

## **stasis: civil war, revolution, and destitution in giorgio agamben's homo sacer- series**

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The subtitle of the final publication in Giorgio Agamben's *Homo Sacer*-series *Stasis: Civil War as a Political Paradigm* announced civil war as the paradigm of the political. While this may have seemed somewhat abrupt, he had in fact already identified civil war as *the* original and decisive political structure of occidental history in the first volume of the series *Homo Sacer: Sovereign Power and Bare Life* twenty years prior.<sup>1</sup> Here he used the concept of civil war to denote both sovereign power's continuous production and elimination of bare life in the state of exception and revolution. He employed this duality to explain the supposedly inevitable failure of the revolutions of the twentieth century, which, he argued, were always

already caught in the state of exception and thus bound to reconstitute sovereign power. Agamben's deployment of Carl Schmitt's conceptual figure of the state of exception subsumed revolution to the sovereign state and thereby produced a seemingly irresolvable political aporia that he sought to escape throughout the rest of the series, albeit with limited success.<sup>2</sup>

However, I argue that Agamben's reconceptualization of the figure of civil war in *Stasis* provides the necessary but unexplored conceptual resources to move beyond the political aporias of his earlier thinking. The subtitle of the book suggests that the initial paradigm of the exception has been displaced by the paradigm of civil war and, in spite of Agamben's insistence on their continuity, I show that the argument of the book involves a subtle but significant conceptual shift that facilitates the conceptual decoupling of civil war (and/as revolution) and the sovereign state, which, in turn, reveals novel political possibilities that Agamben fails to pursue. I explore this opening in order to develop the duality of the concept of stasis – simultaneously denoting civil war (*qua* revolution) and inoperativity – towards a concept of constituent power that may finally render the mutual implication of civil war and sovereignty, as well as sovereign power's continuous production and elimination of bare life, inoperative.<sup>3</sup> This approach follows Agamben's own methodological principle of identifying what is left unsaid or underdeveloped in a given text and developing it beyond its own immediate limits, in this case, Agamben's conservative conclusions.<sup>4</sup> In other words, this essay attempts to think with and, crucially, beyond Agamben through the aporia of the exception in the *Homo Sacer*-series.

The structure of my argument is fairly straightforward; in the initial two sections, I establish the conceptual parameters of the rest of the essay, analyzing Agamben's conceptualization of civil war as *the* political structure of occidental history before turning to his concomitant conceptualization and critique of the revolutions of the twentieth century. The third section traces his unsuccessful attempts to move beyond the resulting political aporia. In the fourth section I provide a close reading of Agamben's *Stasis* in order to uncover the subtle but significant shift

in his conceptualization of the relationship between civil war and the sovereign state. In the final section I reinterpret and develop these conceptual resources towards a positive concept of *destituent power* that inverts the state of exception and may thereby succeed in challenging and overcoming the sovereign state.

## I. CIVIL WAR BEFORE STASIS

Today the concept of civil war primarily evokes images of sustained armed conflict between different political or ethnic factions within the borders of the same state that disproportionately involves and/or targets the civilian population. However, this was not always the case. Throughout much of the European history of ideas, various concepts of civil war (*Stasis*, *bellum civile*, etc.) were used to conceptualize and understand revolutionary change rather than such contemporary images. Civil war was used to denote class struggle and/or factional conflict, the breakdown of pre-existing political authority and, centrally, the possibility of major social and political transformations, i.e., what we today associate with revolution. However, this conceptual connection began to fray around the eighteenth century as the distinctly modern concept of revolution, characterized by a notion of radical novelty, progress and break with tradition, came to the fore. Nevertheless, even this concept has, ironically, remained shaped by the preceding historical experiences and concepts of civil war.<sup>5</sup> The connection remained explicit in the works of a number of central modern political thinkers. Thomas Hobbes' reflections in *Leviathan* (1651) sparked by the English Civil War have been central in this regard: he famously conceptualized a state of nature that supposedly preceded and produced the sovereign state as a form of "civil war."<sup>6</sup> Karl Marx (following G.W.F. Hegel) subsequently used this as the model of his early conceptualization and analysis of class struggle within civil society [*bürgerliche Gesellschaft*] in his 1843 *Critique of Hegel's Doctrine of State*.<sup>7</sup> The conceptual coupling of civil war and class struggle persisted in *The Communist Manifesto*, *The Civil War in France* and his analysis of the struggle over the length of the working day in *Capital*.<sup>8</sup> This association was later reiterated in the works of Vladimir Ilyich Ulyanov, commonly known by his pseudonym Lenin, from whence it proliferated within

the Marxist tradition.<sup>9</sup> In this tradition the concept of civil war was primarily used for its connotations of class struggle, the breakdown of sovereign authority and/ as the potential for revolutionary transformation of existing social and political structures, while the connotations of violence remained secondary; at most a means of overcoming the much greater systemic violence of state and capital.<sup>10</sup>

These latter aspects were more pronounced in Mao Tse-tung's analyses of class struggle, anti-imperialism and revolutions in terms of civil war and "people's war" (reflecting the context and trajectory of The Second Sino-Japanse War, The Chinese Civil War(s) and The Chinese Revolution), which, alongside the aforementioned, would go on to exercise a significant but highly heterogeneous influence on anti-colonial and left-wing struggles around the globe.<sup>11</sup> Precisely these concepts also seem to have had a formative impact on the genealogical works of Michel Foucault (and his rereading of Hobbes), who was closely involved with the French post-1968 Maoists left alongside a number of notable French intellectuals including Jean-Paul Sartre, Simone de Beauvoir, Gilles Deleuze, and Alain Badiou.<sup>12</sup> Deleuze has subsequently elaborated a notion of war as a social form irreducible and opposed to the state alongside his collaborator Félix Guattari in *A Thousand Plateaus*<sup>13</sup> and more recently the Tiqqun collective have developed a concept of civil war as a non-sovereign political form of insurrection that does not coalesce into a state-form and which they eventually identify directly with "communism" in their *Introduction to Civil War*.<sup>14</sup>

Throughout the initial parts of the *Homo Sacer*-series Agamben explores this historical and conceptual coincidence of civil war and revolution – which he identifies as the fundamental political structure of occidental history – although its valence changes markedly in his deployment. Agamben argues that civil war and/as revolution cannot overcome the sovereign state but is always already implicated in and inevitably reaffirm it in and through the state of exception.<sup>15</sup>

