

Giorgio Agamben's Analysis of the Mechanism of Exclusion or the Logic of Sovereign Power

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Abstract

In *Homo sacer: Sovereign Power and Bare Life*, Giorgio Agamben extends Michel Foucault's notion of biopolitics to include life, stripped bare, that is placed completely at the mercy of the powers that be. For him, the biopolitical paradigm is no longer the asylum but the concentration camp. Agamben drew the inspiration for this shift from Walter Benjamin, who decades ago had observed that the state of exception favored by the Nazi jurist Carl Schmitt had become the rule. Certain strata of the population, in this case the Jewish citizens in Germany, were abandoned by the law while continuing to fall under its control. Agamben examines the extent to which Aristotle gave support to this murderous logic with his considerations on "potentiality to be" and "potentiality not to be." It is by suspending its "potentiality not to be" (that is, all elements that thwart its self-affirmation) that absolute Being founds itself. In addition, Agamben dwells on Pompeius Festus's definition of the outlaw (*homo sacer*): the one who cannot be sacrificed but who can be killed with impunity. The article concludes with a sketch of the figure of the Messiah (equally borrowed from Benjamin) who is expected to reverse the logic of the law.

Key terms *self-grounding of Being, state of exception, Holocaust, killing with impunity, Aristotle, Heidegger, Benjamin*

Giorgio Agamben (1942–) is an Italian philosopher whose work has received attention worldwide since the events of September 11, 2001, when two commercial aircrafts were commandeered by terrorists and flown directly into the twin towers of the World Trade Center in New York City. The reaction of the US government against this terrorist act, of drastically boosting its national security, has led to restrictions on civil liberties worldwide. The way in which governments have resorted to emergency measures forms the leitmotif of Agamben's major work, *Homo Sacer: Sovereign Power and Bare Life* (1995).¹ In this work, he examines the mechanisms that Nazi Germany used to exterminate the Jews. His analysis of the “state of exception”—his term for political and social exclusion—is so fundamental that it easily lends itself to the analysis of contemporary case studies of dehumanization.

Unlike political philosophers, such as Habermas, who optimistically continue to believe in the success of democratically conducted deliberations in parliamentary regimes, Agamben is rather alert to the infiltration of totalitarian features in contemporary democracies. For him, even allegedly democratic states are plagued with the growing exercise of sovereign power. In a great many nation-states, presidents and prime ministers (and their immediate collaborators) increasingly tend to make decisions that defy any democratic rule and even turn out to clash with the most basic principles of the nation's constitution. Think of George W. Bush's decision to establish a detention camp in Guantanamo Bay (a US enclave in Cuba), outside US legal jurisdiction, for the purpose of prosecuting prisoners, who are accorded no legal status whatsoever, for war crimes. Agamben terms this kind of power “sovereign power,” because it is accountable to no one, not even to the constitution of the state in whose name the sovereign exercises his power.

¹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (1995; Stanford, CA: Stanford University Press, 1998).

The Concentration Camp as a New Paradigm

In putting forward this thesis, Agamben takes his lead—although from different angles—from the French postmodern philosopher Michel Foucault (1926–1984), and the German jurist and political theorist Carl Schmitt (1888–1985). From Foucault, he assimilated the basic idea that, since the modern era, the European states have been engaging in “biopolitics,” that is, in political strategies designed to enhance the biological vitality of the population through the promotion of hygiene and discipline and the eradication of (mental) diseases. As a result, private life in the household was subjected to control and surveillance. For Foucault, the symbol that best expresses this encompassing interference of the state in private life is the asylum, the exemplary place where inmates are re-educated so as to adopt “rational” conduct. From Schmitt, the Nazi jurist (who was acquainted with Hitler’s program of eugenics and racial purity), Agamben learned the efficacy of the “state of exception” for discriminating against certain strata of the population. This measure enables the sovereign to suspend the law—and so also part of the citizens’ civil liberties—in cases of emergency: “Sovereign,” wrote Schmitt, “is he who decides on the state of exception.”² The combination of both approaches allows Agamben to articulate a state of affairs in which the sovereign ruler decides on the life and death of his subordinates, whose bare lives are completely at his mercy. Hence the title of his book: *Homo Sacer* [The Outlaw]: *Sovereign Power and Bare Life*.

