

ARTICLE

## Impossible Dialogue on Bio-power Agamben and Foucault

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**ABSTRACT:** In *Homo Sacer*, Giorgio Agamben criticizes Michel Foucault's distinction between "productive" bio-power and "deductive" sovereign power, emphasizing that it is not possible to distinguish between these two. In his view, the production of what he calls "bare life" is the original, although concealed, activity of sovereign power. In this article, Agamben's conclusions are called into question. (1) The notion of "bare life", distinguished from the "form of life", belongs exclusively to the order of sovereignty, being incompatible with the modern bio-political notion of life, that is univocal and immanent to itself. In the era of bio-politics, life is already a *bios* that is only its own *zoe* ("form-of-life"). (2) Violence is not hidden in the foundation of bio-politics; the "hidden" foundation of bio-politics is love (*agape*) and care (*cura*), "care for individual life". (3) Bio-politics is not absolutized in the Third Reich; the only thing that the Third Reich absolutizes is the sovereignty of power (Aryan race) and the nakedness of life (the Jews). (4) St Paul's "messianic revolution" does not endow us with the means of breaking away from the closure of bio-political rationality; on the contrary, Paul's "messianic revolution" is a historical precondition for the deployment of modern bio-politics. (5) Instead of *homo sacer*, who is permitted to kill without committing homicide, the paradigmatic figure of the bio-political society can be seen, for example, in the middle-class Swedish social-democrat.

As Spinoza had said, it is a problem of love and hate and not judgment  
Gilles Deleuze, *To Have Done with Judgment*

The vivid discussion around Giorgio Agamben's *Homo Sacer: Sovereign Power and Bare Life* can be seen as a sign that the book is little by little gaining the status of a "post-modern political classic". As is well known, its point of departure is Michel Foucault's concept of bio-political power or bio-power that he elaborates in the end of *The History of Sexuality*. For Foucault, bio-power is an essentially modern form of power and its purpose is to exert a positive influence on life, to optimise and multiply life, by subjecting it to precise controls and comprehensive regulations. In contrast to this power Foucault opposes the classical sovereign power that was exercised mainly as a means of deduction – the seizing of things, time, bodies, and ultimately the

seizing of life itself. Although Agamben admits that our societies are bio-political ones, he nevertheless sees the Foucauldian opposition between bio-power and sovereign power as superfluous. According to him, in fact, these models of power essentially intersect, although in a previously concealed manner. Agamben calls “bare life” – the life of *homo sacer* that is exposed to an unconditional threat of death – the hidden point of intersection between the sovereign and bio-political models of power. As fine as Agamben’s analysis is, however, it is precisely this argument that is most dubious in *Homo Sacer*. Not bare life that is exposed to an unconditional threat of death, but the *care of “all living”* is the foundation of bio-power.

### **Sovereign Power and Bio-power**

According to Foucault, the sovereign power – or the juridico-institutional power as he also calls it – can be summarized in the formula: power of life and death. However, to the extent that the sovereign exercises his right to life only by exercising his right to kill, or by refraining from killing, the sovereign right as the power of life and death is in reality the right to take life or to let live.<sup>1</sup> Hence, the sovereign power is exercised mainly as a means of what Foucault calls deduction. It is “a subtraction mechanism, a right to appropriate a portion of wealth, a tax of products, goods and services, labour and blood, levied on the subjects.”<sup>2</sup> And although the law is the sovereign’s principal means of ruling, the ultimate reference point is the sword: “Law cannot help but be armed and its arm, par excellence, is death.”<sup>3</sup> To those who transgress the law, it replies, at least as a last resort, with the absolute menace.

Foucault points out, however, that since the seventeenth century the West has undergone a very profound transformation in terms of mechanisms of power. Little by little, the violent sovereign power has been replaced by the power that Foucault calls bio-power. In the case of bio-power it is no longer a matter of bringing death into play in the field of sovereignty, but of distributing the living in the domain of value and utility. Its task is to take charge of life that needs a continuous regulatory and corrective mechanism. The logic of bio-power is not deduction but production: “It exerts a positive influence on life, endeavours to administer, optimize, and multiply it.”<sup>4</sup> Bio-power replaces the right to “take life and let live” with that of a power to foster life – or disallow it to the point of death. Instead of being exercised by means of law and violence, bio-power is exercised through the normalising biological, psychological and social technologies – through the “methods of

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1 Michel Foucault, *The History of Sexuality. An Introduction* (New York: Vintage Books, 1990), 136.

2 Foucault, *The History of Sexuality*, 144.

3 Foucault, *The History of Sexuality*, 144.

4 Foucault, *The History of Sexuality*, 137.

power capable of optimizing forces, aptitudes, and life in general.”<sup>5</sup> Unlike sovereign power, it does not celebrate death. On the contrary, bio-power wants to exclude it (“disqualification of death”<sup>6</sup>). Death is no longer the way in which power expresses itself, but rather its absolute limit. Instead of death, the focus of bio-power is on the birth and life of individuals and populations.<sup>7</sup>

## Homo Sacer and Bare Life

As already stated, Giorgio Agamben conceives of this kind of juxtaposition as superfluous in fact, “perfectly trivial”.<sup>8</sup> He emphasizes that it is not possible to distinguish sovereign, juridico-institutional power from bio-power and that the production of a “bare life” is the original, although concealed, activity of sovereign power.<sup>9</sup> When the modern state takes biological life as its primary target, according to Agamben, it brings to light the hidden bond between sovereign power and bare life. In order to prove this claim, Agamben starts with Aristotle. He points out that already Aristotle had excluded life (*zen*) from the good life (*eu zen*) of the political community, that is, bare life (*zoe*) from the (political) form of life (*bios*). This exclusion is not, however, entirely exclusive but is at the same time inclusive in the sense that the exclusion of bare life constitutes the foundation of the very same community: “In Western politics, bare life has the peculiar privilege of being that whose exclusion founds the city of men.”<sup>10</sup>

Agamben gives the name *exception* – or the relation of exception – to that which is included solely through the exclusion. The exception is not something that is simply excluded but something that is taken outside (*ex-capere*). In the exception, what is taken outside (*zoe*) is not absolutely without relation to the inside, that is, to the rule (*bios*). On the contrary, what is excluded in the exception maintains itself in relation to the rule in the form of the rule’s suspension: “The rule applies to the exception in no longer applying it, in withdrawing from it.”<sup>11</sup> The suspension of the rule means not chaos but a zone of indistinction between that of chaos and a normal situation. Agamben

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5 Foucault, *The History of Sexuality*, 141.

6 See Foucault, *The History of Sexuality*, 138.

7 “In the passage from this world to the other, death was the manner in which a terrestrial sovereignty was relieved by another, singularly more powerful sovereignty; the pageantry that surrounded it was in the category of political ceremony. Now it is over life, throughout its unfolding, that power establishes its dominion.” Foucault, *The History of Sexuality*, 138.

8 Giorgio Agamben, *Homo Sacer. Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), 87.

9 Agamben, *Homo Sacer*, 6.

10 Agamben, *Homo Sacer*, 7.

11 Agamben, *Homo Sacer*, 18.

calls this zone – following Carl Schmitt’s analysis of sovereignty – *the state of exception*.