Agamben first introduces the concept of civil war in the last aleph-section of the first book in the *Homo Sacer*-series *Homo Sacer: Sovereign Power and Bare Life*, in

the context of an extended analysis of the concept of “the people.” He suggests that this concept has always referred to two distinct entities, on the one hand, “the total state of integrated and sovereign citizens,” the sovereign people that appear solely in the form of the state and its representatives (as in “We, the people”),<sup>16</sup> and, on the other hand, “the wretched, the oppressed and the defeated” (as in “common people,” “Pöbel,” “foule,” etc.).<sup>17</sup> Agamben distinguishes these two meanings of the people by capitalizing the former (“People”) and leaving the latter in lower case (“people”). He proposes that this division within this central category of western political is the “fundamental biopolitical fracture,” which has characterized all of western political history and thought: People and people in their various historical guises, have been continually pitted against each other in “an incessant civil war,” which constitutes “the original political structure: bare life (people) and political existence (People).”<sup>18</sup> Agamben thereby identifies a perpetual civil war between People and people, as the original political structure, which has characterized all of occidental history up to the present.<sup>19</sup>

In order to understand Agamben’s conceptualization of civil war, it is necessary to scrutinize the aforementioned parties in more detail, starting with the sovereign People. Agamben derives his concept of sovereignty from Schmitt’s 1922 *Political Theology*, which famously defines the sovereign as “he who decides on the exception.”<sup>20</sup> Schmitt argued that all legal systems are based on and continue to rely on an extra-legal power, whose sovereign and fundamentally arbitrary decision founds the law, but cannot itself take the form of law or be subjected to it insofar as it precedes, founds and maintains it. Sovereign power is the extra-legal foundation of the legal system – the exception that defines the rule. Moreover, this sovereign power is not exhausted in the founding of the legal system, but remains inscribed within it as its ultimate guarantor, often explicitly, in constitutional clauses regarding states of exception where the constitutional order can be suspended in favor of unrestrained sovereign power to defend that very same constitutional order. However, the precise conditions that may warrant this cannot be anticipated or legally codified and must thus be deferred

to sovereign power itself, which alone has the capacity to decide when to declare a state of exception and suspend the law. Insofar as the sovereign exception is inscribed within the constitutional order and forms its necessary foundation, it cannot be said to abrogate the constitutional order and disintegrate the state into civil war.<sup>21</sup>

In its original historical context, this argument was meant to demonstrate the legal possibility and legitimacy of invoking the emergency powers afforded to the president by article 48 of the Weimar Revolution, against the threat of revolution and/or civil war, which continued to haunt the Weimar Republic throughout its relatively brief existence. Schmitt's somewhat idiosyncratic reading of article 48 suggested that the president had the sole authority to decide when the situation required the suspension of the law in favor of unrestrained sovereign power, i.e., the declaration of a state of exception to combat threats to the state.<sup>22</sup>

But Schmitt's argument was not merely a practical intervention in the juridical and political debates of his day; it also involved an insidious conceptual shift, whereby the anomic force of civil war and revolution were subsumed by the sovereign state. What would usually be considered the breakdown of sovereign authority and the legal order is reconceived through the state of exception, as the reiteration of sovereign power. The juridico-political order is thus rendered conceptually inescapable through the state of exception. It is no coincidence that Schmitt's work was entitled *Political Theology*: sovereign power in this definition is rendered absolute and omnipresent – any attempts to contest or challenge it are always already internal to it and can therefore only serve to reaffirm and reproduce it.

Agamben embraces Schmitt's understanding of sovereign power, deploying it to suggest that in the state of exception, the law applies precisely in no longer applying. The state of exception thus constitutes what he refers to as a “zone of indistinction” between the normal functioning of the law and sovereign violence, which remains at the heart of all western political systems. The state of exception

thereby reveals unrestrained sovereign power, rather than the rule of law, as the foundation of the modern state, as well as the secret affinity between democracy and dictatorship, insofar as it is not an exception in the ordinary sense of the word but, on the contrary, *the* fundamental, underlying structure of democratic states and increasingly, as he explains in *State of Exception*, also the norm.<sup>23</sup>

Agamben incorporates Schmitt's claim that the political is defined by the distinction between friend and enemy. The sovereign decision not only grounds and guarantees the legal system, but also defines and delimits the political community it governs. The sovereign decides who forms part of a political community and who should be excluded as enemies or otherwise undesirable elements.<sup>24</sup> This exclusion is what Agamben refers to as sovereign power's production of "bare life" – a concept that does not denote the simple fact of biological life, but a life defined by its exclusion within a political community, which is thus left without any legal status or protection but is entirely at the mercy of the sovereign.<sup>25</sup> It is this paradoxical (inclusive exclusive) relationship that Agamben describes as an "incessant civil war" between those included in the sovereign political body of the state ("the People") and those excluded within it ("the people").<sup>26</sup>

The implicit passivity of bare life in this relationship is foregrounded towards the end of the passage in *Homo Sacer: Sovereign Power and Bare Life*, where Agamben initially introduced the concept of civil war. The register shifts rather abruptly from civil war, with its connotations of contestation and the concomitant possibility of change, to the altogether more disquieting "elimination" of bare life exemplified by the Shoah.<sup>27</sup> Contrary to traditional conceptions of civil war, Agamben's deployment of the term does not denote a conflict with the concomitant possibility of victory for either side, but merely sovereign power's one-sided and continuous production and extermination of bare life.

## II. THE INEVITABLE FAILURE OF THE REVOLUTIONS OF THE TWENTIETH CENTURY

Agamben's concept of civil war differs significantly from what we are accustomed

to associating with this term, namely contestation, struggle and the breakdown of sovereign authority. This traditional conception of civil war traces back to Hobbes' *Leviathan*, where Hobbes famously argued that the “natural” condition of mankind in the absence of a sovereign authority was like a “civil war.”<sup>28</sup> The conflict and constant insecurity of this situation would eventually push the warring multitudes to unite and “confer all of their power and strength upon one man” thereby founding a sovereign power capable of imposing peace and security amongst them.<sup>29</sup> To Hobbes the institution of sovereignty marks the end of civil war. Agamben incorporates and revises this argument, proposing that insofar as the sovereign state is founded on and legitimized by civil war, it must continue to reproduce this condition within itself. It does this through the constant threat of abandonment of life to its unrestrained sovereign violence in and as the state of exception. The institution of sovereignty therefore does not mark the end of civil war, but its incorporation into the juridico-political order and/as its most fundamental mode of operation. Agamben's conceptual maneuver is identical to Schmitt's assimilation of civil war to the state through the state of exception, thus Hobbes' conception of civil war, defined by the absence of sovereign power and law, is absorbed by the sovereign state; as Agamben remarks “the state of nature and the state of exception are nothing but two sides of the same topological process.”<sup>30</sup>

