

## Life, Law, and Abandonment in Giorgio Agamben

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The events of 9/11 and the “war on terror”, to cut a long story short, bear all the hallmarks of what Carl Schmitt – the anti-liberal German philosopher of the first half of twentieth century – described as a “state of exception”. In the present political context, a state of exception refers to the ways by which the major liberal democracies are driven by the growing accretion of discriminatory executive power, increasingly bypassing existing legislative and juridical institutions. The crucial issue is whether the state of exception is becoming a permanent feature of governance across nation-states. And it is here that the political treatise of the Italian philosopher Giorgio Agamben (born 1942) becomes relevant. Agamben refuses to accord modernity any epistemic break in political rule. Instead, he argues that the very same lineage of Western metaphysics of political power runs unabated from the classical Greek time onwards; modern political rule, if different, is only so in its manner of ceaseless intensification of sovereign power. He identifies the Camp (meaning, Auschwitz) as the abiding metonym of modern power. Human rights are at best a ruse and at worst grist to an all-powerful sovereign that reduces humans to mere amorphous mass of living bodies bereft of all political claims – bare life or “nude vita” (i.e., nude life), if one goes by the words Agamben uses. Agamben began his career and worked for a long time in classical rhetoric and aesthetics. His turn to political philosophy was only in the 1990s, with the publication of *Homo Sacer* (1995) – the first of his trilogy (or, “tetra-logy” as he prefers to call) – the other two being, *Remnants of Auschwitz* (1998) and a collection of essays, *State of Exception: Homo Sacer II* (2003). Since his claim as a political thinker rests primarily on these three books, the present essay will be concerned mostly with these.<sup>1</sup>

Prior to Agamben, the French philosopher Michel Foucault had argued that the regime of power that emerged in Europe between late seventeenth and early eighteenth centuries and came into its own towards the middle of nineteenth century occasioned a crucial shift in the existing principles of power. He claimed that whereas pre-modern sovereign power operated on the principle of the right to “commit its subjects to death” (i.e., deductive power) in order to enhance the strength of the sovereign, modern power turns around this axis and works through the administration of life. The entry of life itself into the operations of power and the arrangement of political calculations around the survival of the species constituted for Foucault the “threshold of modernity”: “What might be called a society’s ‘threshold of modernity’ has been reached when the life of the species is wagered on its own political strategies.”<sup>2</sup> (Foucault 1990: 143) Since the late eighteenth century, the traditional role of the sovereign expressed as “the right to kill and let live” has been on the decline. Instead, what we have is the emergence of the modern “governmentalized state” that rules through a new combination of discipline and biopolitics, replacing to a large extent the earlier sovereign power. Foucault epitomized the modern thrust of political power as “to make live and to let die”.

The historical claim that biopolitics emerged during the eighteenth century provides the point of purchase of Agamben’s own critical thesis on biopolitics, which he describes as an attempt to “correct” – or at least “complete” – Foucault’s analysis of the relation between biopolitics and sovereign power<sup>3</sup>. Agamben’s major departure lies in this: whereas Foucault sees in “biopower” the primary orientation of modern politics working through a broad spectrum of areas like hygiene, demography, social welfare and insurance systems, Agamben postulates his concept of biopolitics as the bare essence of the sovereign right to kill and let live. Thus, according to Agamben, the concept of biopower means at the political level what is at stake is the very life itself of the subject, not the intervention into the processes of living. Hence if for Foucault, biopolitics is a life-administering power working towards creating homogenous social body, for

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Agamben biopolitics (or, biopower) is the other name of the same subtraction mechanism of earlier times, now more holistic, comprehensive and devastating in its range and scope. Agamben claims that rather than being characteristic of the modern era, sovereignty articulates with biopolitics in a much more fundamental way, such that the “production of a biopolitical body is the original activity of sovereign power” and “biopolitics is at least as old as the sovereign exception” (Agamben 1998: 6). The political status and function of the legal exception is central to Agamben’s analysis of biopolitics, and it is this that allows him to identify the contemporary condition of politics which he characterizes as one of abandonment and nihilism.

