspended, legally places himself outside the law. Consequently, the limits of the juridical order are subjected to the structure of this paradox, whose topology corresponds to the structure of the exception (cf. Agamben 1998 15). In a well-known passage from *Political Theology* (2005), quoted by Agamben in *Homo Sacer*, Schmitt writes:

The exception appears in its absolute form when it is a question of creating a situation in which juridical rules can be valid .... There is no rule applicable to chaos ... –and therefore– a regular situation must be created and the sovereign is he who definitely decides if this situation is actually effective ... [h]e has the monopoly over the final decision. (19)

Thus, the exception –which for Agamben becomes more important than the regular situation–, is explained by the fact that a final authority is required to suspend the validity of the positive law, to define “the normal case as the realm of its own validity” (1998 16). This final authority is insufficiently informed by any law that precedes it: “Authority proves itself not to need law to create law” (Schmitt 19).

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- 3 For Rousseau the Paradox of Sovereignty resides in the fact that “In order for an emerging people to appreciate the healthy maxims of politics and follow the fundamental rules of statecraft, the effect would have to become the cause: the social spirit which should be the result of the institution, would have to preside over the founding of the institution itself; and men would have to be prior to the laws what they ought to become by means of laws” (2004 27).
  - 4 Here it is worth quoting Rousseau's comments on the figure of the legislator in full: “He who dares to undertake the making of a people's institutions ought to feel himself capable, so to speak, of changing human nature, of transforming each individual, who is by himself a complete and solitary whole, into part of a greater whole from which he in a manner receives his life and being; of altering man's constitution for the purpose of strengthening it; and of substituting a partial and moral existence for the physical and independent existence nature has conferred on us all. He must, in a word, take away from man his own resources and give him instead new ones alien to him, and incapable of being made use of without the help of other men” (2004 25).

The character of the exception is defined by Agamben as an exclusion, which preserves a relation with the general rule as a form of the rule's suspension. In this sense, the rule applies in no longer applying and, therefore, the state of exception, far from being the chaotic situation that precedes the order, is the scenario that results from its suspension (cf. Agamben 1998). It is in this light that we must read Carl Schmitt's statement that "sovereignty presents itself in the form of a decision on the exception" (qtd. in Agamben 1998 26).

The complexity of the inclusion described by Agamben exceeds not only Deleuze's and Guattari's affirmation of the capacity of sovereignty to rule only over what it is capable of interiorizing (cf. 1987 45) but also Blanchot's claim that there is an attempt of society to confine the outside and constitute it in an "interiority of expectation or of exception" (1993 272). Indeed, Agamben goes further to suggest that the exception that defines the structure of sovereignty is even more complex: "what is outside is included not simply by means of an interdiction or an interment, but rather by means of the suspension of the juridical order's validity" (1998 18). In this particular sense, the situation created in the exception cannot be defined either as a situation of fact or as a situation of right, but rather as a situation of threshold of indistinction between the two. This zone of indistinction is produced according to Agamben by the inclusion of chaos in the juridical order, since in order to refer to something, a rule must both presuppose and yet still establish a relation with what is outside relation. Once this presuppositional character of law is fully established and the sovereign power is located in the very indistinction between outside and inside, the state of exception and the state of nature become the two sides of the very same topological process in which, according to Agamben, as in a Möbius strip, "what was presupposed as external –the state of nature– now reappears in the inside –the state of exception–" (1998 37).

It is in this way that Agamben digs into the paradox of sovereignty to reveal its originary structure, anticipating one of his major and problematic conclusions: sovereignty is the space in which "law refers to life and includes it in itself by suspending it" (1998 28). At this point, the eschatological character of Agamben's notion of sovereignty is revealed, completely capturing life in the tight logic of the paradox. A theoretical invocation by Agamben reinforces and fills this eschatological position: Agamben's turn to Aristotle's metaphysical concepts of potentiality and actuality<sup>5</sup> in his treatment of the form of law and the dialectic of constituting and constituted power.

