

Sovereignty, state of exception, and the politics of the pandemic: Where is Agamben now?

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Abstract

Over the past three decades, Giorgio Agamben's works have exercised a profound and widespread influence on social and political theory, particularly through his *Homo Sacer*-series, which analyses the foundational (bio-)political structures of Western politics. However, his controversial writings on the COVID-19 pandemic, which grossly underestimated the virus and likened government containment policies to fascism, sparked significant debate and criticism from peers. This essay reviews the recent Omnibus Edition of the *Homo Sacer*-series and a collection of his pandemic interventions entitled *Where Are We Now? The Epidemic as Politics*. It argues that while there are significant conceptual continuities between Agamben's pandemic writings and his earlier works, they also exhibit notable theoretical divergences. These divergences may stem from his methodological approach, which emphasizes the developmental potential of philosophical concepts and may also serve as a model for subsequent engagements with his work beyond their original contexts and Agamben's own interpretations.

Keywords

sovereignty, state of exception, Giorgio Agamben, COVID-19, bare life

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The Omnibus Homo Sacer. By Giorgio Agamben. Stanford: Stanford University Press, 2017. Pp. 1336, \$105 (hardback). ISBN: 9781503603059.

Introduction

Since the publication of the first volume of the *Homo Sacer*-series in 1995, the Italian philosopher Giorgio Agamben has attained widespread and profound influence in the social sciences and humanities. The nine-volume series completed over a period of 20 years outlined a genealogy of what Agamben described as the fundamental (bio-) political structure that has characterized all occidental societies from antiquity and onwards, defined by expansive states of exception that leave ever-greater populations outside of the protection of the law, exposed to an unrestrained sovereign power.¹ It provided a rich repository of critical concepts for analysing of the War on Terror and many later events, and has continued to influence much subsequent research. However, Agamben's (re-)deployment of these theoretical resources in several controversial analyses of governments' responses to the COVID-19 pandemic provoked outrage among his peers and led some to suggest that his project was misguided all along and could be retrospectively dismissed. It is therefore worth re-examining these works, their interrelation, and the implications for our understanding and use of Agamben's thought going forward.

The first section of this essay analyses the central theoretical contributions and developments of Agamben's *Homo Sacer*-series, republished by Stanford University Press in a single *Omnibus Edition* in 2017. It then turns to his (re-)deployment of them, in his controversial pandemic interventions gathered in the anthology *Where are We Now? The Epidemic as Politics*. I identify the genesis of his paranoid misreading of various governments' COVID-19 containment policies in his theoretical totalization of sovereign power in the series. Despite this connection and the conceptual continuities between them, my analysis also shows fundamental theoretical disjunctures. I argue that these divergences are rooted in his distinct methodological approach to theoretical concepts, which pursues their developmental potential [*Entwicklungsfähigkeit*] independently of their initial context and content in new and sometimes entirely incompatible directions. On this basis, I propose that Agamben's pandemic interventions should be conceived as related to and inspired by the *Homo Sacer*-series but not its necessary culmination or conclusion. Despite the evident limitations of Agamben's pandemic writings, they may actually offer a useful model for how to engage with his works, as a repository of versatile theoretical concepts and ideas that can be used and developed to garner novel insights into new and different contexts. This type of engagements should be evaluated on their own merits rather than in terms of their fidelity to Agamben or his corpus. Such an approach would ensure the continued relevance of Agamben's significant theoretical contributions to addressing the complex and developing realities of our time.