In Agamben’s reading, Foucault and Schmitt in a sense complete each other. On the one hand, he welcomes the fact that Foucault abandons “the traditional approach to the problem of power, which is based on juridico-institutional models (the definition of sovereignty, the definition of the State), in favor of an unprejudiced analysis of the concrete ways in which

² Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Cambridge, MA: MIT Press, 1985); quoted in Agamben, *Homo Sacer*, 11.

power penetrates subjects' very bodies and forms of life."³ If you want to know how power works, look at the impact it has on people's lives. On the other hand, he sought to grasp the very mechanism through which the sovereign legislator succeeds in making the law's power penetrate his subjects' bare life. He found this mechanism in Carl Schmitt's legitimization of the "state of exception," which, on close inspection, reduces a number of people to the awful position of being "outlaws": those who enjoy no status under the law so that they are accorded no rights whatsoever and can thus be killed, exterminated, with impunity. Agamben actually had reasons enough to presume that Schmitt, the Nazi jurist, was perfectly well acquainted with the horrible slaughter of innocent people that his juridical theories were used to justify. When looking for a paradigmatic example to illustrate this situation, Agamben's option is clear: the Nazi concentration camp. The concentration camp, much better than Foucault's asylum, evokes what is at stake in modern biopolitics. The reader will not be surprised to learn that Part Three of Agamben's book is entitled: "The Camp as Biopolitical Paradigm of the Modern."⁴

For the purpose of my inquiry, a correct juridical understanding of the "outcast" or the "outlaw" (*homo sacer*) is imperative. Etymologically, the English term "outlaw" might suggest that the person in question is no longer part of the juridical system ("he is outside the law"), but this is not really the case. *S/he continues to belong to the juridical system, as the one who is abandoned by it (i.e., deprived of legal protection). This allows the juridical system to continue to control the forms of life of the abandoned, who remain at its mercy.* Moreover, the paradoxical situation of abandonment and control could gradually be staged. The Jews in Nazi Germany were, in a first move, deprived of their German citizenship by decree—so, they lost the right to teach at German universities or to practice their professions as physicians, lawyers, or judges, and intermarriage between

³ Agamben, *Homo Sacer*, 5.

⁴ Ibid., 117.

Jews and Germans automatically became illegal (all realities subject to state control and intervention). In a further move, they were forbidden from entering pubs, restaurants, and parks (to facilitate control, they were required to wear the yellow star of David). Finally, their properties were confiscated (they had to live in gated ghettos like that of Warsaw in occupied Poland), etc. *In short, the ones who are “excluded” remain “within” the system, under the surveillance of the police state.*

For Agamben, this is the paradox and secret mystery of the “state of exception” (and of exclusion): the victims are “taken outside” and yet “stay within.” The concentration camp is a case in point: “The paradoxical status of the camp as a space of exception,” he wrote, “must be considered. The camp is a piece of land placed outside the normal juridical order, but it is nevertheless not simply an external space. What is excluded in the camp is, according to the etymological sense of the term ‘exception’ (*ex-capere*), *taken outside*, included through its own exclusion.”⁵ *Agamben makes it clear that the more the “state of exception” is “willed”—as this was manifest in the erection of the camp—the more the norm becomes indistinguishable from the exception. The “state of exception” begins, in other words, to be regarded as the rule.* In Agamben’s view, not only totalitarian states, like Nazi Germany or Stalinist Russia, but also respected democratic states, like the United States, eventually find it quite normal to regularly issue a “state of emergency” by reason of which certain civil rights are suspended. In Nazi Germany, the Jews lost their civil and human rights because of a “state of emergency”: the urgent and massive defense of the (threatened) purity and superiority of the German race. In the United States, a similar “state of emergency” was issued after 9/11: in it the American citizens lost their right to privacy, for the sake of assuring national security in times of terror.

Agamben is renowned for his meticulous study of the history of ideas: his erudition covers the whole Graeco-Roman civilization and the entire development of European philosophy and jurisprudence. It is no wonder

⁵ Ibid., 169–70.

that in his book, he seeks to lay bare the implicit or pertinent presence, in a selection of classic texts of Western thought, of his central theme of “sovereignty as power over life and death.” His research falls into two parts: “sovereign power and violence,” and “*homo sacer*,” the outlaw who can be killed with impunity. I will treat both aspects separately.