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5 Agamben, in an essay entitled *On Potentiality*, discusses Aristotle's conceptions of potentiality and actuality. For Aristotle, there are two forms of potentiality, a generic

In her analysis of the French Revolution, Hannah Arendt, to whom Agamben devotes just a few lines in his treatment of constituting power (*cf.* 1998 41), shows how the theoretical problem to be resolved is not that of the conception of a constituting power that does not dissolve itself in a constituted power (Arendt 1963 185), but rather, that the first theoretical task should be the establishment of a clear differentiation between them. By not having fulfilled this task, the revolutionary tradition has failed to recognise the interconnection of constituting power with constituted power. Unlike Agamben, who agrees with Arendt on the importance of this differentiation (*cf.* 1998 43), Antonio Negri focuses on the democratic revolutions in terms of the power struggles between constituent and constituted power, from a historical-political level, that is to say, on how “initially, constituent power infuses its dynamism into the constitutional system and then is itself reformed by the constitution” (Negri 1999 7). In this sense, constituent power for Negri “takes the form of a permanent revolution, a process in which the subject’s independence is affirmed at the moment when it continually rolls back the enemy’s oppression and simultaneously expresses, accumulates, and organises its own power” (1999 31). Therefore, what is at stake for Negri is a political question concerning democracy, since his analysis of constituent power focuses on its mobilisation in particular events where its democratic will is founded. When conceived in all its radicality, constituting power “ceases to be a strictly political concept and necessarily presents itself as category of ontology” (Agamben 1998 44). However, Negri never leaves aside the political dimension of the conflict between constituting and constituted power. Agamben, who discusses Negri’s framework briefly (*cf. id.* 43), claims that while his thesis on the isolation of constituting power from sovereign power fails to grasp the originary ban structure of sovereignty, Negri’s suggestion regarding the ontological character of constituting power as a problem of the constitution of potentiality “opens the way for a new articulation of the relation between potentiality and actuality” (*id.* 44).

Ultimately, however, Agamben turns away from Negri’s and even Arendt’s frameworks, adopting instead the Aristotelian distinction between potentiality and actuality. The only justification Agamben provides for this invocation of Aristotle’s metaphysics is that the

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one, in which an alteration or transformation has to take place for the potentiality to turn into actuality (*i.e.* the potentiality of a child to become architect) and an existing one, in which potentiality is already there and therefore whoever has it can choose not to convert it into actuality (*i.e.* the potentiality of a composer to write music). It is precisely the latter form of potentiality that interests Agamben (*cf.* 1999 179).



relation Aristotle establishes between potentiality and act is as complicated as the relation between constituted and constituting power and, in the last analysis, “the relation between constituting and constituted power (perhaps like every authentic understanding of the problem of sovereignty) depends on how one thinks the existence and autonomy of potentiality” (1998 44).

The Aristotelian concept of potentiality is appealing for Agamben not because it precedes actuality while remaining subordinated to it, but rather because potentiality in Aristotle is also potentiality not to do or be, and, in this sense, potentiality “maintains itself in relation to actuality in the form of its suspension” (1998 45). This is why, for Agamben, in describing the nature of potentiality as im-potentiality Aristotle anticipates the paradigm of sovereignty, since the sovereign ban corresponds to the authentic structure of potentiality. Indeed, just as potentiality could suspend itself and through which it becomes two-faced, the sovereign structure also becomes double, suspending itself while maintaining itself in relation to the ban, and, therefore, claiming that “constituting power never exhausts itself in constituted power is not enough, sovereign power can also, as such, maintain itself indefinitely without ever passing over into actuality” (1998 47). Here it is worth asking a simple question: if the existing potentiality, that is, the potentiality not to do or be, is characterised by its own suspension so that whoever has it can choose not to turn it into actuality, –for instance the potentiality of a poet to write poems–, then how to explain the fact that the potentiality that does not pass into actuality could be affected by time? Indeed, one can argue that the potentiality of a musician to play the piano, for instance, is weakened if for a long period it does not pass into act. For Agamben, however, potentiality in its two forms is that “through which Being founds itself sovereignly, which is to say, without anything preceding or determining it other than its own ability not to be” (*id.* 46). Therefore, the question that remains open is that of the relation between impotentiality and practice, which could be translated as a political question concerning the ability of the sovereign ban to capture life by suspending itself without passing into actuality.