Aporias of the state of exception

The initial volume *Homo Sacer: Sovereign Power and Bare Life* constitutes the entire first subset of the series and establishes the fundamental theoretical parameters of the series.² The subtitle identifies its two central concepts ‘sovereignty’ and ‘bare life,’ which I will outline in turn. Agamben derives his concept of sovereignty from Carl Schmitt’s 1922 *Political Theology: Four Chapters on the Concept of Sovereignty*, which defined the sovereign as ‘he who decides on the state of exception’ (Agamben, 2017: 13; see also Schmitt, 2006: 6).³ Schmitt insisted that all legal systems were based on a founding (sovereign) power whose extra-legal decision constitutes the law as such. This power is not extinguished in the founding moment. It continues to exist alongside the law as its underlying and necessary guarantee. It is often constitutionally codified in the form of emergency clauses that allow the sovereign to declare a state of exception and suspend the legal order in order to protect it.⁴ However, the variety of conditions that might warrant a state of exception cannot be fully anticipated and legally codified insofar as they are, per definition, exceptional. It is therefore up to the sovereign to decide when an exceptional situation has occurred that requires the suspension of the law and the deployment of unrestrained sovereign power (Schmitt, 2006: 6–15; Agamben, 2017: 17–28).

Agamben argues that since the state of exception is typically legally codified and, in any case, constitutes the necessary foundation and guarantee of the legal system, it cannot be said to abrogate the law even when it suspends it. Rather the state of exception constitutes what Agamben describes as a ‘zone of indistinction’ between sovereign power and the law, which, he argues, is the hidden core of all Western political systems (Agamben, 2017: 17–21). This reveals unrestrained sovereign power – rather than the rule of law – to be at the heart of these political systems. It constitutes both their origin, guarantee and increasingly also their primary mode of operation, as Agamben explored at length in the following volume of the series *State of Exception* published in 2003. The contemporary frame of reference was the War on Terror with its limitations or outright suspension of civil and human rights, extensive surveillance programmes, indefinite detentions, and ‘enhanced interrogation’ of so-called ‘illegal enemy combatants’ (a pseudo-legal term invented to place suspected enemies outside of any legal protection) in camps such as Guantanamo Bay, Abu Ghraib, and various CIA black sites (e.g., Agamben, 2017: 169; see also Bush, 2001).

The sovereign’s decision not only defines and delimits the legal system but also the political community. The sovereign decides who should form part of the community and who should be excluded. The sovereign’s exclusion of individuals and groups from the community is what Agamben refers to as the production of ‘bare life.’⁵ Agamben introduces this central concept via two different ancient Greek words for life: *zōē*, referring to the fact of being alive common to animals, human beings and gods; and *bios* referring to a specific and qualified form of living within and as a part of a given political community (Agamben, 2017: 5).⁶ This distinction allowed for the creation (and destruction) of bare life, which does not simply denote biological life (*zōē*), but a life that is included in the political community through its distinct lack of protections of

membership within that very same community; a life that is stripped of any legal status or protection. The sovereign's 'inclusive exclusion' of bare life within the political community, suspends its legal and political protections and thus operates within the state of exception, which constitutes the original and central relationship of all Western politics according to Agamben (2017: 93).⁷

In *State of Exception*, Agamben proposed that Schmitt's concept of sovereignty was formulated in opposition to Walter Benjamin's conceptualization of a 'pure violence' [*reine Gewalt*] entirely 'outside of the law' that reflected contemporary threats of a proletarian general strike and revolution (Agamben, 2017: 217; Benjamin, 1996: 249–252; Eiland and Jennings, 2016: 130–133).⁸ There is little to support Agamben's interpretation. However, it allowed him to critically reflect on Schmitt's state of exception, which efficiently subsumed revolution (in the form of constituent power) to the incessant interplay of constituent and constituted power and with it the omnipresent and omnipotent sovereign state in the state of exception. This totalizes the sovereign state and does not leave any way out of the state of exception; producing a political aporia that the entire *Homo Sacer*-series can be seen as an (unsuccessful) attempt to evade (Agamben, 2017: 1265; see also Prozorov, 2014; Flohr, 2023).

Agamben's *The Kingdom and the Glory* drew on Michel Foucault's genealogy of governmentality, thus evading Schmitt's political theology. Foucault famously proposed that it was necessary 'to cut off the head of the king' in political theory, that is, cease conceiving power as something absolute, that is concentrated in a single 'sovereign' centre and instead turn towards the underlying multiplicity of local and interrelated power relations that structure and maintain this centre and constitutes its conditions of possibility (Foucault, 1998: 89; Flohr, 2016; see also Agamben, 2017: 8). *The Kingdom and the Glory* can be read as Agamben's attempt to heed Foucault's call and reinterpret sovereignty as an effect of governmental practices rather than political theology.