Sovereign Power and Violence

For Agamben, the logic of sovereignty discloses itself in the violent character of the law. This feature had already been tackled by the German Jewish philosopher Walter Benjamin (1892–1940) in his essay “Critique of Violence” (1921). In this essay, Benjamin attempted to draw a distinction between “violence that posits the law” (a violence that flows from the revolutionary establishment of a new regime) and “violence that preserves the law” (violence inherent in the enforcement of the law). As a matter of fact, he had expected to find out that in the latter case the use of violence would be considerably lessened, but this expectation turned out to be flawed: in the police state that the German Weimar Republic had become in his days, the police enforced the law with ever increasing brutality.

Intrigued by the result of Benjamin’s study, Agamben set out to examine how the enforcement of the law was experienced in Ancient Greece. A poem by Pindar (518–438 BC) portrayed the sovereign law as “leading with the strongest hand; justifying the most violent,” thus providing “the hidden paradigm guiding every successive definition of sovereignty: the sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence.”⁶ Plato (427–347 BC) disagreed with this view. For him, Pindar might have been correct in imagining how a tyrant enforces the law, but he certainly was wrong when suggesting that violence belongs to the essence of the legal system whose primary task is precisely to ban violence.

⁶ Ibid., 31–32.

With this nuance, Plato intended to counter the Sophists, who justified the violence of the strongest as a natural given. Yet, Agamben observes, it is evident that the course of history took the other direction. The Sophists' thesis was retrieved (and modified) by Hobbes (1588–1657), whose political philosophy commences with the initial state of “war of all against all.” This situation, though, drastically changes with the advent of the sovereign “who is the only one to preserve its natural *jus contra omnes*,”⁷ i.e., his natural right to combat all the others. Indeed, on the basis of a social contract, the citizens had consigned their natural right to violence to the sovereign. A great many commentators have come to see in this transmission of power the beginning of a peaceful society. But not Agamben. For him, the sovereign possesses plenipotentary powers. It is up to him to maintain law and order. But it is equally up to him to decide the extent to which law and order will be enforced with violence (a violence that, as such, is part of the state of nature). In Agamben's words: “Sovereignty thus presents itself as an incorporation of the state of nature in society, or, if one prefers, as a state of indistinction between nature and culture, between violence and law, and this very indistinction constitutes specifically sovereign violence.”⁸

The inclusion of the violent “state of nature” in the person of the sovereign allows us to understand the phenomenon of the “state of exception,” which is nothing other than the willed relapse into the violent “state of nature.” *In it, the sovereign suspends any form of legal protection, so that the “outlaw” is exposed now to the chaotic assaults of violence that existed before the emergence of the social contract.* The crucial question to be asked at this juncture, however, is what exactly motivated the sovereign to thrust the “outlaw” into a state of abandonment? In order to answer this question, Agamben revisits Aristotle's definition of the way in which actuality relates to potentiality, a definition that “actually bequeathed the paradigm of sovereignty to Western

⁷ Ibid., 35.

⁸ Ibid.

philosophy.”⁹ First of all, he observes that for Aristotle (384–322 BC), potentiality has a double face: it can appear as “potentiality to be” but also as “potentiality not to be.” Agamben then explains how Sovereign Being juggles with this double meaning: it is by suspending its “potentiality not to be” that Sovereign Being ascertains its limitless sovereignty. The suspension of its ability not to be grounds the sovereign power of Sovereign Being. He writes: “Potentiality (in its double appearances as *potentiality to* and as *potentiality not to*) is that through which Being founds itself *sovereignly*, which is to say, without anything preceding or determining it . . . other than its own ability not to be. And an act is sovereign when it realizes itself by simply taking away its potentiality not to be, letting itself be, giving itself to itself.”¹⁰

This process of “giving itself to itself” results in the concept of an Absolute Being that incessantly brings itself forth in a sovereign way: it is only this self-grounding that interests it. In terms of politics, this means that the sovereign is incessantly caught up in a process of having to rearticulate his/her existence: “[Sovereignty] is what always already is, as well as what has yet to be realized; it is the pure source of identity and yet”—and here enters the notion of exclusion—“it has to redefine and purify itself continuously according to exclusion, language, blood and territory.”¹¹ Exceptions and exclusions continue to define the space of political activity, just as they define the self-grounding of Being. Indeed, just as “Being, as potentiality, suspends itself, maintaining itself in a relation of ban (or abandonment) *with itself* in order to realize itself as absolute actuality,”¹² so, too, Being suspends and maintains itself in a relation of abandonment *with (external) elements* that might threaten the realization of its absolute actuality. These elements must be

⁹ Ibid., 46.