Agamben’s use of the notion of potentiality as a tool to determine the extent to which constituting and constituted power are mutually imbricated, disclosing a deeper paradox at the core of the sovereign ban constitutes, no doubt, a successful attempt to capture the structure of the sovereign ban in its capacity to suspend itself. However, the Aristotelian concept of potentiality is not only essentially different from what Negri or Arendt meant by constituting and constituted

power at the historical level, but also it does not confine the political-practical dimension of the debate.<sup>6</sup>

Central to Agamben's approach to the dialectic between constituting and constituted power through the category of potentiality is his move from political philosophy to first philosophy, which is ultimately, what allows the reading of Agamben's notion of sovereignty to be teleological. It is worth quoting Agamben in full on this point:

The unresolved dialectic between constituting power and constituted power opens the way for a new articulation of the relation between potentiality and actuality, which requires nothing less than a rethinking of the ontological categories of modality in their totality. The problem is therefore moved from political philosophy to first philosophy (or, if one likes, politics is returned to its ontological position). Only an entirely new conjunction of possibility and reality, contingency and necessity, and the other *pathêtuontos*, will make it possible to cut the knot that binds sovereignty to constituting power. And only if it is possible to think the relation between potentiality and actuality differently –and even to think beyond this relation– will it be possible to think a constituting power wholly released from the sovereign ban. Until a new and coherent ontology of potentiality (beyond the steps that have been made in this direction by Spinoza, Schelling, Nietzsche, and Heidegger) has replaced the ontology founded on the primacy of actuality and its relation to potentiality, a political theory freed from the aporias of sovereignty remains unthinkable. (1998 44)

In *Potentialities* (1999), Agamben clearly connects the idea of potentiality with a particular conception of ontology. Indeed, in this essay, Agamben claims that every human power is im-potentiality and, paradoxically, “every human potentiality is always-already held in relation to its own privation” (182). The remark of “human potentiality” comes from Agamben's belief that other living beings are capable only of their “specific potentiality. But human beings are the animals who are capable of their own impotentiality. The greatness of human potentiality is measured by the abyss of human impotentiality” (*ibid.*). At this point, Agamben's reading of Heidegger comes to the

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6 On the differences between Agamben's and Arendt's reading of constituted and constituting power, Jennings (2011) claims that Arendt's framework contrasts with “the political anthropology implicit in political modernity (including the revolutionary tradition up to Benjamin and Agamben) in which the very notion of a distinction between constituent and constituting power in constitutional theory still to this day necessarily implies pre-constituted people (*i.e.* the state of nature) choosing to form a political community outside of any pre-existing association of relationship to history” (2011 141).

fore, so that the thinking of Being is always the thinking of the potentiality of Being, and potentiality has always primacy over actuality (cf. Dreyfus 1991). Agamben's ontology in the realm of sovereignty and potentiality is therefore tied to this particular conception of Being.

This is also evident in *Language and Death*, where Agamben engages with the analysis of Heidegger's notion of death, making an ontological choice: Being is given. However, this ontological choice is marked by the problematisation of the Aristotelian definition of the human being as an "animal that speaks" and the fundamental negativity of language that this definition implies.<sup>7</sup> Language is, for Agamben, the crucial element for his ontological perspective. He claims that for the metaphysical tradition, the limit of language has been thought as a presupposition of a relation between a negative transcendent foundation and what can be said (cf. 2006). Therefore, Agamben's ontology is an attempt that, while retaining Heidegger's notion of Being, proposes to rethink the negativity of language claiming that "the unthought or non-being is not to be consigned to a lack, an ineffability, or as the arch-presupposition of a negative definition of being, but instead as its very affirmative and exposed condition of possibility" (Zartaloudis 250). This ontological position is ambivalent: on the one hand, it dwells on the negativity of language as a terrifying and predestining confrontation with death and, on the other, it presents an idea of redemption.