Agamben then proceeds to mobilize Schmitt's state of exception to account for the failures of the revolutions of the twentieth century. He argues that Marxist and anarchist revolutionaries inevitably failed in their attempts to overcome the sovereign state because they did not grasp the topology of the exception, that is, the mutual implication of civil war (and/as revolution) and sovereignty, constituent and constituted power. As a result, they did not recognize that the different forms of direct contestation, insurrection and revolution, i.e., forms of civil war, which they pursued as means to challenge the sovereign state and institute a stateless society, were always already internal to it and thus inevitably reaffirmed and reproduced it – even if some succeeded in replacing its immediate

figureheads or reconfiguring its institutions.<sup>31</sup> In light of the state of exception, revolution no longer marks the breakdown of sovereign power and the possibility of overcoming it, but an inevitable continuation, if not intensification, of its inherent violence, i.e., sovereign power's constant production and elimination of bare life. The exception is, in the dramatic words of Agamben, "the reef on which the revolutions of our century have been shipwrecked."<sup>32</sup>

The topology of the exception, i.e., the capacity of the state and law to maintain itself in and through its relation to its outside, appears as an insurmountable obstacle to revolution and, indeed, any model of political contestation and change. According to Agamben it has left us "constitutionally incapable of truly thinking a politics freed from the form of the State."<sup>33</sup> The topology of the exception leaves no way out of this intolerable situation, defined by sovereign power's continuous production and elimination of bare life. But this aporia is a direct consequence of Agamben's deployment of Schmitt's state of exception, which was a conscious attempt by Schmitt to forestall and subsume contestation of the juridico-political order to that very entity via the figure of the sovereign decision. But whereas Schmitt's argument was motivated by his awareness that revolutionaries might succeed and shatter the sovereign state,<sup>34</sup> Agamben appears genuinely persuaded that all of these modes of contestation are always already implicated in either the founding or perpetuation of the sovereign state and its continuous production and elimination of bare life. His failure to identify the normative import and political implications of Schmitt's topological configuration leads him to a highly conservative evaluation of the modern revolutionary tradition and an apparent political aporia, which he attempts to escape in various ways throughout the rest of the *Homo Sacer*-series.

### III. EXCEPTION WITHOUT EXCEPTION

The problem with Schmitt's state of exception is the topological diffusion and conceptual confusion it produces; it efficiently substitutes suspension for application and absence for presence within a generalized zone of indistinction.

The topology of the exception thus amounts to a totalization of the sovereign state, which, ultimately, renders it inescapable and incontestable.<sup>35</sup> Agamben comes close to acknowledging these shortcomings as early as the initial installment of the *Homo Sacer*-series, when he announces that “in the state of exception, it is impossible to distinguish transgression of the law from application of the law” and when he proceeds to suggest that the state is “always already also a non-state.” But he ultimately recoils from these insights and surrenders them to the omnipresent “structure of the sovereign relation” and the concomitant political aporia.<sup>36</sup>

There are a number of subsequent attempts to break away from Schmitt’s totalization of the sovereign state and begin to conceive of a way to overcome it and its continuous violence in Agamben’s oeuvre: the second book in the *Homo Sacer*-series *State of Exception* suggests that Schmitt developed his conception of the state of exception in response to Walter Benjamin’s conceptualization of a pure (and/or divine) violence or power (*reine Gewalt*) located entirely “outside the law” and/as the incessant cycle of constituent (“law-making”) and constituted (“law-preserving”) power.<sup>37</sup> Reactivating this anomic figure of revolution and reading Schmitt’s works through it, reveals the exception to be a conceptual-juridical fiction, constructed to tie this anomic figure to the state via the exception, in order to maintain the illusion of continuity and the inescapability of the juridico-political order. As Agamben explains:

*The state of exception is unmasked by Benjamin for what it is: a fictio iuris par excellence ... what now takes its place are civil war and revolutionary violence, that is, human action that has shed every relation to law.*<sup>38</sup>

Here we catch a glimpse of civil war and revolution, as they would appear if they were not framed within the (fictional) state of the exception, i.e., as possibilities

of contesting and abolishing the juridico-political order. Agamben, thus implicitly reconsiders his previous extrapolation of Schmitt and consequent evaluation of the (im-)possibility of revolutionary modes of contestation via Benjamin. But as his analysis proceeds it becomes clear that although Schmitt's state of exception is fictional, it nonetheless remains effective and constitutive of our political system as Agamben concludes: “[the state of exception] has continued to function almost without interruption from World War One, through fascism and National Socialism and up to our own time.”<sup>39</sup>

The task that Agamben outlines as the necessary response and resolution to the continued operation of the exception is to challenge this fiction and assert the separation of anomie and law, so as to render it inoperative: “the only truly political action ... is that which severs the nexus between violence and law” as he explains.<sup>40</sup> It is, in other words, necessary to insist on the non-coincidence of civil war and the sovereign state in both theory and practice. Taking exception to the exception in this manner would revive the possibility of civil war, insurrection and revolution in contrast to the previous volume, where the political catastrophes of the twentieth century, were framed as the result of revolutionaries failing to understand the state of the exception, i.e., their coincidence with sovereignty. This seems to invert Agamben's initial pronouncement on the revolutions of the twentieth century, suggesting that it is precisely the conceptual figure of the exception which will shipwreck our attempts to think beyond the sovereign state.

While Agamben identifies the exception as a fiction and asserts the necessity of challenging it in *State of Exception*, he does not actually commence this project. It is not until *The Kingdom and the Glory: for a Theological Genealogy of Economy and Government*, that he begins to elaborate such a detotalizing analysis of its operation in the tradition of Foucault's genealogy of governmentality.<sup>41</sup> Foucault's investigation of governmentality originated in his critique of the traditional sovereign model of power, which he criticized for treating power as an inherent attribute of a single centre. The historical fact that the sovereign had been deposed and decapitated during the French Revolution attested to the inadequacy of this

model. Foucault proposed that political theory had to catch up to historical events by “cutting the king’s head off,” i.e., deposing the orthodoxy of the sovereign model of power, in order to develop an analysis of the practical techniques and strategies employed to govern populations.<sup>42</sup> *The Kingdom and the Glory* can thus be read as an attempt to shift from Schmitt’s political theology towards Foucault’s governmentality; from sovereignty to government, as Agamben now insists:

*The central mystery of politics is not sovereignty, but government; it is not God, but the angels; it is not the king, but the ministry; it is not the law, but the police – that is to say, the governmental machine that they form and support.*<sup>43</sup>

Foucault’s critique of the sovereign model allows Agamben to approach the question of sovereign power in terms of an analysis of government, rather than the political theology of Schmitt. In *The Kingdom and the Glory*, the dual structure of the state, sovereign violence and law, held together by the fiction of the exception, is rearticulated in terms of kingdom and government. This allows Agamben to reconceptualize sovereignty as an “empty throne,” which exists solely in the practices of acclamation of it as sovereign, which is also conceptualized as “glory.”<sup>44</sup> What remains is government, that is, the practical management of populations and glorification of sovereign power. Glory can thus be read as the practices which constitute and uphold the fiction of an omnipotent sovereign power, simultaneously inside and outside the law, i.e., the state of the exception.<sup>45</sup> Although Agamben never explicitly addresses the political implications of his analysis in this text, the move from political theology towards governmentality allows Agamben to reconsider and thereby challenge the functional fiction of the exception suggesting that it may indeed be possible to contest sovereign power.