Most of the book is organized around a genealogy of the concept of economy; the preface announces that it aims to examine 'the paths by which and the reasons why power in the West has assumed the form of an *oikonomia*, that is, a government of men' (Agamben, 2017: 369). The origins of this line of investigation were already outlined in his prior essay 'What is a dispositive,' where he identified 'dispositive,' denoting the relationship that unites discourses, institutions, laws, knowledges, etc., as *the* central concept in Foucault's genealogy of governmentality (Agamben, 2009a: 1–3). Agamben traces this concept back to the Latin *dispositio*, which he claims was used to translate the ancient Greek *oikonomia* among the Church Fathers in the third to fifth centuries (Agamben, 2017: 374, 407, 367; 2009a: 9, 11). The Church fathers originally used the concept of *oikonomia* to conceptualize the trinity; insisting that God was one in substance but multiple (the father, the son, and the holy spirit) in governing his household [*oikos*], the created world. However, God can only be seen in and as his governance of this world, which was delegated to the trinity, the angels and the ministers of the Church. A central part of their government of the world therefore became acclamation and praise of the underlying unity and power of God (and/or the sovereign), which motivated and legitimized government (Agamben, 2017: 369–371, 590–595; see also Jessen and Eggers, 2020).

This detotalization of sovereign power hinted at the possibility of a politics beyond the state of exception. Agamben explored this possibility in the fourth subset of the series, most systematically in the final volume, *The Use of Bodies*. Here he revisited and elaborated the concept of form-of-life, initially outlined in *Means Without Ends* and towards the end of the first volume of the series, as a means of breaking with sovereign power (Agamben, 2000: 3–12; 2017: 153). However, Agamben failed to elaborate this concept in the rest of the series apart from odd gestures towards figures such as Franciscan monks in *The Highest Poverty*, the so-called *Muselmänner* of the National Socialists' concentration camps in *The Witness and the Archive*, and twentieth century refugees in *Means Without Ends* (Agamben, 2017: 809; 961; 2010: 15–26). Form-of-life designates a life (*zōē*) that cannot be separated from its political form (*bios*) – hence the hyphens connecting the words – and as such cannot be turned into bare life, that is, a life deprived of its legal and political status and protections, which is thus excluded within the political community. The form-of-life renders the distinction between *zōē* and *bios* inoperative and points towards a political horizon beyond the sovereign state-form and the state of exception (Agamben, 2017: 1277–1279).

Agamben also identifies the form-of-life with the multitude, the formless collective that exists outside and against the sovereign state-form. He argues that it constitutes a desituent potential capable of deposing sovereign power and escaping the incessant interplay of constituent and constituted power in the epilogue to the book (Agamben, 2017: 1215–1220, 1265–1277). However, in *Stasis* published shortly after the *The Use of Bodies*,⁹ Agamben returns the multitude to the state of exception, insisting that it remains caught in the continuous interplay of constituent and constituted power that keeps reproducing the sovereign state-form, returning him to the aporia of the inescapable state of exception.¹⁰ Agamben's inadvertent analytical totalization of sovereign power in an ever-expanding state of exception, renders him particularly prone to the sort of paranoid conclusions found in his pandemic writings, where almost all policies appear as proto-totalitarian expansions of sovereign power, even if it is far from clear that this is the only possible conclusion (Agamben, 2017: 272–280; see also Flohr, 2023: 187–191).

Pandemic paranoia

On 26 February 2020, Agamben published a polemical critique of the Italian governments' response to the COVID-19 pandemic titled 'The Invention of an Epidemic.' This brief text deployed the concepts that he had spent more than 20 years developing and refining in the *Homo Sacer*-series in order to attack what he described as the 'frenetic, irrational, and unprovoked emergency measures adopted against a supposed epidemic.' He insisted that COVID-19 was 'not too dissimilar to the [normal flu] that recur every year' and merely formed part of 'a growing tendency to trigger a state of exception as the standard paradigm of governance' he had previously outlined in the *Homo Sacer*-series (Agamben, 2021: 11–13).