At this point, we can go back to Agamben's definition of structure of the exception and the category of potentiality immersed in this ontological position to see how this tension is resolved in *Homo Sacer* in favor of a totalising conception of sovereignty, despite Agamben's appeal for a politics freed from every ban. Certainly, taking into account that the relation of the exception is a relation of ban (cf. 1998 28) and that under the state of exception, Being is "nothing other than Being in the ban of being" (*id.* 60), the state of death permeates all structures of power, making it impossible to act outside the zone of indistinction. To move from the political dimension of constituting and constituted power to an ontology of potentiality is to take the paradox of sovereignty to the extreme in which sovereignty itself becomes the pure potentiality of Being to suspend itself in a relation of ban, where at the limit, "pure potentiality and pure actuality are indistinguishable, and the sovereign is precisely this zone of indistinction" (1998 47).

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7 An insightful book in which this connection between ontology, metaphysics and language is traced from Agamben's earlier works is: *Giorgio Agamben: Power, Law and the Uses of Criticism* (2010) by Thanos Zartaloudis.

It is in this sense that Agamben's definition of sovereignty renders meaningless any attempt to dissociate democracy from totalitarianism<sup>8</sup> (cf. Agamben 2004), which constitutes not a historiographical claim, but rather a historical-philosophical one, according to which, ultimately, democracy does not break the link between violence and law. In order to break this link and thus to render the exception inoperative, Agamben relies on the ambiguous expectation of a new ontology of potentiality, pointing in a theological direction. Furthermore, Agamben's invocation of potentiality tied to a particular ontological decision exacerbates the paradox of sovereignty to a point at which the whole biopolitical production necessarily passes through the exceptionality of sovereignty.

However, the parallel that Agamben draws between the structure of the ban and that of the Aristotelian potentiality could also be conceived in a certain sense as a step away from Schmitt, since the state of exception becomes already immersed in every process (juridical or not) where empty forms of relations produce the zone of indistinguishability between life and law (cf. 1998 59). In other words, sovereignty becomes omnipresent through its own suspension so that it is no longer a juridical-technical dispositif, but rather becomes a grey zone of impotentiality. Here, Walter Benjamin comes to the fore once again, so that the state of exception becomes the rule due to an intensification of its own undecidability, which also means that "the state of exception is no longer able to fulfill the function Schmitt assigned to it in Political Theology: to define the normal situation. The state of exception is not meant to produce or confirm the rule –it tends, rather, to coincide with it, that is to say, to blur it" (Agamben 2005b 293). This partial reading of Agamben –without the Schmittian ghost of decisionism–, would not clash with an understanding of the way in which the biopolitical transformation of sovereignty has displaced both, the juridical exception and the law giving more relevance to the norm. However, as it has been shown, this de-centering of sovereignty is only achieved through its ontologisation as impotentiality, in which, by suspended itself, it permeates every relation of power. That is to say, the dislocation of sovereignty in Agamben is the result of the dramatisation of the paradox of sovereignty by which the figure of the Leviathan is re-established in a structure of exception that exceeds the juridical order, rather than being the affirmation of the

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8 As Rancière has pointed out, for Agamben, "any difference grows faint between democracy and totalitarianism and any political practice proves to be already ensnared in the biopolitical trap" (301).

dislocation of the state of exception and of the law as the privileged categories that inform the political production of bare life.

In other words, through the invocation of Aristotle's metaphysical concept of im-potentiality Agamben places himself between Schmitt and Benjamin, displacing sovereignty from the strictly juridical exception but nonetheless retaining it within the structure of sovereign ban as a totalising structure that "captures and incorporates Benjamin's conception of a pure violence that exists outside the law" (2005 299). It remains, therefore, an open question to be answered and with which to conclude this section: how to rethink the dislocation of sovereignty as a political category without falling into a totalising conception of sovereign power?