In a subsequent essay entitled “What is a Destituent Power,” that was later reworked and incorporated as an epilogue to *The Use of Bodies* and the whole *Homo Sacer*-series, Agamben confirms that the entire project was conceived as an attempt to shift the site of politics away from the paradigm of the exception.<sup>46</sup> However, it is at this exact juncture that the topology of the exception reappears, even if it is no longer conceptualized in the same terms. Agamben suggests that “constitutive power,” i.e., “revolutions and insurrections,” will inevitably reproduce the sovereign order: “a power that was only just overthrown by violence will rise again in another form, in the incessant, inevitable dialectic between constituent power and constituted power, violence which makes the law and violence that preserves it.”<sup>47</sup> Rather than shifting the site of political thought and practice, at this point, Agamben’s project appears to have come full circle and returned to the starting point, the paradigm of the exception, which condemns any attempt to challenge and overcome the sovereign state to the inevitable “recreation of powers even more oppressive.”<sup>48</sup>

Agamben’s inability to escape the paradigm of the exception and the corresponding political aporia suggests the potential significance of the paradigm shift announced in the title of the final publication in the series *Stasis: Civil War as a Political Paradigm*. In spite of the previously established affinity between the exception and civil war, and Agamben’s insistence on their continuity, there is a remarkable shift in his conceptualization of the fundamental political structure of occidental history in this book, particularly the second chapter, which potentially allows for the decoupling of civil war (qua revolution) from the sovereign state.

#### IV. CIVIL WAR AS POLITICAL PARADIGM

*Stasis* consists of the revised manuscript of two seminars on the topic of civil war that Agamben held in October 2001 at Princeton University. The central ideas contained in this book were, in other words, formulated prior to the majority

of the series, which it informed and shaped in important ways.<sup>49</sup> This partially explains Agamben's retrospective insertion of *Stasis* as the third book (II.2) in the official sequence of the *Homo Sacer*-series (displacing *The Kingdom and the Glory*, which was moved to II.4) in spite of its publication in 2015 as the final publication in the series, a year after its formal conclusion with *The Use of Bodies*.<sup>50</sup> But this slim volume also contains novel material that warrants its late and somewhat abrupt publication, namely a systematic reconstruction of the historical origins and significance of civil war in Ancient Greece and, more significantly, a subtle but significant displacement in his conceptualization of the relationship between the sovereign state and civil war, which reveals novel political possibilities that nonetheless remains unexplored in the course of the book.

Although the book is explicitly dedicated to the theme of civil war, Agamben insists that he does not intend to develop a fully-fledged theory of civil war, but merely to explore the concept's appearance and development at two crucial junctures in western political philosophy: Ancient Greece and the political philosophy of Hobbes. These two moments correspond in turn to the two chapters that make up this brief book, as well as the two central theses outlined in the foreword: the identification of civil war as the fundamental threshold of politicization and the modern, sovereign state's foundation in *ademia*, the absence of a people; two theses which together outline Agamben's notion of civil war as the paradigm of the political.<sup>51</sup>

The initial chapter of *Stasis*, simply entitled "stasis," traces the historical emergence of the distinction between political existence and bare life to the Ancient Greek conception of civil war (*stasis*), which was initially conceived as a type of conflict originating in the family. Yet, Agamben notes that the family was attributed a highly ambiguous position in relation to civil war, as both its origin and potential remedy through various kinship practices such as (inter-)marriage between quarrelling clans and the obscure "brotherhood by ballot" devised to reconcile the populace of Nakōnē after a civil war in the third century BCE. These and various other practices, contributed to the displacement and reconstitution

of kinship at the level of political community. Thus, around the fifth century BCE citizenship increasingly became *the* primary political identity, displacing familial forms of kinship and identification to the correspondingly depoliticized sphere of the household (*oikos*).<sup>52</sup>

On these grounds, Agamben argues that civil war was not peculiar to the family but, rather, constituted the fundamental threshold of politicization and depoliticization, which delineated and defined political community as a distinct and dominant form of existence.<sup>53</sup> This division between *polis* and *oikos* corresponds to the fundamental scission between natural life common to animal, gods and men (*zōē*), and politically qualified existence (*bios*), which allows for the (inclusive) exclusion of the former from the *polis*, that is, the production of bare life – a life included in the juridico-political order only through its exclusion and thus left without any political status or legal protection therein.<sup>54</sup> It is only against this backdrop that we can appreciate the significance of the Solon's Laws that replaced Athens' first legal code (Draco's law) around the sixth century BCE and which stipulated that any citizen, who did not choose sides and fight in a civil war would be punished with legal and political disenfranchisement (*Atimia*). Stripped of their citizenship, they would only be included in the *polis* by way of their (inclusive) exclusion.<sup>55</sup> Solon's Laws thereby cemented civil war as the decisive threshold of the politicization and depoliticization of life; the political structure, which Agamben insists has defined our political paradigm ever since then.<sup>56</sup>