### Homo Sacer

To explain his position, Agamben redefines the sovereign/subject relation completely. Foucault had already questioned the idea of sovereign and subject as each other’s mirror.<sup>4</sup> Agamben puts this relationship as two sides of a paradox. On the one hand, there are the operations of democratic politics which necessarily have to assume the whole subject, the subject of rights based on liberal consensus. On the other hand, we have the ceaseless production of bare lives through biopolitical-sovereign nexus that reduces life to its minimum essentials, a “spectral lump” bereft of all rights, but it, at the same time, has to be located in the interstices of the juridical.

Excavating ancient Roman law, Agamben finds the right trope for this state: the figure of *homo sacer* (“sacer” here means both sacred and cursed: the Latin *sacrificium/sacr/sacer*). Borrowing from the Roman writer Pompeius Festus, Agamben frames the *homo sacer* as the quintessence of extreme marginality, one who cannot be sacrificed to the gods (for his death is of no value to the gods) but who can be killed with impunity (because he enjoys no legal protection). For Agamben, the figure is neither merely historical nor a residuum, but a generalized trope for included exclusion of modern life, “an epitomic site of the social markings and symbolization of the workings of the sovereign” (Lemke 2005: 6). In other words, it is a limit concept, the source of

sovereign power. *Homo sacer* is at once sacred and accursed since it is located exterior with respect to the human order that it helps to establish. In the eyes of the *homo sacer* every one is a potential sovereign; conversely, to the sovereign, everyone is a potential *homo sacer*. Destruction of such life does not mean homicide; killing here does not involve law and yet it does not indicate lawlessness.

As is evident here, it is through the exception of law (legally performed) that sovereignty and life are brought into conjunction; in other words, even though the sovereign defines and ratifies the exception, it is exception that founds sovereign power and allows the law to take hold of life. Law is fully operative in exception. Sovereignty's power resides in the state of exception produced by the legal order, which in turn draws its life from sovereign decision. The sovereign, much like the *homo sacer*, is a point of exteriority to the legal order. The difference is, while the sovereign constitutes the law by its decision of exception, the *homo sacer* brings out the specificity of law by being reduced to the site of the law's interminable gaze and violence. As the sacred, *homo sacer* occupies a space in-between the profane and transcendent. Peter Fitzpatrick observes: "These two dimensions can only be combined in *homo sacer* because of the confident reference beyond, because of a sacrifice which has brought the beyond into the measure and contingency of a profane world." (Fitzpatrick 2001) This beyond one can argue is as much the sovereign as the law – or better, the sovereign as law. In what follows, I shall focus on two aspects of Agamben's more explicitly political thought around biopolitics: his conception of sovereignty and the exception, and his understanding of the interrelation of life and law in the notion of "bare life".

First, however, let us ask: did the *homo sacer* ever exist? Or, at least, in the way Agamben frames him to be? Agamben is evasive: "It appears that we are confronted with a limit concept of the Roman social order" (1998: 48). James Leigh Stratton-Davidson in his authoritative book, *Problems of Roman Criminal Law* (1912), argues that the *homo sacer* did actually exist. But the meaning he gives is significantly different. He has the following to say: when a devotee of early Roman religion committed a serious crime, he

was called a *homo sacer*. He was taken out of the jurisdiction of the religious authorities and left to the local magistrate and wasn't allowed the benefit of the so-called "right" to appeal. Very often the religious authorities disputed the justice meted out to the *homo sacer* by the magistrate. Stratton-Davidson sees in the *homo sacer* the point at which the pre-legal passed into the properly constituted legal in imperial Rome. If the decision to take the plaintiff out of the jurisdiction of the religious authorities to the purview of the local magistrate is the moment of the reduction of life to *homo sacer*, then the figure belongs to a moment of transition from the pre-legal to the legal. Read in this light, *homo sacer* is indeed, even historically, a "threshold" figure that Agamben considers it to be.