### Violence and Bare Life

Agamben's investigation of sovereignty as the sphere in which "law refers to life and includes it in itself by suspending it" (1998 28)<sup>9</sup> opens up his inquiry into bare life. The passage from Agamben's analysis of the structure of the paradox of sovereignty to his study of the *homo sacer* pivots on Agamben's interpretation of Walter Benjamin's essay *Critique of Violence*. In this essay, Benjamin denounces the tight link between law and violence –violence is the origin of law– and therefore for him, justice and law reveal their unrelated nature. Indeed, as Benjamin had mentioned before in *The Right to Use Force* "the law's concern with justice is only apparent, whereas in truth the law is concerned with self-preservation" (2002 232). Law, rather than guaranteeing justice preserves and posits itself in acts and representations of violence, either in the use of violence as means to legal ends –law preserving violence– or in the violence outside law which creates law –law making violence– (cf. Benjamin 2002 242).

Here, we are in the terrain of mythic violence, since according to Benjamin, at the origin of the cycle of lawmaking and law preserving violence, lay violence as a manifestation of the gods, and thus, law was "merely a residue of the demonic stage of human existence, when legal statutes determined not only men's relationships but also their relation to the gods" (1920 243). In order to break this cycle, and therefore to dissolve the irreducible link between law and violence, Benjamin confronted Mythic violence with the problematic notion of divine violence:

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9 According to Agamben, "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" (1998 83).

If mythic violence is lawmaking, divine violence is law destroying; if the former sets boundaries, the latter is boundlessly destroys them; if mythic violence brings at once guilt and retribution, divine violence only expiates; if the former threatens, the later strikes; if the former is bloody, the later is lethal without spilling blood. (1920 297)

We cannot fully interrogate this messianic notion here but in relation to Agamben's argument it is important to highlight that divine violence deposes the law, providing a parallel to sovereign violence. Although Agamben recognizes the ambiguity of divine violence, he claims nonetheless that its definition becomes clearer when it is analyzed through the state of exception (*cf.* 1998 67). Indeed, the violence exercised in the state of exception, he writes, "clearly neither preserves nor simply posits law, but rather conserves it in suspending it and posits it in excepting itself from it" (*ibid.*) and in this sense, sovereign violence like divine violence cannot be reduced to lawmaking or law-preserving violence. Both, divine violence and Agamben's call for a new ontology of potentiality point in the messianic direction in which the link between law and violence would be broken. For Benjamin, the bearer of the link between violence and law is "bare life" (*id.* 65), hence he writes "mythic violence is bloody power over bare life for its own sake" (1920 250). This is why, for Benjamin, "it is worthwhile to investigate the origin of the dogma of the sacredness of life" (1920 202). It is precisely by following this invitation that Agamben starts his genealogical inquiry into bare life and sacred life.

Agamben begins by asserting that the Greeks "did not even possess a term to express the complex semantic sphere that we indicate with the single term life" (1998 66), instead they used two different terms to refer to life: *zoē*, as the simply natural life common to all beings (animal, gods and men) and *bios* "which indicated the form of way of living proper to an individual or a group" (1998 1). This distinction represents, for Agamben, a decisive point in the origin of Western politics (*cf. id.* 66). Most importantly, however, according to Agamben, for the Greeks this distinction does not assign a sense of sacredness to life itself. Indeed, "even in those societies that, like classical Greece, celebrate animal sacrifices and occasionally immolated human victims, life in itself was not considered sacred" (*ibid.*).

It is later, with the introduction of Roman law, that the character of sacredness is tied to the notion of human life (*cf.* Agamben 1998 71). *Homo sacer* –he who may be killed but not sacrificed– appears for Agamben as a figure that is indissolubly linked to sovereignty, since sovereignty is "the sphere in which it is permitted to kill without committing homicide and without celebrating sacrifice" (*id.* 83). The *homo*

*sacer* is included in the political realm in his capacity to be killed, he belongs to God in the form of unsacrificeability: “Life that cannot be sacrificed and yet may be killed is sacred life” (*id.* 82). In this sense, what defines the status of the *homo sacer* is the “the double exclusion into which he is taken and the violence to which he finds himself exposed” (*ibid.*).