The article provoked outrage and ridicule among many of his peers and interlocutors as the pandemic swept through Italy, claiming more and more lives, and threatening to undermine the public health system.¹¹ Jean-Luc Nancy responded the following day, pointing out the glaring factual inaccuracy of Agamben's evaluation of the severity of

the COVID-19 pandemic and argued that his critique of government responses to it 'seems more like a diversionary manoeuvre than a political reflection' (Nancy, 2021: 27). The following day Roberto Esposito pointed out that 'what is happening in Italy today [...] has more the character of a breakdown of public authorities than that of a dramatic totalitarian grip' (Esposito, 2021: 28–29; see also Appadurai, 2020; List, 2023). The debate became increasingly polemical and Anastacia Berg described Agamben's pandemic writings as 'a collapse into paranoia' (Berg, 2020), Tim Christiaens characterized them as 'the ramblings of a 77-year old man' (Christiaens, 2020) and Benjamin Bratton went even further in his characterization: 'If you were to imagine Alex Jones not as a Texas good ol' boy, but rather as a Heideggerian seminary student, you would have a sense of how Agamben approached the requests for public comment on the COVID-19 pandemic' (Bratton, 2021: 114).¹²

Very few seemed to consider that Agamben's initial article was written at an early stage of the pandemic and relied on the (Italian) National Research Council's early underestimation of the COVID-19 virus and its spread, least of all Agamben, who doubled down on his critique. He published increasingly animated critiques of governments' attempts to contain the virus, from lockdown to mask mandates, vaccine requirements, zoom-meetings, etc., which he explicitly likened to fascist policies (e.g., Agamben, 2021: 8, 38, 42–43, 74). A selection of these short and controversial articles and interviews were published in 2020 in Italian as *A che punto siamo? L'epidemia come politica*. They were subsequently translated into English by Valeria Dani and published in 2021 as *Where are We Now? The Epidemic as Politics* with four additional texts added and later that year a second edition was published with even more texts added.¹³

These texts reiterate and redeploy the theoretical categories that Agamben developed in the *Homo Sacer*-series. It traces the state of exception from the War on Terror to the pandemic: 'once terrorism ceased to exist as a cause for measures of exception, the invention of an epidemic offers the ideal pretext for widening them beyond all known limits' (Agamben, 2021: 13). While Agamben's analyses are superficial and schematic and consistently disregard the severity and implications of the pandemic, it is a welcome reminder to remain critical of the extensive powers that governments may claim in times of seemingly existential crisis. However, out of 27 European member states only 18 declared a state of exception or established statutory regimes during the first phase of the epidemic and they generally ended without incident (Crego and Kotanidis, 2020), challenging Agamben's projections of the establishment of a 'new despotism' more extensive and oppressive than twentieth-century totalitarianism (Agamben, 2021: 42).

Agamben interpreted governments' various – admittedly drastic – containment measures as the emergence of an entirely new governmental apparatus, which he dubbed 'bio-security.' It was characterized by a permanent state of exception and the exaltation of bare life (Agamben, 2021: 9–10, 42, 55–56, 60). However, his insistence on the novelty of this governmental apparatus does not fit with his previous efforts to expose the exception as the transhistorical structure of occidental politics. Marco D'Eramo correctly notes (against Agamben) that 'not all states of exceptions are the same' – those responding to the threat of terrorism inevitably take a different form from those trying to contain the threat of the COVID-19 pandemic (D'Eramo, 2020: 25). This points towards the

truly novel feature of this new governmental apparatus, which according to Agamben is its motivation by ‘the conservation at all cost of bare life, which is abstractly separated from social life’ and he warns that ‘only tyranny, only the monstrous Leviathan with his drawn sword, can be built upon the fear of losing one’s life’ (Agamben, 2021: 64, 24).¹⁴ While this may appear conceptually continuous with the *Homo Sacer*-series, it actually diverges significantly from it. The latter identified bare life as a life that was stripped of legal and political status and protection within a community, included solely through its exclusion, and which could therefore be exterminated without committing murder. Bare life, in other words, is not pure biological life nor is it something that is to be protected by the state at all costs (e.g., Agamben, 2017: 70–71, 258, 1265). The United States, United Kingdom, and Brazilian governments’ seeming abandonment of large parts of their populations to face the consequences of the COVID-19 pandemic in many ways conform more closely to the biopolitical configuration outlined in the *Homo Sacer*-series.