In the second chapter of *Stasis* “Leviathan and Behemoth,” Agamben returns to the work of Hobbes and introduces a significant shift in regard to his previous conceptualization of civil war. The chapter's title refers to the two biblical beasts Leviathan and Behemoth that God recounts having subjected in order to illustrate his omnipotence to Job and which Hobbes redeployed as titles for his classical works concerned with the sovereign state and civil war respectively, which is how they figure here, i.e., as representations of the sovereign state (Leviathan) and

civil war (Behemoth).<sup>57</sup>

The mainstay of the chapter consists of an intriguing analysis of the famous frontispiece of Hobbes' *Leviathan*, created by Abraham Bosse after extensive dialogue with the author. Agamben's analysis starts with the figure of the Leviathan, whose torso is composed of minuscule interlinked human figures, representing the Hobbesian doctrine of the covenant, which unites the warring multitude in the person of the sovereign whose head sits atop the body politic. Agamben draws attention to the strange (dis-)placement of this figure outside the city – a city that appears almost entirely deserted.<sup>58</sup> Agamben suggests that this is the central enigma of the emblem: “a city devoid of its inhabitants and [...] a state outside its geographical borders.”<sup>59</sup> He proceeds to propose that this is a visual representation of the paradox of Hobbes' conception of the body politic, split between the people and the multitude.<sup>60</sup> In *On the Citizen* (1642) and later in *Leviathan* Hobbes describes the people as constituting a coherent political body, which always rules through its unification in the sovereign (whether in the form of a king or a representative assembly), who in turn rule them in the form of a disunited multitude.<sup>61</sup> The body politic thus (dis-)appears suspended in the paradoxical relation between the people as king and the multitude: sovereign and subjects.<sup>62</sup>

Agamben suggests that we must understand this paradoxical relationship in terms of a sequence, wherein the people only exist temporarily, at the instant where the multitude is united in the covenant constituting the sovereign and ending the state of nature. The people is immediately exhausted in this constitutive political act; dissolved into a multitude once again, they only persist politically through their investment in and representation by the sovereign; the people as king or the *populus-rex*.<sup>63</sup> This has significant parallels to Agamben's previous

conceptualization of the sovereign People (with a capital “p”) who only appear in the form of the “total state.”<sup>64</sup>

Agamben identifies a further division between the initial “disunited multitude”, the subject of constituent power, and the subsequent “dissolved multitude”, which has exhausted its constituent power in the (irreversible) covenant and is consequently excluded from politics.<sup>65</sup> It is this constitutive exclusion of the body politic from the polis, which is represented by the deserted city and, which in turn, corresponds to Agamben’s assertion that the fundamental condition of the modern state is *ademia*, that is, the absence of a people.<sup>66</sup> The sovereign state is similarly exiled from the city insofar as it is the projection of this absence of a political body, which transcends and rules the city without being a part of it.<sup>67</sup>

Agamben proceeds to identify civil war with the constant possibility of conflict between the dissolved multitude and the sovereign. Civil war is now understood to denote the former’s attempt to destroy the latter in order to return to its initial state as a disunited multitude capable of asserting constituent power momentarily. The civil war between multitude and sovereign power, takes place in the context of the sovereign state and as such, does not immediately subvert the latter; it is only if the multitude triumphs that the commonwealth and the covenant are shattered and the multitude “returns” to the state of nature.<sup>68</sup> This is of course no simple return to a natural or pre-historical state; Agamben insists that the state of nature is merely Hobbes’ projection of civil war into a mythical past separate from the state. Yet there is no resolution in sight; insofar as the multitude successfully overturns the sovereign state, the people re-emerge momentarily, only to dissolve itself in the (re-)constitution of sovereign power. Agamben even provides a visual illustration of the circular relationship between civil war and the sovereign state, showing how constituent power invariably turns into constituted power and the

sequence of civil war – disunited multitude – people-king – dissolved multitude will repeat itself indefinitely thereby, seemingly, underscoring the fundamental futility of civil war and/or revolution as a means of challenging the sovereign state.<sup>69</sup>

The endless cycle of civil war and sovereignty, constituent and constituted power is at the centre of the *Homo Sacer*-series as I have already shown. In Agamben's initial reading of Hobbes, the state of nature qua civil war was always already internal to the sovereign state, constituting its most fundamental mode of operation, i.e., the state of exception. This state of exception marked the inclusion of civil war within the sovereign state, effectively totalizing it and thereby foreclosing any attempts to contest and overcome it.<sup>70</sup> But, in spite of Agamben's insistence that his conceptualization civil war in *Stasis* is identical to his previous analysis of the state of exception,<sup>71</sup> there are significant divergences between them: most significantly, the state of exception in his previous works denoted the inclusion of civil war in the sovereign state whereas in *Stasis* civil war is no longer identical to the sovereign state, and their relationship is conceptualized as one of coexistence rather than coincidence.<sup>72</sup> Civil war is no longer a part of the sovereign state, in the form of the state of exception, but instead denotes a discrete phenomenon whereby the dissolved multitude attempts to (and may successfully) overthrow sovereign power, even if only to reconstitute it.

While the distinction between the sovereign state and civil war introduced in *Stasis* implicitly contributes to overcoming the previous totalization of the sovereign state, civil war and sovereign power remain mutually constitutive elements in a single overarching political structure.<sup>73</sup> Moreover, civil war remains subordinate, insofar as it is merely a possible exception to the rule of the sovereign and only takes place within the context of the sovereign state, which it is inevitably compelled

to reproduce. Thus, the result appears similar: a vicious circle of revolutionary attempts to contest the sovereign state that are always already implicated in it, and therefore inevitably end up reconstituting it. Agamben thereby also, implicitly, reasserts the pre-modern meaning of revolution as a series of cyclical, movements that return to the point of origin.<sup>74</sup>

#### *V. Civil War and Inoperativity*

From this perspective Agamben's *Stasis* seems to reconfigure but ultimately reiterate the bleak vision of politics caught in the sovereign exception, advanced in the rest of the *Homo Sacer*-series. Yet some oblique references towards the end of the book suggest a possible "messianic" resolution:

*The two primordial monsters, Leviathan and Behemoth, will fight one another in the days of the Messiah and both will perish in the struggle. Then the righteous will prepare a messianic banquet, in the course of which they will eat the flesh of the two beasts.*<sup>75</sup>

Here Agamben draws on the Talmudic tradition where Behemoth and Leviathan are said to struggle in the final days of the messiah, eventually annihilating one another, before their flesh is consumed at the messianic banquet, which marks the end of time.<sup>76</sup> Agamben proceeds to suggest that the third part of *Leviathan* "Of a Christian Commonwealth" should be read against such an eschatological backdrop, as a treatise on the coming Kingdom of God.<sup>77</sup> While this specific aspect of the Talmudic tradition may or may not have been known to Hobbes, Agamben makes the slightly strained case, that it is implicit in the Christian tradition,

referring mainly to Paul's Second Letter to the Thessalonians, which describe the eschatological conflict preceding the constitution of the Kingdom of God.<sup>78</sup>

Hobbes does indeed outline a vision of the Kingdom of God, which he insists must be understood as a real political entity rather than a metaphor, insofar as God is always already supreme.<sup>79</sup> Agamben argues that this Kingdom of God emerges at the end of days to replace the incessant struggle of Behemoth and Leviathan; constituent and constituted power, overcoming the separation of the body politics from itself and finally "at this point may the righteous be seated at their messianic banquet, freed forever from the bonds of law."<sup>80</sup>