As William Connolly has argued, Agamben’s conception of the sacred as a twofold structure –double exclusion– differs from conventional approaches to this notion. Indeed, Agamben’s notion of the sacred is defined by the violence that opens a sphere that is neither the sphere of the profane nor that of the divine. Hence, sacred life can be killed but not murdered (Bartonek 2004), constituting an inherent principle in the formulation of sacred life itself and also in the structure of sovereign power:

In the figure of this sacred life, something like a bare life makes its appearance in the Western world. What is decisive, however, is that from the very beginning this sacred life has an eminently political character and exhibits an essential link with the terrain on which sovereign power is founded. (Agamben 1998 100)

Central to the double exclusion of the sacred is Agamben’s invocation of the ban as the original political relation. Agamben quoting Cavalca, states that to ban someone is “to say that anybody may harm him” (1998 104). The ban, however, is not simply a sanction, rather it entails abandonment. Heidegger who is in the background of Agamben’s treatment of the ban, confronts the problem of the abandonment of the entity by Being, revealing that Being is nothing other than the “being’s being abandoned and remitted to itself” (Agamben 59). The relation of the ban becomes, for Agamben, a relation in which the being is abandoned by a law “that prescribes nothing and not even itself” (1998 60). The life caught in the sovereign sphere is the life that has been abandoned in the juridical paradox of sovereignty, the sacred life that may be killed but not sacrificed;<sup>10</sup> it is in this particular sense that the production of bare life appears in Agamben as the “originary activity of sovereignty” (*id.* 83).

However, *homo sacer* is a figure treated by Agamben as a paradigm whose role is to “constitute and make intelligible a broader historical problem” (2009 9). That is to say, even though the *homo sacer* consti-

10 The threshold figure that embodies the sacred man, for Agamben, is the werewolf. It is the man banned by his community. The Werewolf, by definition has not collective identity and it is completely defenseless: “it is a threshold of indistinction and of passage between animal and man, between physis and nomos, exclusion and inclusion” (1998 105).

tutes an actual historical phenomenon, Agamben uses this figure not as a signifier extended to or imposed on historical contexts by means of metaphorical transfer of meaning, but rather as paradigm that corresponds to the analogous logic of the example. In the first essay of *The Signature of all Things* (cf. 2009 9-32), Agamben reflects on the function and meaning of paradigms responding indirectly to the different critiques that have been raised regarding the notion of *homo sacer* as a merely historiographical reconstruction. In this essay, Agamben first traces the concept of paradigm in Foucault's work, indicating its relation to Kuhn's notion of scientific paradigms,<sup>11</sup> to subsequently establish a more general genealogy of this concept that leads him back to Aristotle's *Prior Analytics*. This insightful investigation cannot be fully revised here, but for the sake of my argument it is worth quoting a passage that summarises the basic features of a paradigm:

1. A paradigm is a form of knowledge that is neither inductive nor deductive but analogical. It moves from singularity to singularity. 2. By neutralising the dichotomy between the general rule and the particular, it replaces a dichotomous logic with a bipolar analogical model. 3. The paradigmatic case becomes such by suspending and, at the same time, exposing its belonging to the group, so that it is never possible to separate its exemplarity from its singularity. 4. The paradigmatic group is never presupposed by the paradigms; rather, it is immanent in them. 5. In the paradigm, there is no origin or *archê*; every phenomenon is the ororigin, every image isarchaic. 6. The historicity of the paradigm lies neither in diachronic not in synchrony but in a crossing of the two. (Agamben 1999 31)

With this in mind, two different critiques to Agamben's notion of bare life, as embodied by the figure of the *homo sacer* could be considered. The first one asserts that Agamben has hypostatized the *homo sacer* as the only figure outside the law produced in the double exclusion to which the sacred is exposed. There is no room, according to this critique, to think the antagonistic social practices articulated within those who are banned from the juridical-political community and, therefore, the political in Agamben appears as an unidirectional

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11 For Agamben, Foucault's and Kuhn's notion of paradigm are analogous. This relation is established when taking into account Kuhn's second meaning of paradigm, that is to say, paradigm not as a disciplinary matrix but rather as an example, as "a single case that by its repeatability acquires the capacity to model tacitly the behavior and research practices of scientists. The empire of rule, understood as the canon of scientificity, is thus replaced by that of the paradigm; the universal logic of the law is replaced by the specific and singular logic of the example" (Agamben 1999 11-12).