¹⁰ Ibid.

¹¹ Giorgio Agamben, *Means without Ends: Notes on Politics* (Minneapolis, MN: University of Minnesota Press, 2003), 32.

¹² Agamben, *Homo Sacer*, 47. Italics mine.

discarded and excluded for the sake of the self-grounding of Being, and, in the space of political activity, for the sake of self-grounding of sovereign power.

Criticism of Western Metaphysics

It will not have escaped the attention of the reader that with his analysis of Aristotle, Agamben reconstructed a system that justifies both sovereign power and the mechanisms of exclusion flowing from it. With this reconstruction, he intends to criticize Carl Schmitt and the “state of exception” that played such a pivotal role in Carl Schmitt’s *Political Theology: Four Chapters on the Concept of Sovereignty*. According to Schmitt, “all significant concepts of the modern theory of the state are secularized theological concepts,”¹³ that is, they all display a remainder of the inviolability of the sacred. With this inviolability, Schmitt sought to give a justification to his juridical theories as well as to the exclusions they contain. Agamben is fully aware of the catastrophic outcome of such a “theological” justification, and is determined to do away with it. In this undertaking, he collaborates with Heidegger’s deconstruction of onto-theology.

Onto-theology is a “metaphysics of Being” that takes its point of departure in the Highest Being, the sovereign God. Separate beings are supposed to acquire their value and consistency from their dependency on the Highest Being that is the ground of all that exists. In the vein of Heidegger (1889–1976)¹⁴ he blames the onto-theology of Western metaphysics for having developed a ruthless philosophy of dominance. But, whereas Heidegger elaborated this assessment in terms of a critique of Western technology, Agamben focuses on the political implications of sovereign power. That is why he is able to bring up the scandal of the

¹³ Schmitt, *Political Theology*, 35; quoted in Giorgio Agamben, *The Power and the Glory*, iBook ed. (Stanford, CA: Stanford University Press, 2011), 34.

¹⁴ In 1966 and 1968, Agamben studied with Heidegger in France, when near the end of his life, Heidegger held seminars in the town of Le Thor.

German concentration camps, which Heidegger never critically exposed as a political fact. The only text in which Heidegger mentions the death camps is a statement from 1949, three years after the end of the Second World War. There he says, “Agriculture is now a mechanized food industry, in essence it is no different than the production of corpses in the gas chambers,”¹⁵ a statement that displays a concern about technical mechanization much more than about the Jews’ extermination through political maneuvers of exclusion.

It is worth noting that the postmodern deconstructionist Jacques Derrida (1930–2004) also made it clear that logocentrism, his term for onto-theology, inevitably leads to a system of oppositions and exclusions.¹⁶ Yet, more explicitly than Derrida, Agamben succeeds in giving a clearly political content to such exclusions, precisely by demonstrating the strict parallel between the Aristotelian self-grounding of Being which needs exclusions and abandonments in order to achieve its full actualization, and the—equally self-grounding—exclusions wrought by the sovereign in the political realm.

If one were to ask the question as to how he came to draw this parallelism, the answer is apparent: because of his obsession with Carl Schmitt, an obsession he shared with Walter Benjamin (whose remaining unedited texts he published and translated into Italian). Agamben was shocked by the manner in which Schmitt used the “state of exception” (exclusion) as an explanatory category for elucidating the impact of sovereign power. For Schmitt, “The exception explains the general and itself. And when one really wants to study the general, one need only look around for a real exception.”¹⁷ *So, if you want to know how sovereignty works in all its cruelty, look at those whom it pitilessly expels: the excluded.* Each reality elucidates the other: the killing of the outlaw is the logical consequence of the ruthless self-grounding of Being.

¹⁵ Wolfgang Schirmacher, *Technik und Gelassenheit: Zeitkritik nach Heidegger* (Freiburg: Alber, 1984), 25.

¹⁶ See Georges De Schrijver, *The Political Ethics of Jean-François Lyotard and Jacques Derrida* (Leuven, Paris, and Walpole, MA: Peeters, 2010), 222.

¹⁷ Schmitt, *Political Theology*, 22; quoted in Agamben, *Homo Sacer*, 16.