For Schmitt, the sovereign is the one who decides in the state of exception. However, inasmuch as it is not possible to determine the exception beforehand – to the extent that it is unpredictable and unexpected by its nature (“it cannot be anticipated”,<sup>12</sup> “it defies general codification”<sup>13</sup>) – the sovereign is, at the same time, he who decides *on* the state of exception.<sup>14</sup> And if the sovereign decides whether or not the state of exception prevails, then it is obvious that he also decides on the normal situation, “whether a normal situation actually exists.”<sup>15</sup> In order to decide on the state of exception and thereby whether a normal situation exists, it is necessary, according to Schmitt, that the sovereign is “outside the normally valid legal system.”<sup>16</sup> The sovereign is outside because the validity of the normally valid legal system must be decided by someone, but the one who decides on it cannot be a part of it. According to Schmitt, the sovereign “nevertheless belongs” to the normally valid legal system, not as a part of it but *in relation to its totality*: “It is he who must decide whether the constitution needs to be suspended *in toto*.”<sup>17</sup>

According to Agamben, bare life is excluded from the political realm, from the realm of the normal situation, in the very same sense as the Schmittian sovereign is excluded from the normally valid legal order. Here lies the hidden bond between bare life and sovereignty, between bio-power and sovereign power. Of course, bare life does not *decide* on the state of exception. The one whose existence is reduced to a bare life *lives* in the state of exception determined by the sovereign.<sup>18</sup> And to the extent that in our age the state of exception comes more and more to the foreground as the fundamental political rule, as Agamben claims, then we are all living, at least virtually, in the state of exception.<sup>19</sup> To live in the state of exception does not mean that we are simply excluded from the legal system – or from the law, as Agamben

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12 Carl Schmitt, *Political Theology. Four Chapters on the Concept of Sovereignty* (Cambridge: MIT Press, 1985), 7.

13 Schmitt, *Political Theology*, 13.

14 The sentence “*Souverän ist wer über den Ausnahmezustand entscheidet*”, with which *Political Theology* begins, can be interpreted in both ways.

15 Schmitt, *Political Theology*, 13.

16 Schmitt, *Political Theology*, 7.

17 Schmitt, *Political Theology*, 7. On Schmitt’s analysis of sovereignty, see Mika Ojakangas, *A Philosophy of Concrete Life: Carl Schmitt and the Political Thought of Late Modernity* (Jyväskylä: Sophi Academic Press, 2004), 33-55.

18 “At the two extreme limits of the order, the sovereign and *homo sacer* [bare life] present two symmetrical figures that have the same structure and are correlative: the sovereign is the one with respect to whom all men are potentially *homines sacri*, and *homo sacer* is the one with respect to whom all men act as sovereigns.” Agamben, *Homo Sacer*, 84.

19 Agamben, *Homo Sacer*, 9.

puts it. We are still included in the law, but only in the form of exception, that is to say, in an external relation to the law “*in toto*” – or “in general” as Agamben says. (The relation of exception is the “pure form of reference to something in general.”)<sup>20</sup>

On the other hand, as has already been mentioned, when the state of exception becomes the rule, the legal order becomes in force only by suspending itself, that is, the rule applies to something in no longer applying it. This means that the rule has lost its content, that it is nothing but the empty principle, an empty form of relation. In the state of exception that has become the rule, the law is “in force without significance.”<sup>21</sup> Therefore, it is impossible that we would be protected by the law. On the contrary, we are *banned* and thereby *abandoned* by it. In a situation where the state of exception has become a rule, the law that is in force without signifying includes life in itself only by banning it:

Everywhere on earth men live today in the ban of a law and a tradition that are maintained solely as the “zero point” of their own content, and that include men within them in the form of a pure relation of abandonment.<sup>22</sup>

Agamben calls this condition “sovereign ban,” which in the final analysis means that we, whose existence is reduced to the level of bare life and who are abandoned by the law that is in force without signifying, are at every instant exposed to *an unconditional threat of death*. For this reason Agamben says that we are all virtually *homines sacri*, sacred men.

This does not mean, however, that Agamben claims that our culture is still sacrificial. On the contrary, he says that in modernity the principle of the sacredness of life is completely emancipated from sacrificial ideology.<sup>23</sup> Instead of sacrificial ideology, the key to the modern principle of sacredness of life is, for Agamben, the life of *homo sacer*. *Homo sacer* is not a religious figure but a figure of archaic Roman law in which the character of sacredness is tied, according to Agamben, for the first time to a human life. In other words, *homo sacer* is the most ancient figure of sacredness as such and reveals the most ancient meaning of the term *sacer* – prior to any distinction between sacred and profane, religious and juridical.<sup>24</sup> In what, then, does the sacredness of the sacred man consist? According to Agamben, it has nothing to do with any “ambivalence of the sacred” that initially took form in late Victorian anthropology and was immediately passed on to French sociology in the work of Durkheim, Mauss and Callois. Alfred Ernout-Meillet confirms

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20 Agamben, *Homo Sacer*, 28-29.

21 Agamben, *Homo Sacer*, 51.

22 Agamben, *Homo Sacer*, 51.

23 Agamben, *Homo Sacer*, 114.

24 Agamben, *Homo Sacer*, 71-74.

the ambivalent meaning of the term in *Dictionnaire étymologique de la langue latin* (1932): “*Sacer* designates the person or the thing that one cannot touch without dirtying oneself or without dirtying; hence the double meaning of ‘sacred’ or ‘accursed’.”<sup>25</sup> At issue here is, according to Agamben, nothing but a scientific mythologeme that has since the nineteenth century, led the social sciences astray “in a particularly sensitive region”, that is, in interpretations of social phenomena in general and of the origin of sovereignty in particular.<sup>26</sup>

Agamben sees no ambivalence in the original meaning of the sacred. He bases his interpretation on Sextus Pompeius Festus’s treatise *On the Significance of Words*, particularly on Festus’s note on the first tribunitian law. In this law it is noted, according to Festus, that “if someone kills the one who is sacred according to the plebiscite, it will not be considered homicide.”<sup>27</sup> Moreover, and more surprisingly, Festus adds that it is not even permitted to “sacrifice this man”. In other words, in the case of *homo sacer sacratio* takes the form of a double exception: he is excluded from the sphere of the profane law (*ius humanum*) as well as that of the divine law (*ius divinum*):

What defines the status of *homo sacer* is therefore not the originary ambivalence of the sacredness that is assumed to belong to him, but rather both the particular character of the double exclusion into which he is taken and the violence to which he finds himself exposed. This violence – the unsanctionable killing that, in his case, anyone may commit – is classifiable neither as sacrifice nor as homicide, neither as the execution of a condemnation to death nor as sacrilege.<sup>28</sup>

In terms of modern jurisprudence, *homo sacer* is the one who belongs neither to the sphere of positive law nor to that of natural law; he has neither the rights of a citizen nor human rights. Rather, he presents, according to Agamben, the originary figure of life in the state of exception that has become a rule and thereby of life taken into the sovereign ban: “What is captured in the sovereign ban is a human victim who may be killed but not sacrificed: *homo sacer*.”<sup>29</sup> Sacred is not the one who is ambivalently holy and accursed at the same time, but the one who is exposed to an unconditional threat of death.

To the extent that we are all, at least virtually, captured under the sovereign ban, that is, under the law that is in force without signifying, we are all *homines sacri*, sacred men, whose whole existence is conditioned by the fact that we are at every instant exposed to an unconditional threat of death. For this reason, the sacredness of life cannot be presented, according to Agamben, as an absolutely fundamental right in opposition to sovereign power. To

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25 Quoted in Agamben, *Homo Sacer*, 79.