Agamben beyond Agamben?

Agamben’s insistence on the novelty of a governmental apparatus structured by the state of the exception and his inconsistent (re-)deployment of the theoretical category of bare life are enigmatic. It seems implausible and inexplicable that the originator of these concepts would be so confused about their contents. Adam Kotsko’s recent rereading (Kotsko, 2020) of Agamben’s *oeuvre* up to and including the *Homo Sacer*-series offers a resolution to this conundrum. Kotsko identifies several major thematic and theoretical shifts across Agamben’s works, which were all associated with the rearticulation of prior concepts in new contexts and, sometimes, with entirely new contents. From this perspective, the immediate conceptual continuity between the *Homo Sacer*-series and Agamben’s subsequent writings on the pandemic need not imply any actual or necessary theoretical continuity. It can also be understood as a fundamental theoretical reconfiguration of these concepts for novel purposes and with entirely new meaning.

Here it is relevant to revisit Agamben’s explicit methodological approach to the works of other thinkers, which focuses on identifying and pursuing the *Entwicklungsfähigkeit* of particular theoretical concepts, that is to say, their potential for development and capacity to generate new insights in new contexts, such as Schmitt’s concept of sovereignty, Foucault’s concept of biopolitics and government, etc., which Agamben appropriated and sought to push beyond the immediate limits of the original texts and contexts that they appeared in (Agamben, 2009a: 12–13; 2009b: 7–8). This explains Agamben’s theoretically inconsistent (re-)deployment of the concepts of his *Homo Sacer*-series in his pandemic interventions, as an appropriation and fundamental repurposing of them, rather than their inherent truth or necessary culmination. This also means that we neither can, nor should, look for the correct or authoritative interpretation and deployment of Agamben’s concepts and ideas, but must instead consider how useful and convincing their deployment is in a given context; what they might help us understand and what they might obscure. This provides a useful model for how to engage with and use Agamben’s theoretical edifice in the wake of his controversial pandemic writings and more generally: as a repository of theoretical concepts that can be engaged with, developed, and (re-)

deployed in order to garner new insights in novel contexts rather than as a static corpus of ideas legitimized solely by their origin. The uses of the concepts of Agamben's theoretical edifice should be assessed on their own merits rather than their fidelity to him or his evolving *oeuvre*.¹⁵ The lasting contribution of Agamben's pandemic interventions should become the impetus to reconsider and reconfigure his theoretical edifice independently of his own use and abuse of it.