Homo Sacer: The Outlaw

Agamben initially planned to confine his polemics with Schmitt to the question of sovereignty. But the more he laid bare its procedures, the more it dawned upon him that he also had to dwell on the victims of sovereign exclusion. The prototype of exclusion is, for him, *homo sacer*, the outlaw. Agamben leaves the Latin term *homo sacer* untranslated. This may be confusing to a great many of his readers, since they associate the “holy man” (*homo sacer*) with a person having a higher vocation: with the one who dedicated his existence to God. The original meaning of “*sacer*,” however, is the “one who is set apart”: the segregated, a meaning that is further qualified depending on the specific context. In a religious context, *homo sacer* is the one who has abandoned profane existence: the holy person who becomes the object of admiration. But in a juridical context, *homo sacer* is the one who is abandoned by the law, the outcast, the bandit to be treated as a criminal, the cursed and banned outlaw. This is the meaning Agamben discovered in Roman juridical texts, and which became his favored understanding of the term. According to the juridical understanding, the person who breaks his oath, or the *maecenas* (Godfather) who deceives his protégés and clients, is a criminal that ought to be banned: “*Sacer esto* (you may be banned) is in fact a curse, and *homo sacer* on whom this curse falls is an outcast, a banned man.”¹⁸

Agamben takes his lead from the definition of *homo sacer* given by Pompeius Festus (1st century BC) in his treatise *On the Significance of Words*. This definition reads as follows: “The sacred man is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide.”¹⁹ The question is, of course, how one is to understand this enigmatic statement. That the statement appears enigmatic to us is evident from the divergent interpretations of the phenomenon. Specialists in jurisprudence opine that

¹⁸ Agamben, *Homo Sacer*, 79.

¹⁹ Ibid., 71.

we have to do with an archaic penal law in which the death penalty was seen as a consecration of the victim to the gods of the underworld. For them, it is evident that the person in question can be killed with impunity, but they are unable to explain the veto on sacrifice mentioned by Festus, because for them the killing is, in the archaic mentality, already a sacred act (*sacratio*). Specialists in ethnology, on the contrary, focus on the notion of taboo and on the ambivalent character of the damned, who was felt to be both worthy of veneration and as provoking horror—qualities associated with the sacred. For them, *homo sacer* cannot be sacrificed because he is already possessed by the gods. But they have difficulties in explaining why that person can still be killed (with impunity). Those who would kill a sacred person by this very act render themselves religiously impure.

For Agamben, both interpretations have their shortcomings because they are unduly influenced by rather recent studies that place the ambivalent character of the sacred into the limelight—consider, for instance, Rudolf Otto's (1869–1937) famous characterization of the sacred as the awe-inspiring, fascinating mystery (*mysterium tremendum et fascinans*). Agamben is fully aware of the fact that ancient cultures associate feelings of inviolability and sacredness, or purity and impurity, with certain juridical and political facts. But he wants to stress that all that is being said about *homo sacer* belongs in the first place to the political sphere: “The syntagma *homo sacer* names something like the ‘originally’ political relation,” that it is to say, “the inclusion of bare life in the juridical order *Sacer esto* is the originary political formulation of the imposition of the sovereign bond.”²⁰

Festus's definition of *homo sacer* can only properly be understood if one pays attention to the double exclusion to which it alludes. *Homo sacer* can be killed with impunity because he is excluded (ex-cepted) from the natural order of the human community; yet, his killing cannot be qualified as a sacrifice to the gods, because he is equally excluded (ex-cepted) from the

²⁰ Ibid., 85.

divine order. *Homo sacer* is abandoned both by the human community and by the gods. In Agamben's words: "It has been observed that while *consecratio* normally brings an object from the *ius humanum* to the *ius divinum*, from the profane to the sacred, in the case of *homo sacer* a person is simply set outside human jurisdiction without being brought into the realm of divine law If this is true, then *sacratio* takes the form of a double exception, both from the *ius humanum* and from the *ius divinum*, both from the sphere of the profane and from that of the religious."²¹