26 Agamben, *Homo Sacer*, 75.

27 Quoted in Agamben, *Homo Sacer*, 71.

28 Agamben, *Homo Sacer*, 82.

29 Agamben, *Homo Sacer*, 83.

invoke the sacredness of life only sustains sovereign power to the extent that it expresses both life's subjection to a power over death and life's irreparable exposure in the relation of abandonment.<sup>30</sup> Instead of invoking the sacredness of life we should get rid of the sovereign ban, that is, the state of exception that has become the rule. This does not mean, for Agamben, that we should restore the classical political categories proposed, for instance, by Leo Strauss and Hannah Arendt.<sup>31</sup> It means, instead, that we should move from the sovereign state of exception to that which Walter Benjamin calls the *real state of exception*,<sup>32</sup> in other words, to the state of abandonment beyond every idea of law:

Only if it is possible to think Being of abandonment beyond every idea of law (even that of the empty form of law's being in force without significance) will we have moved out of the paradox of sovereignty toward a politics freed from every ban.<sup>33</sup>

In the real state of exception a form of life is wholly exhausted in bare life and "a *bios* is only its own *zoe*".<sup>34</sup> As we will see below, however, it is precisely this real state of exception and its politics, politics beyond every idea of law in which a *bios* is only its own *zoe*, that is at issue in the Foucauldian bio-politics.

### **Bio-political Life and Norm without Form**

The original problem of Agamben's analysis is that he sees bio-power as power based upon bare life, defined in turn solely by its capacity to be killed. Foucault's bio-power has nothing to do with that kind of bare life. In fact, to the same extent that bio-power is the antithesis of sovereign power, its concept of life is the antithesis of bare life. This is so because life that is at issue in bio-power is univocal and immanent to itself – like Spinoza's Being analyzed by Agamben himself in his article on Gilles Deleuze's philosophy of life.<sup>35</sup> It is without such differences in kind as that between bare life (*zoe*) and a

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30 Agamben, *Homo Sacer*, 83.

31 In spite of this, Arendt is a central figure in *Homo Sacer* because she was, according to Agamben, the first who analysed – in *The Human Condition* – the process that brings biological life, as such, to occupy the very centre of the political scene of modernity. It would, however, have also been appropriate to bring to light that Arendt was one of the last ones who insisted that the exclusion of biological life is the necessary condition of founding the political space of the city. See Hannah Arendt, *The Human Condition* (Chicago: The University of Chicago Press, 1958), 22-50.

32 See Walter Benjamin, "Theses on the Philosophy of History". In Hannah Arendt, ed., *Illuminations* (New York: Random House, 1988), 259.

33 Agamben, *Homo Sacer*, 59.

34 Agamben, *Homo Sacer*, 188.

35 See Giorgio Agamben, "Absolute Immanence". In *Potentialities: Collected Essays in Philosophy* (Stanford: Stanford University Press, 1999), 226. According to Agamben's

form of life (*bios*). In the era of bio-power, life is one ("life in general"<sup>36</sup>), and all differences, even virtual ones, are merely differences of degree, differences of intensity. (Beings are no longer distinguished by a qualitative essence but by a *quantifiable degree of power*.) However, this life is not even Spinoza's Being because in his distinction between substance and the modes "substance appears", at least according to Deleuze, "independent of the modes".<sup>37</sup> Such independence always implies the return of transcendence. In the era of bio-politics, there is no transcendence: substance (life in general) is not independent of the different modes (forms of life), but the *unlimited – or "anarchical" – totality of the modes themselves*, different merely according to their degree of intensity and power.

Admittedly, Agamben also holds that in the modern era of bio-politics a form of life and bare life enter into a zone of irreducible indistinction. Nevertheless, he maintains that even in this zone it is possible and, from the perspective of bio-power, even *necessary* to isolate "something like a bare life."<sup>38</sup> For, without this isolation, without a distinction between a form of life and bare life – even if this distinction is paradoxical one as in the case of a generalized ban – there would be no power that could have "any hold" over men's existence. This is something that Foucault would refuse to admit. Bio-power has hold over men's existence precisely because it operates with a completely different notion of life. The concept of life corresponding to bio-politics is no longer the Aristotelian notion, differentiating the various levels of life (vegetative life, animal life, human life, divine life...), nor is it the classical taxonomic notion, differentiating species according to their visible properties. It is a *synthetic* notion, unifying both the levels and the species in the "invisible focal unity" of life, from which the "multiple seems to derive, as though by ceaseless dispersion", as Foucault puts it in *The Order of Things*.<sup>39</sup>

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interpretation, the principle of immanence in Deleuze's study of Spinoza is nothing other than a generalization of the ontology of univocity, which excludes any transcendence of Being.

36 Foucault, *The History of Sexuality*, 141.

37 Gilles Deleuze, *Difference and Repetition* (London: Athlone Press, 1994), 40. Although Deleuze has proclaimed himself a Spinozist, in *Difference and Repetition* he conceives the independence of substance in regard to the modes as Spinoza's error, preventing the thinking of the difference as such, which requires that substance is "said of the modes and only of the modes". Deleuze, *Difference*, 40-41. For this reason, Daniel W. Smith is right in saying that Deleuze's philosophy of difference must be seen "as a kind of Spinozism *minus* substance, a purely modal or differential universe." Daniel W. Smith, "The Doctrine of Univocity." In Mary Bryden, ed., *Deleuze and Religion*. (London: Routledge, 2001), 175.

38 Agamben, *Homo Sacer*, 153.

39 "It is the transition from the taxonomic to the synthetic notion of life which is indicated, in the chronology of ideas and sciences, by the recrudescence, in the early nineteenth century, of vitalist themes." Michel Foucault, *The Order of Things* (London: Routledge, 1991), 269.



To be sure, it is possible to think that now this invisible focal unity, the “root of all existence”,<sup>40</sup> represents bare life isolated from the multiple forms of life that are merely its external expressions. This is not the case, however. The modern synthetic notion of life, although it implies a difference between the “mysterious depth” and the “visible surface”, does not allow any isolation, because the mysterious depth does not reside outside the surface as an essence of existence, but is the “fundamental force” *within* the surface. It animates the surface, functioning within it as an “untamed ontology”.<sup>41</sup> Bio-political life is not bare life (Being) isolated from the forms of life (beings) but becoming – *becoming of beings*: “Now it is over life, *throughout its unfolding*, that power establishes its dominion.”<sup>42</sup>

Moreover, life as the object *and* the subject of bio-power – given that life is everywhere, it becomes everywhere – is in no way bare, but is as the synthetic notion of life implies, the multiplicity of the forms of life, from the nutritive life to the intellectual life, from the biological levels of life to the political existence of man.<sup>43</sup> Instead of bare life, the life of bio-power is a

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40 Foucault, *The Order of Things*, 278.

41 Foucault, *The Order of Things*, 278. In this sense, bio-political life resembles more Deleuze’s concept of “a life” than bare life. See Deleuze’s last text published before his death. Gilles Deleuze, “Immanence: A Life.” In *Pure Immanence: Essays on A Life* (New York: Zone Books, 2001), 27-31: “A life” is “absolute immanence”; it “is complete power, complete bliss”; it is “indefinite”; it is “everywhere”; it is “beyond good and evil”; it “contains only virtuals”; it produces all the actual determinations without actualizing itself etc. Although Agamben admits that Deleuze enters a “dangerous territory” in displacing immanence into the domain of life, he nevertheless identifies in “a life” the point of resistance to bio-power given that it marks, according to him, “the radical impossibility of establishing hierarchies and separations”. Agamben, “Absolute Immanence”, 233. The problem in this identification is, however, that *also bio-power aims for the destructions of hierarchies and separations*, be they hierarchies or separations between “biological life and contemplative life”, or those between “bare life and the life of the mind” – to use Agamben’s expressions. Agamben, “Absolute Immanence”, 239. From this perspective, it would be appropriate to reassess Foucault’s statement according to which the twentieth century will be Deleuzean. For some reasons, it has been thought that with this statement Foucault intended to say that Deleuze will someday be recognized as the distinctive philosopher of the twentieth century, well beyond his own times. To my mind, however, Foucault was just expressing his opinion that Deleuze’s philosophy fits quite well with the general metaphysical picture of the era. As a matter of fact, Deleuze can be seen as one of *the* metaphysicians of the era of bio-politics – alongside Spinoza (immanence), Hume (empiricism), James (pragmatism), Nietzsche (perspectivism), and Bergson (vitalism).