Agamben makes a crucial reversal of Aristotle's distinction between bare life (*zoē*) and good life (*bios*). For Aristotle, *zoē* is that life that man as a living animal shares with other living animals, while *bios* signifies man's entry into the world of ratiocination, of the question of justice. *Bios* is therefore the sphere of language, the sphere that differentiates man from other animals. For millennia, this was the difference on which Western political thought was based. Agamben reverses the distinction to argue that the work of politics is precisely to monopolize the sphere of the living – merely living (*zoē*) – to reduce man to his bare existence, and more: to ceaselessly threaten with the prospect of annihilation: "Human life is politicized only through an unconditional power of death." (1998: 56) Therefore Agamben's focus is not on the life adorned with rights, but the life that fails to achieve humanity itself, "the remains as it were of our becoming moral, just and political. I say "as it were" because political life's condition of possibility is the non-exclusion of bare life". And a little later: "There is politics because man is the living being who, in language, separates and opposes himself to his own bare life and, at the same time, maintains himself in relation to that bare life in an inclusive exclusion." (1998: 8) This erasural bond Agamben will call "threshold": political life's relation with the non-relational. Politics must again and again enact its distinction with the bare life and thus again and again bring bare life within its scope as excluded.

To explain its relation with exception, Agamben locates the figure of the sovereign in a special topological arrangement, an architectonic that enables it to be at once inside and outside the juridical order. To elaborate this position, Agamben quotes Carl Schmitt's key claim: "Sovereign is he who decides on the state of exception." (1998: 11) Just as in the Foucauldian *dispositive* the pathological is mapped to indicate what normal is, for Agamben the sovereign too defines and creates the normal through the act of exception; exception is the distinctive feature of the sovereign, for only he has the right to decide on it. Early in modernity, Hobbes viewed the state of nature (or, premodern) not as a real epoch chronologically prior to the foundation of the City, but a principle internal to the City itself: *tanquam dissoluta*, "as if it were dissolved". It can emerge anytime and therefore proper vigil is essential. In continuity with Hobbes's formulation, the sovereign's precise function for Agamben lies in deciding what constitutes public order and security and whether the social order has been disturbed and conditions of chaos prevail. This decision is the immutable core of sovereignty.

Agamben endorses Schmitt's position that the exception is "that which cannot be subsumed; it defies general codification, but simultaneously reveals a specifically juristic element: the ability to decide in absolute purity. Therein resides the essence of the states sovereignty, which must be juristically defined as the monopoly to decide" (Schmitt, 2006: 13). Since for the legal order to operate there needs be an understanding what constitutes the normal – and since this depends on the decision of the sovereign – the sovereign decision on the norm and the exception itself creates the basis for the law. Agamben calls sovereignty the "border-line" concept of order and the exception. As he states, "what is at issue in the sovereign exception is not so much the control or neutralization of an excess as the creation and definition of the very space in which the juridico-political order can have validity" (1998: 19) People are given rights, there are norms and orders to follow. They can claim those rights if they wish and are supposed to follow those norms and order, knowing fully well that exception may erupt any moment. Much like Hobbes' understanding of *tanquam dissoluta* in the City, therefore, in Agamben's scheme too there is the ever-present possibility of chaos in order and this

possibility is determined by the sovereign's decision. Since the exception is the condition of law's operation, far from being outside to the realm of the law, it is cardinal to the law; it is what in a sense makes law possible. In other words, the law resides in its own suspension. Law can apply but it can also apply in not applying to a specific case. The exception is included within the scope of the law, points out Mills, precisely through its exclusion from it. "The effective consequence of this is that the exception confirms the rule by its being other than the normal reference of the rule." (Mills 2008: 63) This Agamben calls, "inclusive exclusion" (1998: 19-20). He concludes from this special grammar of the exception that "the rule applies to the exception in no longer applying, in withdrawing from it." (1998: 28)