The book ends rather abruptly at this point, without exploring the meaning of this eschatology and the messianic banquet any further. However, it is possible to develop this otherwise obscure conclusion by looking to Agamben's other works, where the messianic event and the feast are consistently invoked as figures of "inoperativity" or the more recently introduced synonymous concept of "destituent power."<sup>81</sup> In a recent essay "What is a Destituent Power" Agamben explains that this concept is derived from Benjamin's notion of a pure violence that might finally break the incessant cycles of constituent and constituted power, which either makes or preserves law but never seems able to escape it. Agamben traces Benjamin's concept of pure violence back to the French syndicalist Georges Sorel's vision of the "proletarian general strike:" an indefinite strike, which would not aim for industrial or political concessions or to seize power; it would instead constitute a complete refusal of the entire system that would thereby render it inoperative indefinitely.<sup>82</sup>

At this juncture, it is also instructive to note that Agamben has previously also

elaborated his concept of inoperativity in terms borrowed from the Italian tradition of (post-) *operaismo* (workerism), as an “exodus from any sovereignty.”<sup>83</sup> The concept of exodus is obviously biblical in origin, referring to the flight of the Jews from slavery in Egypt, but has subsequently been developed in radical Italian theory and practice. The concept was initially employed to signify a mutation of the “refusal of work”-strategy (*rifiuto di lavoro*) developed in the course of Italian labor struggles of the late 1960s and 1970s. This strategy initially aimed to elevate the strike from a tool of collective bargaining for higher wages and better working conditions under capitalism, to a complete refusal of the condition of wage labour and/as capitalism.<sup>84</sup> Here it is instructive to note that the root of Agamben’s concept of inoperativity (*inoperosità*) *opera* also translates as “work” and as such can be read as a continuation and development of this refusal of work.<sup>85</sup> The refusal of work-strategy was subsequently broadened into a more general strategy of refusal and defection from all oppressive and exploitative social relations and institutions, which was conceived in terms of an “exodus.” The fundamental insight leveraged by this strategy is that oppressive and exploitative social relation and institution generally cannot sustain themselves for longer periods of time but rely on the tacit acceptance and participation of its members including those oppressed and exploited by them. As such, their withdrawal from these social relations and institutions may efficiently undermine them. In its contemporary formulations this concept designates a strategy, which emphasizes refusal rather than direct confrontation, as a means of undermining sovereign power.<sup>86</sup> And it is precisely in this way that we must read Agamben’s notion inoperativity and/as exodus if we are to evade the aporias of his political thought: rather than a strategy to achieve an impossible victory in an endless civil war, which would only serve to reaffirm and reproduce sovereign power in a different guise, the strategy of exodus offers a way out of this impossible struggle.

Agamben develops the conceptual contours of this “inoperative operation” further via Paul’s description of the relationship between the messianic event

and the mosaic covenant in terms of the Greek verb *katargein*, whose etymology he traces back to *argos* meaning “inoperative, not-at-work (*a-ergos*), inactive,” and which he proposes simultaneously refers to the fulfilment, preservation and abolishment of the law.<sup>87</sup> The *katargein* of the messianic event is the completion of the mosaic covenant’s prophecy and insofar as it fulfils it, it also preserves it, all the while replacing it with the new (messianic) covenant. However, as we have just seen, Agamben insists that this does not take the form of law, but a new form of life, which renders law inoperative: “the *kainē diathēkai* [new covenant] ... is not a text but the very life of the messianic community, not a *writing*, but a *form of life*.”<sup>88</sup> Agamben summarizes this messianic form of life with the (Pauline) formula *hōs mē* (as not); a form of life which does not destroy what precedes it, but renders it inoperative by not partaking, behaving as if it did not exist. It is “a form-of-life ... which unrelentingly deposes the social conditions in which it finds itself living, without negating them” – depriving the sovereign state of its power without destroying and/or replacing it.<sup>89</sup>

It is important to note that Agamben’s messianism is not a politics of deferral to some transcendent entity, i.e., simply awaiting the second coming. Agamben insists, in his reading of Paul’s Letter to the Romans, that we are already living in the messianic “time that remains” – the time between the end of history, marked by the coming of the messiah, and the messiah’s full presence (*Parousia*), which is to be achieved in the messianic form of life, that is to say, the destitution of sovereign power.<sup>90</sup>

However, there remain some seemingly significant challenges, as Antonio Negri and Michael Hardt remind us in regard to the strategy of exodus and its biblical precedent: “the pharaoh does not let the Jews flee in peace,” that is to say, a withdrawal from the sovereign state cannot be completed without facing significant opposition and repression from that very same state, which cannot simply be ignored or wished away. Negri and Hardt therefore conclude that the strategy of exodus requires a readiness for active and potentially violent resistance – while avoiding being drawn into a direct and prolonged confrontation with the

state. While they operate within different conceptual parameters, they remind us that any exodus will be forced to confront the very same civil war it is trying to evade in one form or another.<sup>91</sup> Previously in the *Homo Sacer*-series this paradox would have entailed that any such exodus would inevitably be subsumed to the sovereign state via the topology of exception. However, Agamben's reconfiguration of the relationship between civil war and the sovereign state in *Stasis* opens up the possibility of thinking civil war and destituent power together even if he does not pursue it himself in any meaningful way beyond the messianic imagery.

The point of departure for thinking about the connection between civil war and destituent power should be the exploration of the dual meaning of *stasis*, starting not with civil war but with the other meaning of *stasis* as immobility or suspension of movement; a meaning which likewise derives from the Greek *histemi*, designating standing up or, more significantly, a fixed stance or position, which Agamben notes in passing but fails to investigate any further.<sup>92</sup> Insisting on the potential practical and conceptual coincidence of civil war and inoperativity – *stasis* and *stasis* – facilitates a reinterpretation of the eschatological sequence outlined by Agamben, wherein Behemoth and Leviathan destroy each other in advance of the messianic banquet, in terms of the dissolved multitude successfully defeating the sovereign state in civil war and thus disbanding itself as such, as the necessary precondition of a destituent power. Destituent power would then come to designate the paralysis of the sequence outlined by Hobbes, at the threshold between civil war and the sovereign state, that is, the precise point where the multitude and the people momentarily coincide. Destituent power would thus come to designate a form of revolution that does not constitute a new sovereign power.