42 Foucault, *The History of Sexuality*, 138. Emphasis mine.

43 Foucault ceaselessly repeats that from the beginning the task of bio-power is to take care of all aspects of human life, religion, morals, health, infrastructure, safety, arts, trade, industry, poverty and so on: “The *police* [an institutional locus of bio-power in the eighteenth century] includes everything.” Michel Foucault, “*Omnes et Singulatim*’: Toward a Critique of Political Reason.” In James D. Faubion, ed.,

*plenitude* of life, as Foucault puts it.<sup>44</sup> Agamben is certainly right in saying that the production of bare life is, and has been since Aristotle, a main strategy of the sovereign power to establish itself – to the same degree that sovereignty has been the main fiction of juridico-institutional thinking from Jean Bodin to Carl Schmitt. The sovereign power is, indeed, based on bare life because it is capable of confronting life merely when stripped off and isolated from all forms of life, when the entire existence of a man is reduced to a bare life and exposed to an unconditional threat of death. Life is undoubtedly sacred for the sovereign power in the sense that Agamben defines it. It can be taken away without a homicide being committed. In the case of bio-power, however, this does not hold true. In order to function properly, bio-power cannot reduce life to the level of bare life, because bare life is life that can *only* be taken away or allowed to persist – which also makes understandable the vast critique of sovereignty in the era of bio-power. Bio-power needs a notion of life that corresponds to its aims. What then is the aim of bio-power? Its aim is not to produce bare life but, as Foucault emphasizes, to “multiply life”,<sup>45</sup> to produce “extra-life.”<sup>46</sup> Bio-power needs, in other words, a notion of life which enables it to accomplish this task. The modern synthetic notion of life endows it with such a notion. It enables bio-power to “invest life through and through”, to “optimize forces, aptitudes, and life in general without at the same time making them more difficult to govern.”<sup>47</sup>

It could be argued, of course, that instead of bare life (*zoe*) the form of life (*bios*) functions as the foundation of bio-power. However, there is no room either for a *bios* in the modern bio-political order because every *bios* has always been, as Agamben emphasizes, the result of the exclusion of *zoe* from the political realm. The modern bio-political order does not exclude anything – not even in the form of “inclusive exclusion”. As a matter of fact, *in the era of bio-politics, life is already a bios that is only its own zoe*. It has already moved into the site that Agamben suggests as the remedy of the political pathologies of modernity, that is to say, into the site where politics is freed from every ban and “a form of life is wholly exhausted in bare life.”<sup>48</sup> At the end of *Homo Sacer*, Agamben gives this life the name “form-of-life”, signifying “always and above all *possibilities* of life, always and above all power”, understood as

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*Power/Michel Foucault*, translated by Robert Hurley and others (New York: The New Press, 2000), 317-318; Michel Foucault, “The Political Technology of Individuals”. In James D. Faubion, ed., *Power/Michel Foucault* (New York: The New Press, 2000), 412-413.

44 Foucault, *The History of Sexuality*, 145.

45 Foucault, *The History of Sexuality*, 138.

46 Foucault, “*Omnes et Singulatim*”, 319.

47 Foucault, *The History of Sexuality*, 139, 141.

48 Agamben, *Homo Sacer*, 188.

potentiality (*potenza*).<sup>49</sup> According to Agamben, there would be no power that could have any hold over men's existence if life were understood as a "form-of-life". However, it is precisely this life, life as untamed power and potentiality, that bio-power invests and optimizes. If bio-power multiplies and optimizes life, it does so, above all, *by multiplying and optimizing potentialities of life, by fostering and generating "forms-of-life"*.<sup>50</sup>

For all these reasons, Foucault had no need to analyse the hidden intersection between sovereign power and bio-power. In fact, there exists no such intersection (although there do exist many other intersections) to the degree that only sovereign power is based on the difference between *bios* and *zoe*, even if this difference maintains itself in the relation between the non-signifying law and bare life. To be sure, historically these two forms of power, sovereign power based on bare life and bio-power operating on the level of life in general, have ceaselessly intermingled. As Foucault has noted, modern states are in fact "demonic combinations" of these two.<sup>51</sup> This is not the case, however, because there are hidden *de jure* ties between sovereign power and bio-power, as Agamben claims, but rather because classical sovereign states have *de facto* used bio-political methods just as modern bio-political societies have *de facto* hinged on the principles of sovereignty. According to Foucault, however, this *de facto* bond has also started to deteriorate in late modernity. This is not because the realms of juridico-institutional power and bio-power have diverged from each other, but because "we have entered a phase of juridical regression."<sup>52</sup> This does not mean that the law has faded into the background or that the institutions of justice have disappeared, but rather that the law operates more and more as a tool of bio-power, that is, as a technique the task of which is to regulate and correct the development of life in general. In other words, the law operates "more and more as a norm."<sup>53</sup>

Surprisingly enough, Agamben does not mention Foucault's concept of norm at all in his analysis of bio-power. What is surprising here is that although Agamben refuses to see the *de jure* difference between sovereign power and bio-power, his analysis of law resembles Foucault's concept of the norm inasmuch as the norm also is defined in terms of exception. However, one probable reason why Agamben does not mention Foucault's concept of the norm derives from Agamben's view that law's relation to life is nevertheless an *external* relation (although in bio-political societies, as Agamben defines them, this relation is paradoxical one to the extent to which

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49 Giorgio Agamben, *Means without End: Notes on Politics* (Minneapolis: University of Minnesota Press, 2000), 2-3. See also Agamben, *Homos Sacer*, 188.

50 Unlike for classical political philosophy, for bio-political rationality the crucial question is not what the essence of man is but rather what his capacities are.

51 Foucault, "Omnes et Singulatim", 311.

52 Foucault, *The History of Sexuality*, 144.

53 Foucault, *The History of Sexuality*, 144.

the law maintains itself in its own privation, that is, it applies in no longer applying). For, according to Foucault, the norm's relation to life is not external but *internal*: "The norm, or normative space, knows no outside", as Foucault's disciple, François Ewald puts it.<sup>54</sup> This does not mean that the norm would not recognise exceptions. On the contrary, in the final analysis *all* forms of life ("forms-of-life") are exceptions. (Normality, as such, is, and has always been, a mere fiction.<sup>55</sup>) In the case of the norm, these exceptions are not, however, taken out (*ex-capere*), but taken in (*in-capere*). Exceptions are nothing but extensions of the norm: "The norm integrates anything which might attempt to go beyond it – nothing, nobody, whatever difference it might display, can ever claim to be exterior."<sup>56</sup> This is so because the norm is not transcendent as regards the forms of life – the synthetic notion of life excludes any transcendence – but is *derived* from them, that is, from the multiplicity of exceptions. Because the norm is derived from the multiplicity of exceptions, Agamben's statement that the law must first of all create the sphere of its reference in real life and make that reference regular, does not apply to the norm.<sup>57</sup> Foucault's concept of the norm assumes that real life, as the multiplicity of exceptions, can be seen, from a certain point of view, as more or less regular in itself. The norm is a *derivative* of this perspective regularity. It does not apply to our life, neither in the normal sense of the word, nor in no longer applying it, that is, abandoning us to the sovereign ban. The perspective regularity of our very lives ("forms-of-life") produces norms. These norms are no longer – transcendent – norms for life but norms *of* life, immanent to life. They are not norms without content of the sovereign state of exception ("there is no norm in itself, there is no pure law"),<sup>58</sup> but norms *without form* of the real state of exception in which politics is freed from every ban.<sup>59</sup>

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54 François Ewald, "A Power without an Exterior." In *Michel Foucault, Philosopher* (New York: Harvester Wheatsheaf, 1992), 173.