relation of exclusion. Bare life is, in this sense, an artificial product, an obscure bareness that hides social relations of resistance and political articulations and that only serves to “personalise what is excluded from the protection of law” (Vismann 2001 15) without capturing all the possibilities that being outside the law could report. The *homo sacer* is, therefore, incapable of using violence in his defense. Agamben’s reading of the dialectic of mythic violence does not allow an interpretation of law-making violence as the violence used for natural ends, so that the violence outside the law is, paradoxically the violence exercised by law in the state of exception. On the contrary, despite the fact that Benjamin “recognises the inherent law-making character of violence used for natural ends, he nevertheless believes that this violence originates as a violence outside of law” (Magnuson 2008 75). To sum up, as Laclau suggests, in order to reduce all the possibilities of the ban to the figure of the *homo sacer*, extra presuppositions should be added to Agamben’s argument:

In the first place, the sheer separateness –absence of relation– of the outside involves that he/she is a naked individuality, dispossessed of any kind of collective identity. But secondly, it also involves that the situation of the outsider is one of radical indefension, wholly exposed to the violence of those inside the city. Only at that prince can sovereign power be absolute. Are, however, these two extra presuppositions justified? Do they logically emerged from the mere category of “being outside the law”? Obviously not. (Laclau 2007 14)

Needless to say that all of these critiques that revolve around the figure of the *homo sacer* as a reduction of the different possibilities opened up by the sovereign ban miss the fact that the *homo sacer* is treated by Agamben as a paradigm, and in this sense, the *homo sacer* is only a “singular case that is isolated from its context only insofar as, by exhibiting its own singularity, it makes intelligible a new ensemble, whose homogeneity it itself constitutes” (Agamben 1999 18). In other words, Laclau takes the figure of the *homo sacer* as a fixed structure whose singularity is to be transferred to different historical phenomena without suspending its own particularity, or as Agamben has put it, without deactivating its “normal use” (*ibid.*). Laclau and the aforementioned scholars are certainly right when they suggest that the *homo sacer* is only one of the possibilities opened up by the relation of the ban, and that in concrete historical contexts, the outsider will probably have social and identity links. However, Agamben’s intention when using the figure of the *homo sacer* is to present a canon detached from its singularity and in this sense, he is moving away from deduction and induction.

There is a second group of critiques to the notion of bare life that also ignore Agamben's methodological framework. Indeed, the notion of bare life, according to these critiques, is marked by an irresolvable ambivalence; it is the life of the *homo sacer* and yet, in Agamben's analysis of modern democracy, it is tied to the secularised notion of naked life. The status of the *homo sacer* is defined by the double exclusion to which it is exposed and as such, it overflows the pure biological life of the "modern avatars" to which Agamben refers as examples of bare life (cf. 1998 120). In *Means without Ends* Agamben claims that biological life which is the

... secularised form of naked life and which shares its unutterability and impenetrability, constitutes the real forms of life literally as forms of survival: biological life remains inviolate in such forms as that obscure threat that can suddenly actualize itself in violence, inextraneousness, in illness, in accidents. (2000 8)

*Zoē* then, according to these critiques, becomes a pivotal notion that reappears in Agamben analysis of the politisation of life during the 20th century, entering into conflict with the centrality of the sacred in the notion of bare life. Indeed, when analysing the bare life of a patient –Karen Quinlan– Agamben makes clear that it is *zoē* rather than the notion of the sacred which becomes determinant in the notion of bare life as such:

Here biological life –which the machines are keeping functional by artificial respiration, pumping blood into the arteries, and regulating the blood temperature– has been entirely separated from the form of life that bore the name Karen Quinlan: here life becomes (or at least seems to become) pure *zoē*. (1998 186)