However, this interpretation sits uneasily with Agamben's call to "abandon" revolution and constituent power in order to think a "purely destituent power."<sup>93</sup> Yet, such pronouncements are not necessarily incompatible with the present argument: the concept of abandonment was central to the first book of the *Homo Sacer*-series, where it denoted "the simple positing of a relation with

the nonrelational”, that is, an inclusive exclusion structurally identical to the state of exception.<sup>94</sup> Thus, Agamben’s call to abandon constituent power and revolution can also be read as an inclusive exclusion rather than a rejection, which incorporates revolution within destituent power.

However, this seems to pose another problem, insofar as it appears to implicate destituent power in the state of exception, whereby the state subsumes and incorporates its outside, i.e., civil war or revolution.<sup>95</sup> Agamben seems to corroborate this in a passage in *The Time That Remains*, where he proposes that the messianic form of life is structurally identical to the state of exception, insofar as it renders law indiscernible from its suspension and, by extension, the state indistinguishable from civil war.<sup>96</sup> But this may also be read in terms of another type of exception Agamben has invoked at various points throughout the *Homo Sacer*-series, Benjamin’s “real state of exception,” which stands in opposition to our contemporary state of exception caught in the incessant interplay of constituent and constituted power.<sup>97</sup> Agamben consistently identifies both the real state of exception and destituent power with Benjamin’s pure violence, suggesting that they coincide in his thought. If the state of exception is the totalization of the sovereign state, so as to includes its outside, i.e., the non-state, civil war and/or revolution, we may conceive the “real state of exception” as an inverse totalization whereby the non-state incorporates (and destitutes) the sovereign state. The real state of exception can thus be conceived as an exception to the exception, which overcomes the state of exception by simultaneously fulfilling, maintaining and rendering it inoperative; an interpretation, which is supported by Agamben’s description of this destituent power as “an *Aufhebung* of the state of exception, an absolutizing of the *katargēsis*.<sup>98</sup>

This reading suggests that we both can and should think civil war and destituent power together. Such an interpretation of the dual meaning of the concept of *stasis* has the twin benefits of rehabilitating the potentials of the revolutionary tradition without ignoring its potential pitfalls and rendering destituent power a plausible practical and political project to overcome the sovereign state and its continuous

production and elimination of bare life. Destituent power can thus be conceived as a form of revolution, which does not constitute a new sovereign power. Instead, it can be thought of as an exception to the exception, which breaks the continuous cycle of constituent and constituted power at the point of their intersection. A constitutive power, which does not produce constituted powers per definition ceases to qualify as constitutive power and must instead be conceptualized as a form of destituent power. Such a destituent power could interrupt the incessant cycle of constituent and constituted power from within and create new political possibilities that point beyond the paradigm of the exception and the sovereign state.

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## NOTES

1. *Stasis* was published in Italian in 2015 as the last of the nine books that together comprise the *Homo Sacer*-series but was (retrospectively) inscribed as the third (II.2) book in the official sequence of the series. See Adam Kotsko, *Agamben's Philosophical Trajectory*. Edinburgh: Edinburgh University Press, 2020, 203.
2. See Andrew Norris, "The Exemplary Exception: Philosophical and Political Decisions in Giorgio Agamben's *Homo Sacer*," *Radical Philosophy* 119 (2003), 6–16; Andreas Kalyvas, "The Sovereign Weaver: Beyond the Camp." *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's Homo Sacer* Ed. Andrew Norris. Durham: Duke University Press, 2005, 107–134; Alberto Toscano, "Divine Management." *Journal of the Theoretical Humanities*: 16:3 (2011), 125–136; Mikkel Flohr, "Giorgio Agamben's Inclusive Exclusion of Étienne de La Boétie." *Telos*: 181 (2017), 106–112; Lotte List, "Political Theology and Historical Materialism: Reading Benjamin against Agamben." *Theory, Culture and Society*: 38:3 (2021), 117–140.
3. "Destituent power" was the most prevalent translation of Agamben's *Potenza destituent* until Adam Kotsko rendered it "destituent potential" in his translation of *The Use of Bodies*, which is in many ways more precise. However, for the sake of consistency and because it resonates with my specific development of the concept I use the previous translation. See Giorgio Agamben, *The Use of Bodies*. Stanford: Stanford University Press, 2016, xi; Giorgio Agamben, "What is a Destituent Power." *Society and Space*: 32 (2014), 65–74; Giorgio Agamben, "For a theory of Destituent Power." *Xqovoō* (2013) available via [<http://www.chronosmag.eu/index.php/g-agamben-for-a-theory-of-destituent-power.html>] (accessed 2/11/2016).
4. Giorgio Agamben, *What is an Apparatus and other Essays*. Stanford: Stanford University Press, 2009, 12–3; Giorgio Agamben, *The Signature of all Things: On Method*. New York: Zone Books, 2009, 7–8; see also Agamben, *Use of Bodies*, xiii.
5. Neithard Bulst, Jörg Fisch, Reinhart Koselleck and Christian Meier, "Revolution, Rebellion, Aufruhr, Bürgerkrieg." *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland. Band V*. Ed. Werner Conze. Stuttgart: Klett-Cotta, 1984, 712–4. 726–7, 778–80; Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*. New York: Columbia University Press, 2004, 46–9; David Armitage, "Every Great Revolution is a Civil War." *Scripting Revolution: A Historical Approach to the Comparative Study of Revolutions*. Eds Keith Michael Baker and Dan Edelstein. Stanford: Stanford University Press, 2015, 57–9.
- One of the earliest and perhaps most prominent examples is Aristotle's association of constitutional change (*metabole politeias*) and civil war (*stasis*) in book five of *Politics*. See Aristotle, *Politics*. Cambridge: Harvard University Press (Loeb Classical Library), 1932, 1301b5, 1302a16–17 (but see also 1303a14–15). On the Roman tradition, see Armitage. "Civil War," 59–62.
6. Thomas Hobbes, *Leviathan: with selected Variants from the Latin Edition of 1668*. Indianapolis: Hackett, 1994, 77.
- C. B. Macpherson notes that the exact phrase "state of nature" primarily emerged in the subsequent reception of Hobbes' works whereas Hobbes relied on a number of closely related synonyms ("natural state," "state of pure nature," and "the natural condition of mankind"). For ease of reference and consistency in regard to the secondary literature, I will nonetheless employ this phrase as a synonym for the aforementioned variations, which I take to refer to a single conceptual figure. See C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Oxford University Press, 2011, 25.
7. Karl Marx, *Early Writings*. London: Penguin, 1975, 101; G.W.F. Hegel, *Elements of the Philosophy*

*of Right*. Cambridge, Cambridge University Press, 1991, 329.