Agamben points to the aporia of law and politics as they function in modern constitutions of nation-states: "If exceptional measures are the result of periods of political crisis and as such must be understood on political and not juridico-constitutional grounds, then they find themselves in the paradoxical position of being juridical measures that cannot be understood in legal terms, and the state of exception appears as the legal form of what cannot have legal forms."<sup>5</sup> The state of exception is not a special kind of law (like the law of war); rather, insofar as it involves suspension of the juridical order itself, it defines law's threshold or limit concept. For instance, on November 13, 2001, the president of the USA issued a decree which authorized the indefinite detention and trial by military commissions (not to be confused with the military tribunals provided by the law of war) of noncitizens suspected of involvement in terrorist activities. The USA Patriot Act issued by the US Senate on October 26, 2001, had already allowed the attorney general to "take into custody" any alien suspected of activities that endangered the national security of the USA; however, as per the Act, within seven days the alien had to be either released or charged with the violation of immigration laws or some other criminal offence. What was new in President Bush's order is that it radically erased any legal status of the individual, thus producing a legally unnamable and unclassifiable being. Those captured as terrorists in Iraq did not enjoy the status of POWs as defined by

the Geneva Convention, they did not even have the status of persons charged with a crime according to American laws. Neither prisoners nor persons accused, but simply “detainees”, they are the object of pure *de facto* rule. They are removed from the law by taking permission of the law itself. At Guantanamo Bay, bare life reaches its maximum indeterminacy.<sup>6</sup>

Here two things need to be kept in mind: one, exceptional measures are not a carry-over of the past absolutist state, but the creation of the democratic-revolutionary traditions that brought modern states into being. Second, even though exception is not codified in law, for exception to work, at least in the sense postulated by Agamben, it needs a legal, constitutional order in the first place. Here it may be interesting to compare Agamben’s notion of the state of exception with the influential African political theorist, Achille Mbembe’s notion of “necropolitics”. In his 2004 essay, “Necropolitics”, Mbembe maintains that the Foucauldian notion of biopower is insufficient to account for contemporary forms of subjugation of life to the power of death one experiences in certain sectors of international political life today. His examples come predominantly from the fringe states of postcolonial Africa that do not have monopoly of violence due to the eruption of many non-state players clustered around mineral extraction and export, activities that are linked to multinational conglomerates bent on taking full advantage of the unstable economies of those states. In such zones, Mbembe argues, death is arbitrary and commonplace as are those who constitute those roving marauding bands. In his bid to explain such emerging phenomena, Mbembe coins the term, necropolitics, borrowing, as he maintains, from Agamben’s understanding of the modern cusp between biopolitics and sovereignty. But the examples Mbembe cites do not, strictly speaking, fall within the terms of Agamben’s analysis because state of exception – as defined by Agamben – requires a constitution to be in place; the charge of the concept is precisely its juridicality. The extra-juridical, for Agamben, is not non-juridical and anarchy, but very much premised on the juridical.



As a matter of fact, Agamben is not so much interested in law as such, unless a specific article of the Constitution refers to the temporary seizure of legal procedures (like Article 48 of the Weimar Republic used eighteen times, as Agamben points out, during the republic's fourteen-year reign – i.e., 1919-1933). Otherwise, his interest by and large lies in decrees like the decree for the protection of the people and the state issued by Hitler as soon as he came to power. By virtue of such a decree Hitler could suspend certain basic rights and liberties. The concept of the state of emergency was never mentioned but the decree remained in force till the last day of Nazi rule, thus making impossible to distinguish between the rule and its exception (Agamben 2005: 25-6).

We conclude the discussion on *homo sacer* by pointing to two crucial analogues. First is the link-line between the sovereign, the *homo sacer* and the exception. It is exception, one ought to remember, that links sovereign and *homo sacer* together; exception is what constitutes both the sovereign and the *homo sacer*. Agamben defines exception in *State of Exception* much the same way he defines the *homo sacer* in his earlier book: “what cannot be included in the whole of which it is a member and cannot be a member of the whole in which it is always already included.” (1998: 25) Second is the conceptual link between biopolitics and sovereignty which Agamben calls “ban” (taking from Jean Luc Nancy's notion of “abandon”). The originary moment of political relation is the “ban”: the establishment of a “borderline” and the inauguration of a space that is deprived of the protection of the law. To ban the juridico-political community from the juridical and yet keep it within the scope of the latter is the primal act that defines the sovereign. As Agamben makes it clear, to be banned does not simply mean to be expelled; its basic political purpose is to expose and to threaten. “That which is excluded” Mills points out “is not simply set outside the law and made indifferent or irrelevant to it, but rather abandoned by it, where to be abandoned means to be subjected to the unremitting force of the law while the law simultaneously withdraws from its subject.” (Mills 2008: 62) It is not so much the control or neutralization of an excess that the sovereign is concerned with “as the creation and definition of the very space in which the juridico-political order can have validity.” (Agamben 1998: 19)