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Notes

1. In the first volume, he suggested that sovereign power was founded when Emperor Augustus combined his consular powers with the powers of the plebeian tribunes (Agamben, 2017: 71), but in *Stasis* he suggested that its origins were to be found in Ancient Greece (Agamben, 2017: 260–262), corresponding to his previous emphasis on their distinction between *bios* and *zōē* as constitutive of the fundamental political structure throughout the series (Agamben, 2017: 5ff). In the final volume *The Use of Bodies*, Agamben goes even further back and suggests 'that the mechanism of the exception is constitutively connected to the event of language' (Agamben, 2017: 1266). For a poignant critique of the strangely ahistorical historicity of Agamben's projection of this transhistorical political structure, see Alberto Toscano (2011: 128–129).
2. Agamben designates the different books as volumes belonging to one of four subsets, although the organization is never properly explained. Confusingly, the books were not published in order, the initial volume was not attributed a volume number, and some volumes were subsequently moved (for an overview see Kotsko, 2020: 203). It is unclear if Agamben did not originally conceive the initial volume as part of a larger series and only retrospectively (re-) conceived it as such or if the absence of a volume-designation should be interpreted on the topographical model of the exception, placing it simultaneously inside and outside of the series.
3. Note that the current English translation of Schmitt's *Political Theology: Four Chapters on the Concept of Sovereignty* renders the German *Ausnahmezustand* as 'exception' rather than 'state of exception' as Agamben does (Schmitt, 2006: 6; Schmitt, 2009: 13).
4. A recent study established that over 90% of constitutions currently in effect contain clauses allowing for the declaration of a state of exception (Ginsburg and Versteeg, 2020: 14).
5. This is the translation of the Italian *nuda vita*, which is Agamben's rendition of Walter Benjamin's *bloßes Leben* in his 'Zur Kritik der Gewalt' typically translated into English as 'mere life' (Agamben, 1995: 65; Benjamin, 1991: 199–201; Benjamin, 1996: 250–251). Agamben's development of the concept is also informed by Hannah Arendt's writings on

- refugees (Agamben, 2000, 15–26; Arendt, 2007, 264–274; Arendt, 1976, 267–302; see also Flohr, 2024).
6. This distinction seems to be derived from Hannah Arendt's *The Human Condition* (1998: 12, 97f) but has been widely criticized as mistaken and/or misleading (see Dubreuil and Eagle, 2007; Finalyson, 2010).
 7. It is also in this context, as an illustration of bare life, that Agamben introduces the obscure eponymous Roman legal figure of *homo sacer* ('the sacred man'), who is shunned from human and divine law and may thus be killed with impunity and cannot be sacrificed to the Gods.
 8. For a recent and highly relevant critique of Agamben's appropriation of Benjamin see Lotte List (2021).
 9. This sequence is often overlooked because the English translation of *Stasis* appeared before *The Use of Bodies*. However, the Italian edition of *Stasis* was published in 2015 after the Italian edition of *The Use of Bodies*, even though it occupied an earlier place in the structure of the series (2.2) and most of the text appears to have been drafted already in 2001. Note that a new chapter was added to the Italian omnibus edition, which has not yet appeared in English (Kotsko, 2020: 203; Agamben, 2018: 296–310).
 10. A significant number of authors have challenged the limitations of Agamben's destituent politics (e.g. Kalyvas, 2005; Negri, 2005, 2006; Whyte, 2013; Jamali, 2024; but see also Flohr, 2023: 191–197).
 11. The dossier entitled 'Coronavirus and the Philosophers' on *The European Journal of Psychoanalysis*' homepage provided a particularly good overview of the initial responses. Most of the entries have subsequently been taken down and published as a book entitled *Coronavirus, Psychoanalysis, and Philosophy* (Castrillón and Marchevsky, 2021). See also Marco D'Eramo (2020), Alberto Toscano (2011) and Adam Kotsko (2022) for good summaries.
 12. Some of the few positive evaluations of Agamben's pandemic interventions can be found in Guillermo André Duque Silva and Cristina Del Prado Higuera (2021) and Bianca Maria Esposito (2022).
 13. For an overview of the contents of the different editions of this book in English and Italian, see Michael Lewis (2022: 200–201).
 14. There is something fundamentally strange about Agamben decrying the decline of 'bourgeoisie democracy [...] built on rights, parliaments, and the division of powers,' and governments' allegedly unconstitutional behaviour, as if he had not spent 20 years anticipating precisely this development and criticizing the fundamental vacuity of constitutionalism and the rule of law (see Agamben, 2021: 42, see also 8, 37, 46, 60, 70, 82f).
 15. Some of the most notable and inspiring examples of this type of creative engagements with the concepts and ideas contained in the *Homo Sacer*-series are Judith Butler's *Precarious Life: The Powers of Mourning and Violence* (2004), Achille Mbembe *Necropolitics* (2003; 2019), Mitchell Dean *The Signature of Power: Sovereignty, Governmentality and Biopolitics* (2013) and Alexander Weheliye *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (2014).

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