55 "Properly speaking, there is no biological science of the normal. There is a science of biological situations and conditions *called* normal. This science is physiology." Georges Canguilhem, *Le normal et le pathologique* (Paris: Puf, 1966), 156.

56 Ewald, "A Power without an Exterior", 173.

57 Agamben, *Homo Sacer*, 26.

58 Pierre Macherey, "Towards a Natural History of Norms." In *Michel Foucault,, Philosopher* [essays translated from the French and German by Timothy J. Armstrong] (New York: Harvester Wheatsheaf, 1992), 186.

59 This is what happens, according to Agamben, in the real state of exception that Benjamin calls "messianic nihilism": "Confronted with the imperfect nihilism that would let the Nothing subsist indefinitely in the form of a being in force without significance, Benjamin proposes a messianic nihilism that nullifies even the Nothing and lets no form of law remain in force beyond its own content." Agamben, *Homo Sacer*, 53.

In fact, this is the same conclusion that Carl Schmitt draws in his analysis of the fate of law in modern bio-political societies – or in liberal “administrative states”,<sup>60</sup> as he puts it:

Law became a means of planning, an administrative act, a directive. Such a directive is issued by an authorized agency but not publicly announced and often only sent to those immediately concerned. It can be changed overnight or adjusted to rapidly changing conditions.<sup>61</sup>

The directive is not an antithesis of the law. It is an antithesis of law without content. The directive is a law without form, an “elastic law”<sup>62</sup> that is reduced to the level of pure content. According to Schmitt, the directive appears because the legislation is subjected to serve the immediate needs of the economy. In Foucault’s terms, the law operates more and more as a norm – or as a tactics, as he also puts it. It is no longer an expression of a legislator’s will but an expression of life in the sphere of the economy. It is the laws of economy – as well as biology, psychology, sociology – that define the content of the formless norm. And inasmuch as these elastic laws are not the subject of political decision but of scientific *knowledge*, power in bio-political societies is not political power proper at all, but purely administrative power – power of the experts and interpreters of life.<sup>63</sup>

### The Origin of Bio-Power: Love and Care

In a sense Agamben’s analysis of Walter Benjamin’s *Critique of Violence* in *Homo Sacer* reveals quite well his reluctance of admitting – or perceiving – the nature of modern bio-power. In the article, Benjamin defines two forms of power, namely, the law-creating and law-preserving mythical power and the law-destroying divine power. Mythical power is, by Benjamin’s definition, “bloody power over mere life for its own sake”,<sup>64</sup> based on the production of “mere life”. (Without mere life, there exists no “rule of law over the living”.<sup>65</sup>) In this sense, mythical power corresponds well both with Foucault’s conception of the sovereign power and with Agamben’s definition of the

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60 See Carl Schmitt, *Legalität und Legitimität*. In *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954. Materialien zu einer Verfassungslehre*. (Berlin: Duncker & Humblot, 1958), 266-268.

61 Carl Schmitt, “The Plight of European Jurisprudence”. *Telos* 83, Spring 1990, 53.

62 See Schmitt, “The Plight”, 53.

63 See Michel Foucault, “Governmentality”. In Graham Burchell, Colin Gordon, and Peter Miller, eds, *The Foucault Effect: Studies in Governmentality* (Chicago: The University of Chicago Press, 1991), 95.

64 Walter Benjamin, “Critique of Violence”. In *One-Way Street* (London: Verso, 1997), 151.

65 Benjamin, “Critique of Violence”, 151.

structure of the sovereign ban. What is divine power then? Agamben, who writes extensively on Benjamin's article in *Homo Sacer*, quite surprisingly claims that Benjamin offers no positive criterion for its identification.<sup>66</sup> Contrary to Agamben's claims, however, Benjamin does indeed offer positive criteria for the identification of divine power. First and foremost, divine power is the antithesis of mythical power "in all respects".<sup>67</sup> It is not bloody power over mere life for its own sake but "pure power over all life for the sake of the living."<sup>68</sup> Instead of making and preserving the law and thereby producing mere life, the purpose of divine power is the same as that of bio-power, the producing and preserving of "all life", "life in general". Admittedly, Benjamin's concept of divine power is by no means as simple as presented here.<sup>69</sup> However, if Agamben would have taken into account Benjamin's basic definition ("pure power over all life for the sake of the living"), he perhaps would have recognized the link, not between the sovereign mythical power and bio-power, but between the latter and divine power. He would have recognized that in addition to divine power that "stands outside the law",<sup>70</sup> bio-power also stands outside the law – even outside the law which is in force without signifying.

To say that bio-power stands outside the law does not yet mean that it stands outside state power. On the contrary, as we have already noted and as Foucault himself has shown, it was precisely the modern sovereign state that first started to use bio-political methods extensively for the care of individuals and populations. Undoubtedly, the original purpose of these methods was to increase state power, but its aim has also been, from the beginning, the welfare of the individual and of the entire population, the improvement of their condition, the increase of their wealth, their longevity, health and even happiness<sup>71</sup> – happiness of "all and everyone" (*omnes et singulatim*): "The sole purpose of the police", one of the first institutional loci of the nascent bio-power, "is to lead man to the utmost happiness to be enjoyed in this life", wrote De Lamare in *Treaty on the Police* at the beginning of the eighteenth century.<sup>72</sup> According to Foucault, one should not, however, concentrate only on the modern state in looking for the origin of bio-power. One should

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66 Agamben, *Homo Sacer*, 63.

67 Benjamin, "Critique of Violence", 150.

68 Benjamin, "Critique of Violence", 151.

69 For according to Benjamin, divine power is, after all, lethal – although it is lethal "without spilling blood": "But in annihilating it also expiates, and a deep connection between the lack of bloodshed and the expiatory character of this violence is unmistakable." Benjamin, "Critique of Violence", 151.