### The Musselman

Historically what manifests this state most acutely for Agamben is the epitomic figure of the *Musselman* of the Camp. Even though by the Camp Agamben means the Auschwitz – i.e., the cruellest of them all – perhaps it is worthwhile to remember that the word is primarily used as a concept metaphor, one indicating the blurred threshold between juridical rule and bare life. In the state of exception, the law effectively coincides with life itself, such that fact and norm enter into indistinction, and the form of law can be understood as “being in force without significance”. By this phrase Agamben indicates a situation in which “the law is valid precisely insofar as it commands nothing and has become unrealizable” (Agamben 2000: 172). In “being in force without significance”, the law is emptied of all content or significance, and its suspension is precisely its mode of application. Mills observes: “It is not that the law no longer applies as in a state of lawlessness; rather, while applying, the law cannot do so in any concrete or immediate sense since it has lost any apparent meaning or intelligibility.” (Mills 63) Agamben borrowed this phrase from the Judaic philosopher, Gershom Scholem. Benjamin, it may be pointed out, had reservations about Scholem’s position on the law. For him, a radical conflation of life and law makes law unable to rule over life since it loses its claim to transcendence. Agamben, however, maintains that this conflation, this indistinction of life and law is real for both life under “a law without significance” and life in sovereign exception. “In the state of exception, law without significance passes into life while life always subsists in relation to the law.” (Mills 64) This indistinction Agamben finds maximized in the Nazi camp – at the same time, it remains an ever present possibility in the way modernity organizes political life.<sup>7</sup>

Agamben notes that apart from the decrees, the introduction of “indeterminate clauses” into the law in the twentieth century – deciding in accord with “good morals” or “public security and order”, for example – rendered obsolete the illusion of a law that would *a priori* be able to regulate all cases and all situations and that judges would have

to limit themselves simply to applying. This modality of blurring the distinction between fact and law reaches its climax in the Camp, the quintessential expression of the process of reducing the human to *homo sacer*. For Agamben, Auschwitz is the inevitable manifestation and ever renewed possibility of sovereign power and the production of bare life. Again, the paradigmatic figure of bare life in the Camp is the *Musselman*, a person rendered living dead due to treatment rendered in the camp, including sustained nutritional deprivation and psychological torture. Between those who survived the Camps and those who perished as soon as they arrived in Gas Chambers, were the clusters of walking dead: “an anonymous mass, continually renewed and always identical, of non-men who march and labour in silence, the divine spark dead within them, already too empty to really suffer. One hesitates to call them living: one hesitates to call their death death, in the face of which they have no fear, as they are too tired to understand.”<sup>8</sup> Wolfgang Sofsky, in his book *The Order of Terror: The Concentration Camp*, describes the stepwise annihilation of human beings, what he calls the transmogrification of the *conditio humana*: “Their skulls seemed elongated; their noses dripped constantly, mucus running down their chins. Their eyeballs had sunk deep into their sockets; their gaze was glazed. Their limbs moved slowly, hesitantly, almost mechanically ... Their increasing emaciation eradicated the dividing line between life and death.” (1999: 199) Seeing the *Musselmänner* (the plural of *Musselman*) from afar, one had the impression of seeing Arabs in prayer. This image was held to be responsible – the original instigation – for being so named, a cluster of staggering, stooping corpses, a bundle of physical functions in its last convulsions.<sup>9</sup>

This is how Moses Schulstein, the Yiddish poet, writes about the Auschwitz in the poem, “I saw a mountain”:

We are the shoes, we are the last witness.  
We are shoes from grandchildren and grandfathers,  
from Prague, Paris, and Amsterdam,

and because we are only made of fabric and leather  
and not of blood and flesh, each one of us avoided the hellfire.