In other words, Agamben is accused of relating bare life to two different historical situations at the same time and yet, being incapable of examining the particularity of the forms of life deprived of value. The politisation of life is, therefore, reduced to the sovereign production of the sacred man, who, in turn, is partially secularised in the figures of the overcomatose, the neomort and the modern avatars (cf. 1998 164). This is, for instance, the position defended by Thomas Lemke, for whom Agamben "cannot account for these processes since his attention is fixed on the establishment of a border –a border that he does not comprehend as a staggered zone but as a line without extension that reduces the question to an either-or" (2011 59). Furthermore, since it is tied to a notion of the sacred linked to sovereign violence (cf. Norris 2000), the notion of bare life does not inform either the economisation of life –the processes by which

life is deprived of value through the commoditisation of the body– or the proliferation of molecular focuses of production of forms of life deprived of value outside the sovereign domain. To sum up, as Paul Patton has put it, Agamben’s argument on bare life –as *zoē* and sacred life– “relies on an equivocation with regards to the two senses of the term bare life” (2007 211).

All of these critiques, however, miss the underlying methodological function of the paradigmatic cases that Agamben uses in his analysis of bare life. No doubt, Agamben uses both *zoē* and the *homo sacer* (and even more figures) to refer to bare life. For instance, in his analysis of the refugee he refers frequently to *bare natural life* and to *zoē* (cf. 1998 126) and yet, in his approach to the camp he introduces another figure, the Muselmann, in whom nothing natural or common is “left in him, nothing animal or instinctual remains in his life” (*id.* 185); in other words, the life of the Muselmann is not pure *zoē*. It could be argued, however, that this is not a contradiction in terms, since *zoē*, *homo sacer* and the Muselmann as paradigms are deactivated from their normal use, “not in order to be moved into another context, but on the contrary, to present the canon –the rule– of that use, which cannot be shown in any other way” (Agamben 1999 18). In short, Agamben’s bare life is never presupposed by the paradigms he uses to make it intelligible.

However, once again, Agamben’s insistence on Schmitt’s decisionism allows a more legalist reading of bare life which is not centered on the paradigmatic cases that make it intelligible but rather on the underlying logic that produces it: sovereign decisions in the state of exception produce automatically this form of life which becomes “indistinguishable and finally coincides with the law” (Salzani 2012 4). Bare life, Agamben claims in his essay *The State of Exception* is “a product of the machine and not something that preexists it” (2005 88). Hence, even when the singularity of the *homo sacer* as a paradigm is suspended and sovereignty as impotentiality exceeds the state of exception as a merely juridical dispositif, the notion of bare life still remains captured in the machine of the sovereign ban and Agamben’s acceptance of Schmitt’s decisionism, shaping Agamben’s understanding of the biopolitical.

Biopolitics therefore, becomes the way in which life is caught in the sovereign ban, that is to say, a purely thanatopolitical function of state power. Indeed, as Connolly writes, Agamben “contends that the logic that binds sovereignty, the sacred and, biopolitics together leads (inexorably?) to a state in which a supreme power can annihilate a whole minority in the name of national unity” (27).

Moreover, given that the sovereign exception functions for Agamben in the same way as the Aristotelian im-potentiality, that is to say, maintaining itself in the form of its suspension (*cf.* 1998 47), Agamben claims that the state of exception becomes the rule and the concentration camp is revealed as the “hidden paradigm of the political modernity” (*id.* 123). Agamben, however, is not referring to the camp as a concrete historical place, but rather as an “event that repeats itself on a daily basis” (Panagia 1999 3). To say then that the camp is the structure that corresponds to the *nomos*, is to make the claim that modernity is the threshold of indistinction between the exception and the rule, the biopolitical age par excellence where sovereignty subsumed the whole biopolitical production rendering biopolitics to a sort of thanatopolitics (Fitzpatrick 2001). This reflects the general conclusion of this inquiry: the juridical exception cannot be the origin of politics and its purpose. A double movement is therefore necessary: to rethink the decentering of sovereignty as a juridical decision on the exception not via the dramatization of the paradox of sovereignty but on the contrary via its de-ontologisation. And secondly, to construct another figure as a new paradigm of bare life (*i.e.* the overcomatose) to illustrate the production of forms of life deprived of value in a terrain in which the juridical-institutional features of the state of exception do not play a central role.

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