Bare Life

These considerations prepare us to understand the unusual and shocking term "bare life" (*la nuda vita* in Italian). Agamben borrows the term from Walter Benjamin, for whom the expression "*das blossle Leben*" indicates the defenseless denudation to which our lives will be exposed as soon as the state of exception becomes the rule. "Bare life" is a life bereft of legal protection, and which for this reason finds itself in the liminal space between life and death. In Agamben's words: *homo sacer*, the outcast, "has been excluded from the religious community and from all political life: he cannot participate in the rites of the *gens*, nor . . . can he perform any juridically valid act. What is more, his entire existence is reduced to a bare life stripped of every right by virtue of the fact that anyone can kill him without committing homicide; he can save himself only in perpetual flight or a foreign land. And yet, he is in a continuous relationship with the power that banished him precisely insofar as he is at every instant exposed to an unconditional threat of death."²²

The more somebody is exposed to the logic of sovereign violence, the more he/she, as if brainwashed, will be convinced that his/her life is worthless and that the reigning powers also regard it as a "life devoid of

²¹ Ibid., 82.

²² Ibid., 183.

value.” The jurists in Nazi Germany justified their extermination of the Jews by decreeing that “theirs was a life unworthy of being lived” (*lebensunwertes Leben*); Hitler even dared to declare that the Jews were lice that must be trampled. Facing up to these facts, Agamben brings up again the question Walter Benjamin years ago raised about the “sacredness of life.” He right from the start observes that the contemporary notion of “sacredness of life” (appealed to in protests against atrocities of totalitarian regimes) was totally absent in Greek and Latin thought. Instead, life—ordinary, bare life—was seen as entirely at the mercy of the sovereign powers that be. He writes: “The sacredness of life, which is invoked today as an absolutely fundamental right in opposition to sovereign power, in fact originally expresses precisely both life’s subjection to a power over death and life’s irreparable exposure in the relation of abandonment.”²³ Within the ambit of sovereign power, life is “sacred” because of its “consecration” not just to the destiny of death, as Heidegger would have it, but to the pending risks of being slaughtered with impunity.

Instead of being inviolable, life for the victims of exclusion appears as “worthless.” Stripped of all value, they are treated with disdain, as “subhuman,” as “nonpersons.” Agamben refers to “the stadium in Bari into which the Italian police in 1991 provisionally herded illegal Albanian immigrants before sending them back to their country”; as well as to the “*zones d’attentes* in French international airports in which foreigners asking for refugee status are detained.”²⁴ He could equally have mentioned the massive ethnic cleansings that took place in Bosnia and in Rwanda, or the tragic destiny of so many African shipwreck migrants around Lampedusa, who, when their overcrowded ships capsize, are not given any help. In all these cases, the specter of the concentration camp looms as the place of extermination and death. But the banalization of life also becomes visible elsewhere—in the thousands and thousands of victims of car accidents on

²³ Ibid., 83.

²⁴ Ibid., 174.

our highways: “Our age is the one in which a holiday weekend produces more victims on Europe’s highways than a war campaign.”²⁵ To the extent that biopolitics or, better, thanatopolitics has a growing impact on our lives, all of us, Agamben predicts, are in one or another way gradually being reduced to worthless lives: “If today there is no longer any one clear figure of the sacred man, we all are virtually *homines sacri*.”²⁶

To summarize, Giorgio Agamben sought to take the work of Michel Foucault and build upon it. He extended the latter’s notion of biopolitics from a life disciplined by political interference to include bare life declared worthless by sovereign power. For him, the biopolitical paradigm is no longer the asylum but the concentration camp. The figure that inspired him to this paradigm shift is, without doubt, the German Jewish philosopher Walter Benjamin, who as a refugee from Nazi Germany committed suicide in 1940 at the border between France and Spain, for fear that he might end up in a concentration camp. Prior to this, Benjamin witnessed the rise in Germany of the Nazi regime as well as the many measures of exclusion imposed upon the Jewish community. This occasioned him to reflect on the logic of sovereign power and to write about it. Agamben knows Benjamin’s works as nobody else does. Taking his lead from them, and after the atrocities of the holocaust had become a fact, he published his book *Homo Sacer*, in which he developed in an original way the Aristotelian origin of the connection between sovereignty and exclusion, and linked this insight to what the grammarian Pompeius Festus had to say about *homo sacer*, the outcast.

The Messianic Community

Homo Sacer is not a pleasant book to read. The question that undoubtedly will arise is how it will ever be possible to escape the deadly grip of sovereign power? For this aspect, too, Benjamin will provide the

²⁵ Ibid., 114.