What interests Agamben primarily in Auschwitz is not the pile of shoes or other artefacts that shocked the sensibility of the poet or the countless dead bodies lying all around the place that numerous films and paintings would later depict, not the various surgical experiments performed on the living bodies of the inmates for “the advancement of scientific knowledge” which the Holocaust museum so graphically illustrates but the figure of the *Musselman*, the moving threshold in which man passed into non-man, yet kept performing the bare rituals of living. In the vacuous, emaciated body of the *Musselman* was inscribed the law in its pure form, law that is “all the more pervasive for its total lack of content” and has force precisely in this lack. It is in relation to witnessing that *Musselman* becomes important for Agamben. This is the particular framework from which to read Agamben’s views on the *Musselman*.

Primo Levi tried to show that the camps were beyond the understanding of good and evil, they were simply incomprehensible. But Agamben argues that simply to deny the *Musselman*’s humanity would be to accept the verdict of the SS and to create conditions for its recurrence. The *Musselman* is the site of an experiment in which morality and humanity are called into question, not extermination as such but the continuous production of material to be destroyed. Living becomes a performance of death. Commenting on Levi’s *The Drowned and the Saved*, Berel Lang observed that the *Musselman* and its muteness signified not a loss of life, but of death itself.<sup>10</sup> Hurlled to the precipice of life, life and death are blurred. So death loses its distinction, it becomes banal. As a mere physical presence without any remaining trace of humanity, the *Musselman*’s body becomes the signifier of the Nazi lexicon, the limit sovereign power cannot exceed: “the invisible ark of biopower”<sup>11</sup> as Agamben puts it. Here we confront the primary problem of witnessing, or, to put it more emphatically, we confront the

impossibility of testimony.<sup>12</sup> It is here that the ethical/legal project of Auschwitz lies for Agamben.

For Primo Levi, the problem of the witness and the survivors comes from this very point of impossibility: “I must repeat: we the survivors, are not true witnesses. ... We survivors are not only an exiguous (meager) but also an anomalous minority; we are those who by their prevarications or abilities or good luck did not touch the bottom. Those who did so, those who saw the Gordon, have not returned to tell about it or have returned mute, but they are the “Muslims”, the submerged, the complete witnesses, the ones whose deposition would have a general significance. They are the rule, we are exception.” (Levi 1989: 83-4) For Agamben, however, the *Musselman* as the testimony of the survivor for and on behalf of the un-dead, offers an example of the embodiment of the ethical moment in the remainder (*le reste*), the trace and aporia of a relationship with the Other. It needs to be remembered here that Agamben does not exactly pose the problem of testimony as an ethical problem beyond suggesting that it is an aporia. Much of the holocaust literature does this, but it may be wrong to collapse Agamben’s work in this sense with that of Friedlander or Lyotard.<sup>13</sup> In the preface to *Remnants of Auschwitz*, Agamben speaks about the inadequacy of available ethical categories. He says he would be content if in his study of the testimony he has “erected some signposts allowing future cartographers of the new ethical territory to orient themselves.” (Agamben 2002: 13) “The paradox here is the following: if the person whose humanity was destroyed is the only one who testifies about the human, this means that the identity between the human and the non-human is never perfect, that it is not possible to completely destroy the human, that something always remains. The witness is this remainder.” (Agamben 2002: 176) Agamben thus returns to a consideration of the intimate connections between language and death. To reconfigure the legal and ethical status of the only possible witnesses to Auschwitz, law, language and death must all be rethought, and thought together. The possibility of constructing a language of death which is neither a dead

language nor a language of the dead: this is the ethical challenge that the mute impossible witness in the figure of the *Musselman* leaves for us.