70 Benjamin, "Critique of Violence", 151.

71 See for instance Foucault, "Governmentality", 100.

72 Quoted in Foucault, "*Omnes et Singulatim*", 312.

examine also the religious tradition of the West, especially the Judeo-Christian idea of a shepherd as a political leader of his people.<sup>73</sup>

Although Foucault's studies of Judeo-Christian political ideas were merely initiatory, he was nevertheless somewhat convinced that the origin of bio-political rationality can be found in the Judeo-Christian tradition of pastoral power. What then is pastoral power, especially in its original Hebraic form? Foucault addresses this question by juxtaposing it to the Greek and Roman conceptions of power and governance, claiming that it is something unknown in those traditions. Firstly, Greek and Roman power was power over land, whereas the shepherd wields power over a flock. Secondly, the main task of the Greek political leader was to quiet down hostilities and resolve conflicts within the city, whereas the purpose of the shepherd is to guide and lead his flock. Thirdly, it was sufficient for the Greeks that there be a virtuous Greek lawgiver, like Solon, who, once he had resolved conflicts, could leave the city behind with laws enabling it to endure without him. Instead, the Hebraic idea of the shepherd-leader presupposes the immediate presence of the shepherd, who has only to disappear for the flock to be scattered. Fourthly, whilst the aim of the Greek leader was to discover the common interest of the city, the task of the shepherd is to provide continuous material and spiritual welfare for each and every member of the flock. Fifthly, the measure of success of the Greek leader was the glory he won by his decisions. By way of contrast, the measure of the shepherd's success is the welfare of the flock: "Everything the shepherd does is geared to the good of his flock." That is his constant concern. When they sleep, he keeps watch:

The shepherd acts, he works, he puts himself out, for those he nourishes and who are asleep. He watches over them. He pays attention to them all and scans each one of them. He's got to know his flock as a whole, and in detail. Not only must he know where good pastures are, the season's laws, and the order of things; he must also know each one's particular needs.<sup>74</sup>

Of course, these are merely themes that Hebraic texts associate with the metaphors of the shepherd and especially the Shepherd-God and his flock of people. Moreover, the ultimate purpose of the shepherd's kindly care of the flock is not so much mundane happiness but the salvation of souls. In other words, Foucault does not claim that that is how political power was wielded in Hebrew society. However, what is important, especially from the perspective of modern bio-power, is that Christianity gave these themes "considerable importance", both in theory and in practice.<sup>75</sup> To be sure,

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73 As a matter of fact, divine power is, according to Benjamin, also attested by the Jewish religious tradition. Benjamin, "Critique of Violence", 151-152.

74 Foucault, "*Omnes et Singulatim*", 303.

75 Foucault, "*Omnes et Singulatim*", 303.

Foucault also maintains that the Christian pastorate is profoundly different from the Hebraic pastoral theme. However, the Christian pastorate is different because in Christianity this theme was *intensified, institutionalized* and transformed into an *art of governing* people: "No civilization, no society has been as pastoral as the Christian societies."<sup>76</sup> In Hebrew society the theme of the pastorate was by no means as important as the theme of the law. In Christian societies, however, the function of the law as the source of absolute authority was called into question: "The shepherd is neither fundamentally nor primarily a judge, he is essentially a physician."<sup>77</sup> With Christianity, the law lost its sacredness and became a mere instrument, first and foremost an instrument of pastoral power.

According to Foucault, it is that transformation which constitutes the background of what he calls governmentality, that is to say, bio-political rationality within the modern state.<sup>78</sup> It explains why political power that is at work within the modern state as a legal framework of unity is, from the beginning of a state's existence, accompanied by a power that can be called pastoral. Its role is not to threaten lives but to "ensure, sustain, and improve" them, the lives of "each and every one".<sup>79</sup> Its means are not law and violence but *care*, the "care for individual life".<sup>80</sup> It is precisely care, the Christian power of love (*agape*), as the opposite of all violence that is at issue in bio-power. This is not to say, however, that bio-power would be nothing but love and care. Bio-power is love and care only to the same extent that the law, according to Benjamin, is violence, namely, by its origin.<sup>81</sup>

Admittedly, in the era of bio-politics, as Foucault writes, even "massacres have become vital."<sup>82</sup> This is not the case, however, because

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76 The theme of the pastorate, first became "enriched, transformed and complicated by the Christian thinking". Second, Christianity provided it with a "dense institutional network". Third, it became "an art of conduct, of governing, of leading, of guiding, and of manipulating people, an art of hustling them and making them follow step by step, an art which has this function of taking charge of people collectively and individually during their whole life and in every step of their existence". Michel Foucault, *Sécurité, territoire, population. Cours au Collège de France 1977-1978* (Paris: Gallimard, 2004), 168.

77 Foucault, *Sécurité, territoire, population*, 178.

78 "Briefly, the pastorate does not coincide with a politics (*politique*), with a pedagogy, or with a rhetoric. It is something completely different. It is an art of governing people and it is, I think, in this aspect that we must search for the origin, the point of formation, the crystallization, and the embryonic point of that governmentality of which entry in politics marks the threshold of the modern state in the end of sixteenth and in the seventeenth and eighteenth centuries." Foucault, *Sécurité, territoire, population*, 169.

79 Foucault, "*Omnes et Singulatim*", 307.

80 Foucault, "The Political Technology", 404.

81 Benjamin, "Critique of Violence", 140.

82 Foucault, *The History of Sexuality*, 137.



violence is hidden in the foundation of bio-politics, as Agamben believes. Although the twentieth century thanatopolitics is the “reverse of bio-politics”,<sup>83</sup> it should not be understood, according to Foucault, as “the effect, the result, or the logical consequence” of bio-political rationality.<sup>84</sup> Rather, it should be understood, as he suggests, as an outcome of the “demonic combination” of the sovereign power and bio-power, of “the city-citizen game and the shepherd-flock game”<sup>85</sup> – or as I would like to put it, of *patria potestas* (father’s unconditional power of life and death over his son) and *cura materna* (mother’s unconditional duty to take care of her children). Although massacres can be carried out *in the name of care*, they do not follow from the logic of bio-power for which death is the “object of taboo”.<sup>86</sup> They follow from the logic of sovereign power, which legitimates killing by whatever arguments it chooses, be it God, Nature, or life.

Indeed, the imperative “to improve life, to prolong its duration, to improve its chances, to avoid accidents, and to compensate for failings”,<sup>87</sup> may also legitimate killing. According to Foucault, it may legitimate killing if it assumes the following logic of argumentation of *racism*:

The more inferior species die out, the more abnormal individual are eliminated, the fewer degenerates there will be in the species as a whole, and the more I – as species rather than individual – can live, the stronger I will be, the more vigorous I will be. I will be able to proliferate.<sup>88</sup>

It is the logic of racism, according to Foucault, that makes killing acceptable in modern bio-political societies. This is not to say, however, that bio-political societies are necessarily more racist than other societies. It is to say that in the era of bio-politics, *only* racism, because it is a determination immanent to life, can “justify the murderous function of the State”.<sup>89</sup> However, racism can only *justify* killing – killing that does not follow from the logic of bio-power but from the logic of the sovereign power. Racism is, in other words, the only way the sovereign power, the right to kill, can be maintained in bio-political societies: “Racism is bound up with workings of a State that is obliged to use race, the elimination of races and the purification of the race, to exercise its sovereign power.”<sup>90</sup> Racism is, in other words, a discourse – “quite

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83 Foucault, “The Political Technology”, 416.

84 Foucault, “The Political Technology”, 405.

85 Foucault, “*Omnes et Singulatim*”, 311.

86 Michel Foucault, “*Society Must Be Defended*”: *Lectures at the Collège de France 1975-1976* (New York: Picador, 2003), 246.

87 Foucault, “*Society Must Be Defended*”, 254.

88 Foucault, “*Society Must Be Defended*”, 254.

89 Foucault, “*Society Must Be Defended*”, 256.

90 Foucault, “*Society Must Be Defended*”, 258.

compatible"<sup>91</sup> with bio-politics – through which bio-power can be most smoothly transformed into the form of sovereign power.