²⁶ Ibid., 115.

model. On the basis of his Jewish heritage, Walter Benjamin developed a theory of the messianic interruption that would invalidate the law. Giorgio Agamben will take up this idea and, in his specific learned style, develop what St. Paul and St. Francis of Assisi have to say about the messianic way of life.

In *The Highest Poverty: Monastic Rules and Form-of-Life* (Italian original 2011), Agamben stages a figure—the Franciscan friar and his enjoyment of bare life—that forms, so to speak, the antipode to the miserable “bare life” resulting from the exclusion/exception policies of sovereign power. For him, “the most precious legacy of Franciscanism to which the West must return ever anew to contend with it as its undeferrable task [is precisely] how to think a form-of-life, a human life entirely removed from the grasp of the law and a use of bodies and of the world that would never be substantiated into an appropriation. This is to say again: to think life as that which is never given as property but only as a common use.”²⁷ The book is particularly interesting because it gives a detailed account of the struggle the Franciscans had to wage against the church hierarchy in order to have their “form-of-life” recognized. This “form-of-life” consists in living a life without property rights, which in the last resort implies a life outside the law and its legal stipulations. Agamben meticulously follows the discussion, also as regards the distinction between the Conventuals and the Spirituals, up to the last detail. He finally welcomes the solution given by the Franciscan theologian Peter Olivi (1248–1298): the abdication of every right to property is the material precondition for living a life of “highest poverty,” but without the joyous commitment to making only “poor use” of things, this ideal is only negatively defined. It is precisely the joyous commitment to poverty that bestows a positive value to the Franciscan “form-of-life” beyond any reference to the law. And, Agamben concludes, with this positive depiction, the Franciscans were moving in the direction of the “theory of use present in

²⁷ Giorgio Agamben, *The Highest Poverty: Monastic Rules and Form-of-Life*, iBook ed. (2011; Stanford, CA: Stanford University Press, 2013), 17.

the Pauline letters, in particular in 1 Corinthians 7:20–31, in which using the world as not using or not abusing it defined the Christian form of life.”²⁸

The reference to St. Paul is not random when one realizes that Agamben, from 1998 until 1999, gave a series of seminars in Paris and Berkeley on St. Paul’s *Letter to the Romans*, which lead to the publication of *The Time That Remains: A Commentary on the Letter to the Romans* (Italian original 2000). In this commentary, he took his inspiration from Walter Benjamin’s second thesis on the philosophy of history, in which Benjamin set out to conjure traces and images of “Messianic Time” which hold out the prospect of redeemed life: “The past,” the second thesis states, “carries with it a temporal index by which it is referred to redemption Like any generation that preceded us, we have been endowed with a *weak* Messianic power, a power to which the past has claim.”²⁹ In other words, Benjamin felt the need to boost his weak Messianic power by revisiting the inspiring texts and images of his Jewish religious tradition. Agamben, will in a sense, do the same.

Moreover, in his historical research on Benjamin, Agamben discovered that Benjamin’s source for the notion of “Messianic Time” was St. Paul. For St. Paul, “Messianic Time” is the ever given “now moment” (*kairos*) that compels the Messianic Community to live in the urgency of achieving the goal of resurrected life. For Agamben, it is evident: *The good news St. Paul brought was the living presence, in the community, of Christ, the Messiah who deactivates the law by living a “form-of-life”—freed from the law—that renders the law inoperative.* This ushers in an unexpectedly new perspective: the messianic community continues to live in the existing order, but under the proviso of the “as not” (*hoos me*), persuaded that the law has no longer any repressive claim on them, and that they themselves have no longer any right to property warranted by that law. As Agamben writes: “to be messianic, to live in the Messiah, signifies the expropriation (*depropriazione*) of each and every juridical-factual

²⁸ Ibid., 363.

²⁹ Walter Benjamin, “Theses on the Philosophy of History,” in *Illuminations*, ed. Hannah Arendt (New York: Schocken Books, 1973), 254.

property (circumcised/uncircumcised; free/slave; man/woman) under the form of the *as not*.”³⁰ Put differently: *to be messianic means to exercise one’s human potential for development (technically: potentiality) without any orientation towards establishing power*. Such a “weak” exercise of potentiality has, however, the capacity to demystify the logic of sovereignty—and exclusion—on which theories of the state are predicated.

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³⁰ Giorgio Agamben, *The Time That Remains: A Commentary on the Letter to the Romans* (2000; Stanford, CA: Stanford University, 2005), 26.