We conclude with an attempt to link Agamben's deliberations on the questions of exception as worked out in the figures of *homo sacer* and *Musselman* with the wider question of the political. Alexander Garcia Duttmann begins his essay "Never before, always already: notes on Agamben and the category of relation" with this nuanced reflection: "To that which was never before we cannot relate, just as we cannot relate to that which has always already been." (2001: 3) The moment we relate to that which was never before, Duttmann explains, we have transformed it into something recognizable; similarly, the moment we relate to that which has always already been, we have made it into something new, something that never existed before. In other words, to relate is to accept that not all can be related, not all can be said, that there will be a remainder just as there will be a zone of the possible unexplored. So remainder does not make relation impossible, rather it is the very crux of relation, the silent folds within language itself and not an escape from language per se. For Agamben, this erasural identity of relation faces a void in a biopolitical context. He rules out therefore the notion of the political as the polycentric space of staking claims to denied citizenship, the terrain of the subversive or transversal of agonism. Instead, what interests Agamben is the threshold state of "being-outside and yet belonging" – that is, inclusive exclusion. To come out of this inevitable bare life, the ceaseless production of bare bodies in contemporary life, Agamben evokes the eschatological, messianic time when a new form-of-life would achieve a total overturning of the conditions of abandonment. This for him is the necessary condition of redemption from biopolitical capture. The only possible link to our messianic times with the present is perhaps the indestructibility of the human, or as he says, "something always remains".

## Notes

1. For a discussion of Agamben's subsequent books on political sovereignty like *Regno e la Gloria: per una genealogia teologica dell'economia e del governo* ("The Reign and the Glory: For a Theological Genealogy of Economy and Government"), *The Signature of All Things: On Method* (2009) and *The*

*Sacrament of Language: Archaeology of the Oath* (2010), see Jeffrey Bussolini, “Critical Encounter Between Giorgio Agamben and Michel Foucault” and Anke Snoek, “Agamben’s Foucault: An overview”, *Foucault Studies*, No. 10, November 2010.

2. See also, Catherine Mills, *The Philosophy of Agamben*, pp. 58-59.

3. “The Foucauldian thesis will then have to be corrected or, at least, completed, in the sense that what characterizes modern politics is not so much the inclusion of *zoē* in the *polis* – which is, in itself, absolutely ancient – nor simply the fact that life as such becomes a principal object of the projections and calculations of State power. Instead the decisive fact is that, together with the process by which the exception everywhere becomes the rule, the realm of bare life – which is originally situated at the margins of the political order – gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zoē*, right and fact, enter into a zone of irreducible indistinction.” (Agamben, 1998, 9).

4. One example of such reciprocity is the Hobbesian social pact of taking away some rights from the subject-citizens and in exchange assuring them security and protection. Another example is Rousseau’s general will.

5. “The State of Exception as a Paradigm of Government” in *State of Exception*, p. 1. To note, such understanding of exception matches well with the Emergency declared by Indira Gandhi in 1975.

6. For a discussion on this, Judith Butler: *Precarious lives: powers of mourning and violence*.

7. From Agamben’s standpoint, therefore, the so-called “relief camps” – say for riot or flood victims – would not qualify as camp in the first place.

8. Levi, Primo. 1987. *If This Is A Man – The Truce*, p. 96. Here it may be mentioned that those who were gassed were also best looked after, nutritionally and in terms of basic amenities – perhaps the harshest irony of the camp logic and the most effective way of making death banal.

9. The use of the term *Musselman* has caused considerable controversy, especially after 9/11 when clearly the Muslims are the new Jews of the western world. In any case, it has been pointed out that the word used by camp guards should not have been used without any qualifier.

10. See Lang: *Holocaust Representation: Art within the limits of History and Ethics*.

11. “(T)he absolutely unwitnessable, invisible ark of biopower”, *Remnants of Auschwitz*, p. 156.

12. By inference, one could say that it is not simply the problem of putting the subaltern within the framework of history, of recorded history, but more profound: Can language capture what expired from language?

13. See Saul Friedlander edited, *Probing the Limits of Representation: Nazism and the "Final Solution"*.

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