Such transformation, however, changes everything. A bio-political society that wishes to “exercise the old sovereign right to kill”,<sup>92</sup> even in the name of race, ceases to be a mere bio-political society, practicing merely bio-politics. It becomes a “demonic combination” of sovereign power and bio-power, exercising sovereign means for bio-political ends. In its most monstrous form, it becomes the Third Reich. For this reason, I cannot subscribe to Agamben’s thesis, according to which bio-politics is absolutized in the Third Reich.<sup>93</sup> To be sure, the Third Reich used bio-political means – it was a state in which “insurance and reassurance were universal”<sup>94</sup> – and aimed for bio-political ends in order to improve the living conditions of the German people -- but so did many other nations in the 1930s. What distinguishes the Third Reich from those other nations is the fact that, alongside its bio-political apparatus, it erected a massive machinery of death. It became a society that “unleashed murderous power, or in other words, the old sovereign right to take life” throughout the “entire social body”, as Foucault puts it.<sup>95</sup> It is not, therefore, bio-politics that was absolutized in the Third Reich – as a matter of fact, bio-political measures in the Nazi-Germany were, although harsh, relatively modest in scale compared to some present-day welfare states – but rather the sovereign power:

This power to kill, which ran through the entire social body of Nazi society, was first manifested when the power to take life, the power of life and death, was granted not only to the State but to a whole series of individuals, to a considerable number of people (such as the SA, the SS, and so on). Ultimately, everyone in the Nazi State had the power of life and death over his or her neighbours, if only because of the practice of informing, which effectively meant doing away with the people next door, or having them done away with.<sup>96</sup>

The only thing that the Third Reich actually absolutizes is, in other words, the sovereignty of power and therefore, the nakedness of bare life – at least if sovereignty is defined in the Agambenian manner: “The sovereign is the one with respect to whom all men are potentially *homines sacri*, and *homo sacer* is the one with respect to whom all men act as sovereigns.”<sup>97</sup>

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91 Foucault, “Society Must Be Defended”, 255.  
92 Foucault, “Society Must Be Defended”, 256.  
93 Agamben, *Homo Sacer*, 146-147.  
94 Foucault, “Society Must Be Defended”, 259.  
95 Foucault, “Society Must Be Defended”, 259.  
96 Foucault, “Society Must Be Defended”, 259.  
97 Agamben, *Homo Sacer*, 84.

### Excursus: St Paul and the Law Rendered Inoperative

To the extent that Foucault identifies the origin of bio-power in the Judeo-Christian tradition of pastoral power, it would have been interesting if Agamben would have included his analysis of bio-power in his excellent study of St. Paul (*Il tempo che resta*, 2000). For it is precisely Paul, as we all know, who, through Christianity, introduced Judaic ideas into the political tradition of the West. It is true, however, that the pastoral theme is almost absent in Paul's letters. In the First Letter to the Corinthians (9:7) he speaks about the shepherd in literal terms, whereas the letters to the Ephesians (4:11) and Hebrews (13:20), where Christ or ministers and teachers of the Church are presented as shepherds, are generally considered as "forgeries."<sup>98</sup> However, Paul's deconstruction of the law, nicely demonstrated by Agamben, paves the way, not only for the "revolutionary Messianic dimension", as Slavoj Žižek claims,<sup>99</sup> but also for bio-politics. These two do not, however, contradict each other. On the contrary, the messianic revolution can be seen as a historical precondition of the deployment of modern bio-politics. Even Žižek comes to this conclusion, although without acknowledging it: "If this Messianic dimension means anything at all, it means that 'mere life' is no longer the ultimate terrain of politics."<sup>100</sup>

Why then is the messianic – that is to say Pauline – revolution a precondition of the deployment of modern bio-politics? In the first place, the Pauline revolution is a revolution against the law: "For all who rely on works of the law are under a curse" (Galatians 3:10). According to Agamben, however, Paul does not want to abolish the law but to *suspend* it. As we have seen, however, there is nothing specifically messianic in the suspension as such, insofar as Schmitt's "explicitly anti-messianic constellation" of the sovereign state of exception also signifies the suspension of the law.<sup>101</sup> Nevertheless, the messianic suspension of the law is, according to Agamben, the complete opposite of a sovereign suspension. In both cases the law is suspended, but in the sovereign state of exception the suspended law is still active (although without significance, without content), whereas in the messianic state of exception the law becomes absolutely passive. It is not devoid of content – as a matter of fact, Christ signifies the *fulfilment* (*pleroma*) of the content of the law – but only that of *force*. In that state of exception the

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98 On Foucault's analysis of the letter to the Hebrews, see *Sécurité, territoire, population*, 156.

99 "In his detailed reading of Saint Paul Agamben violently reasserts the 'revolutionary' Messianic dimension." Slavoj Žižek, *Welcome to the Desert of the Real* (London: Verso, 2002), 100.

100 Žižek, *Welcome*, 100.

101 Giorgio Agamben, *Il tempo che resta: Un commento alla Lettera ai Romani* (Torino: Bollati Boringhieri, 2000), 98.

law is inactivated, rendered inoperative (*katargesis*): "Now [when we are living in Christ] we have been inactivated [*katergethemen*] in relation to the law" (Romans 7:6, Agamben's translation).

Why then is the law fulfilled when inactivated? According to Agamben, the law is fulfilled in *katargesis* in the same way as the potency (*dunamis*) in Paul is made perfect in weakness (*astheneia*), that is to say, when it has made an exit from the act (*energeia*): "Power (*dunamis*) is made perfect (*teleitai*) in weakness (*en astheneia*)" (2 Corinthians 12:9). In other words, power (*dunamis*) attains its fulfilment, not in the act – in the force of law – but in weakness and powerlessness (*adunamia*): "For Paul, messianic power does not exhaust itself in its *ergon*, but remains powerful in it in the form of weakness."<sup>102</sup> As regards *nomos* this signifies that:

If, in *nomos*, the power of promise was transposed in the works and the obligatory precepts, the messianic age renders these works inoperative and restores them to power in the form of inoperativeness and ineffectiveness. The messianic [that is to say, Pauline] signifies not the destruction but the inactivation and the non-executability [*ineseguibilità*] of the law.<sup>103</sup>

If the law is inactivated in the messianic state of exception, what is the relation between law and life then? In order to reply to this question we must know what it means to live in the messiah. The answer to this latter question can be found, according to Agamben, in the First Letter to Corinthians (7:29-31):

But this I say, brethren, the time is shortened, that henceforth both those that have wives may be as though they had none; and those that weep, as though they wept not; and those that rejoice, as though they rejoiced not; and those that buy, as though they possessed not; and those that use the world, as not using it to the full.

In this extraordinary passage and especially in the formula "as though not" (*hos me*), Agamben sees the most rigorous definition of the messianic life, the only acceptable messianic vocation (*klesis*). It does not mean that an ancient less authentic vocation is replaced with a new more authentic one. Instead, it means that the vocation is put in tension with itself in the form of "as though not": "The messianic vocation is the revocation of all vocation."<sup>104</sup> However, the revocation of vocation does not signify a simple destruction of ancient vocation: "The *hos me* has not a negative content only."<sup>105</sup> The vocation is indeed preserved but the attitude towards it has changed. It has become *relativized*. It is no longer the foundation of identity, but rather conceived as a

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102 Agamben, *Il tempo*, 93.

103 Agamben, *Il tempo*, 93.

104 Agamben, *Il tempo*, 28.

105 Agamben, *Il tempo*, 31.

contingent thing that can be used if necessary. According to Agamben, it is precisely the usage, in opposition to the possession, that defines the messianic manner of being: "To live in a messianic manner signifies 'make use'."<sup>106</sup> In fact, Agamben argues that only the revocation of all vocation – and thereby the relativizing of every identity – in the form of "as though not" opens up the possibility for the free usage of ancient vocation, that is to say, of all juridico-factual conditions:

Messianic being, life in the messiah, signifies de-possession (*depropriazione*), in the form of *as though not*, of all juridico-factual property (circumcised/uncircumcised; free/slave; man/woman), but this de-possession does not found a new identity and the 'new creature' is but the messianic usage and vocation of the ancient.<sup>107</sup>

To the extent that it is the law that defines all juridico-factual conditions, the status of the law in the messianic life becomes obvious. Also, the law, when rendered inoperative, becomes a "locus of pure praxis."<sup>108</sup> One should not live according to the maxims of law, but rather use them. In the messianic life the law becomes, in other words, a mere *instrument*, a neutral object of pragmatic considerations. The law operates more and more as a norm, as a means of planning, as a tactics.<sup>109</sup>

What is revolutionary in all this? Where is the revolutionary moment of the messianic life in which the self is relativized, the law neutralized and politics becomes pragmatics? It is precisely here, in these operations. The messianic revolution is nothing but the original impetus of secularization – to the extent that secularization is understood both as the process in which the law and politics descend from the isolated sacred sphere to the common sphere of the profane and as the process in which *the biblical message is made accessible for its free usage in the sphere of the profane*. Doubtless, the sacred and the profane are thereby entered into a zone of irreducible indistinction, but the result of this process is not Nazi-Germany and Auschwitz, as Agamben would claim (the Third Reich was a reaction *against* secularization), but, rather, bio-politics in the Foucauldian sense, that is, the care of all life. It is only because of the process of secularization – the neutralization of the law and the pragmatization of politics, on the one hand, and the free usage of the biblical message, on the other – that the shepherd's original care of his flock for the sake of the hereafter turns out to be the care of life of individuals for

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106 Agamben, *Il tempo*, 31.

107 Agamben, *Il tempo*, 41.

108 Agamben, *Il tempo*, 33.

109 In fact, the neutralization of the law was, also according to Agamben, Paul's original task when he tried to bypass this cursed – and I would like to add sacred – wall that separates nations: "In what way is it possible to neutralize, from the messianic perspective, the partitions imposed by the law?" Agamben, *Il tempo*, 51.

the sake of their mundane health and happiness. This is not so, however, only because the Judeo-Christian tradition of pastoral care is included in the messianic revolution of neutralization and pragmatization, but also because the law and politics are neutralized and pragmatized precisely *by means* of love and care. For it is, after all, love and care (*agape*) by means of which the law is inactivated in the first place: "Love [*agape*] is the fulfilment [*pleroma*] of the law" (Romans 13:10).

## Conclusion

For Foucault, the coexistence in political structures of large destructive mechanisms and institutions oriented toward the care of individual life was something puzzling: "It is one of the central antinomies of our political reason."<sup>110</sup> However, it was an antinomy precisely because in principle the sovereign power and bio-power are mutually exclusive. How is it possible that the care of individual life paves the way for mass slaughters? Although Foucault could never give a satisfactory answer to this question, he was convinced that mass slaughters are not the effect or the logical conclusion of bio-political rationality. I am also convinced about that. To be sure, it can be argued that sovereign power and bio-power are reconciled within the modern state, which legitimates killing by bio-political arguments. Especially, it can be argued that these powers are reconciled in the Third Reich in which they seemed to "coincide exactly".<sup>111</sup> To my mind, however, neither the modern state nor the Third Reich – in which the monstrosity of the modern state is crystallized – are the *syntheses* of the sovereign power and bio-power, but, rather, the institutional loci of their *irreconcilable tension*. This is, I believe, what Foucault meant when he wrote about their "demonic combination".

In fact, the history of modern Western societies would be quite incomprehensible without taking into account that there exists a form of power which refrains from killing but which nevertheless is capable of directing people's lives. The effectiveness of bio-power can be seen lying precisely in that it refrains and withdraws before every demand of killing, even though these demands would derive from the demand of *justice*. In bio-political societies, according to Foucault, capital punishment could not be maintained except by invoking less the enormity of the crime itself than the monstrosity of the criminal: "One had the right to kill those who represented a kind of biological danger to others."<sup>112</sup> However, given that the "right to kill" is precisely a sovereign right, it can be argued that the bio-political societies analyzed by Foucault were not entirely bio-political. Perhaps, there

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110 Foucault, "The Political Technology", 405.

111 Foucault, "Society Must Be Defended", 260.

112 Foucault, *History of Sexuality*, 138.

neither has been nor can be a society that is entirely bio-political. Nevertheless, the fact is that present-day European societies have abolished capital punishment. In them, there are no longer exceptions. It is the very “right to kill” that has been called into question. However, it is not called into question because of enlightened moral sentiments, but rather because of the deployment of bio-political thinking and practice.

For all these reasons, Agamben’s thesis, according to which the concentration camp is the fundamental bio-political paradigm of the West, has to be corrected.<sup>113</sup> The bio-political paradigm of the West is not the concentration camp, but, rather, the present-day welfare society and, instead of *homo sacer*, the paradigmatic figure of the bio-political society can be seen, for example, in the middle-class Swedish social-democrat. Although this figure is an object – and a product – of the huge bio-political machinery, it does not mean that he is permitted to kill without committing homicide. Actually, the fact that he eventually dies, seems to be his greatest “crime” against the machinery. (In bio-political societies, death is not only “something to be hidden away,” but, also, as Foucault stresses, the most “shameful thing of all”.<sup>114</sup>) Therefore, he is not exposed to an unconditional threat of death, but rather to an unconditional retreat of all dying. In fact, the bio-political machinery does not want to threaten him, but to encourage him, with all its material and spiritual capacities, to live healthily, to live long and to live happily – even when, in biological terms, he “should have been dead long ago”.<sup>115</sup> This is because bio-power is not bloody power over bare life for its own sake but pure power over all life for the sake of the living. It is not power but the living, the condition of all life – individual as well as collective – that is the measure of the success of bio-power.

Another important question is whether these bio-political societies that started to take shape in the seventeenth century (but did not crystallize until the 1980s) are ideologically, especially at the level of practical politics, collapsing – to say nothing about the *value* of the would-be collapse. One thing is clear, however. At the global level, there has not been, and likely will

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113 “Today it is not the city but rather the camp that is the fundamental bio-political paradigm of the West.” Agamben, *Homo Sacer*, 181.

114 Foucault, “*Society Must Be Defended*”, 247.

115 Foucault, “*Society Must Be Defended*”, 248. Foucault is referring here to the “joyous event” of the death of the dictator Franco. According to him, this event is very interesting because of the symbolic values it brings into play, symbolizing the “clash between two systems of power”: that of “sovereignty over death”, and that of the “regularization of life”: “The man who died (...) was the bloodiest of all the dictators, wielded an absolute right of life and death for forty years, and at the moment when he himself was dying, he entered this sort of new field of power over life which consists not only in managing life, but in keeping individuals alive after they are dead.” Foucault is referring to the medical attempts to keep Franco alive even though he was virtually dead.

not be, a completely bio-political society. And to the extent that globalization takes place without bio-political considerations of health and happiness of individuals and populations, as it has done until now, it is possible that our entire existence will someday be reduced to bare life, as has already occurred, for instance, in Chechnya and Iraq. On that day, perhaps, when bio-political care has ceased to exist, and we all live within the sovereign ban of Empire without significance, we can only save ourselves, as Agamben suggests, “in perpetual flight or a foreign land”<sup>116</sup> – although there will hardly be either places to which to flee, or foreign lands.

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116 Agamben, *Homo Sacer*, 183.