8. Karl Marx and Friedrich Engels, *The Communist Manifesto*. London: Verso, 1998, 49; Karl Marx, “The Civil War in France.” Karl Marx: Later Political Writings. Ed. Terrell Carver. Cambridge: Cambridge University Press, 1996, 163-207; Karl Marx, *Capital: A Critique of Political Economy Volume One*. London: Penguin, 1976, 409, 412-3.

9. Vladimir Ilyich Lenin, *State and Revolution*, London: Penguin, 1992; Vladimir Ilyich Lenin, “The Military Programme of the Proletarian Revolution.” *Lenin Collected Works. Volume 23: August 1916-March 1917*. Moscow: Progress Publishers. 1964, 78-9, 81.

10. See for instance Karl Marx, “On the Hague Congress [A Correspondents Report of a Speech made at a Meeting in Amsterdam on September 8, 1872].” *Karl Marx / Friedrich Engels Collected Works. Volume 23*. London: Lawrence and Wishart, 1988, 254-6; Lenin, *State and Revolution*, 18-21, 39, 73-4; see also Vladimir Ilyich Lenin, “A Caricature of Marxism and Imperialist Economism.” *Lenin Collected Works, Volume 23*. Moscow: Progress Publishers, 1964, 69; Giorgio Agamben, “On the Limits of Violence,” in *Diacritics*: 39:4 (2009), 104-111.

11. Mao Tse-tung, *Quotations from Mao Tse-tung*. Peking: Foreign Languages Press, 1966, 58-62, 87-98; Mao Tse-tung, “On Protracted War.” *Selected Works of Mao Tse-tung. Volume II*. Peking, Foreign Languages Press, 1967, 113-194; Julia Lovell, *Maoism: A Global History*. London: Vintage, 2020.

12. See in particular Michel Foucault, *The Punitive Society, Lectures at the Collège de France, 1972-73*. New York: Picaor, 2015, 1-43; Michel Foucault, *Society Must be Defended: Lectures at the Collège de France, 1975-76*. New York: Picador, 2004, 89-110; David Macey, *The Lives of Michel Foucault*. London: Verso, 1993, 217-9; Richard Wolin, *The Wind from the East: French Intellectuals, The Cultural Revolution and the Legacy of the 1960s*. Princeton: Princeton University Press, 2010, 18, 288-349.

13. Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*. London: Athlone Press, 1988, 352-8; see also Pierre Clastres, *Society against the State: Essays in Political Anthropology*. New York: Zone Books, 1987.

14. Tiqqun, *Introduction to Civil War*. Los Angeles: Semiotext(e), 2010, 32-3, 63.  
Agamben actually cites this work approvingly (although on an altogether different topic) in the final volume of the *Homo Sacer*-series. See Agamben, *The Use of Bodies*, 231.

15. The following section draws on and develops some of the reflections initially presented at the symposium “Giorgio Agamben after 2007: Theology, Administration and Method” at the School of Culture and Society, Aarhus University, subsequently explored in Mikkel Flohr, “The Problem of Civil War in Agamben’s Thought.” *Semikolon*: 27:15 (2014), 61-8; Mikkel Flohr, “Borgerkrig fra Athen til Auschwitz: Et essay om de politiske (u-)muligheder I Agambens tænkning.” *Slagmark – Tidsskrift for idéhistorie*: 72 (2015): 37-54.

16. The “total state” here seems to be an implicit reference to Carl Schmitt’s *On the Political*, where it denotes the “identity of the state and society.” Schmitt argued that this could either take the form of a *quantitative* total state where a plurality of social forces and interests dominate the state and threaten to tear it apart or a *qualitatively* total state that dominates and integrates all of society on the model of Italian fascism. Carl Schmitt, *On the Concept of the Political*. Chicago: Chicago University Press, 2007, 22; Carl Schmitt, *Four Articles, 1931-1938*. Corvallis: Plutarch Press, 1999, 20-7, 7-18; see also Jan-Werner Müller, *A Dangerous Mind: Carl Schmitt in Post-War European Thought*. New Haven: Yale University Press, 2003, 32-2, 36.

17. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*. Stanford: Stanford University Press, 1998, 178; Mark Neocleous, “Friend or Enemy? Reading Schmitt Politically.” *Radical*

*Philosophy*: 79 (1996), 15.

Agamben explicitly invokes Marx's conception of class struggle at this juncture. But in spite of this reference and the obvious parallels between his description of the excluded "people" and Marx's description of the proletariat, Agamben does not engage with the critique of political economy nor the potential universality of the proletariat outlined by Marx here. Marx, *Early Writings*, 255-7; but see also Giorgio Agamben, *The Time That Remains: A Commentary on the Letter to the Romans*. Stanford: Stanford University Press, 2005, 57-8.

18. Agamben, *Homo Sacer*, 177-8.

Note that Agamben seldom employs the distinction between "People" and "people" subsequently, but generally relies on the synonymous concepts of sovereign power and bare life.

19. The duality of the concept of the people can be traced all the way back to Ancient Athens where the concept of *demos*, denoting the citizenry, was also associated with the poor and/as the majority of the population [*plethos*]. This in turn also parallels the association of *populus* with the *plebs* in the Roman Empire, which Agamben highlights. Marc Crépon, et al, "People/Race/Nation." *Dictionary of Untranslatable*. Ed. Barbara Cassin. Princeton: Princeton University Press, 2014, 760-3; Agamben, *Homo Sacer*, 178.

20. Agamben, *Homo Sacer*, 11; Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: Chicago University Press, 2006, 5.

21. Schmitt, *Political Theology*, 12-3; Agamben, *Homo Sacer*, 26.

22. See in particular Carl Schmitt, *Legality and Legitimacy*. Durham: Duke University Press, 2004; Carl Schmitt, "Appendix: The Dictatorship of the President of the Reich according to Article 48 of the Weimar Constitution." *Dictatorship: From the Beginning of the Modern Concept of Sovereignty to the Proletarian Class Struggle*. Cambridge: Polity Press, 2014, 180-226.

23. Agamben, *Homo Sacer*, 177, 12; Giorgio Agamben, *State of Exception*. Chicago: Chicago University Press, 2005; see also Walter Benjamin, "On the Concept of History." *Walter Benjamin: Selected Writings Volume 4, 1938-1940*. Eds Howard Eiland and Michal Jennings. Cambridge: Harvard University Press, 2006, 392.

24. Schmitt, *On the Concept of the Political*, 46-7; Carl Schmitt, *The Crisis of Parliamentary Democracy*. Cambridge: MIT Press, 1985, 8-10.

25. Agamben, *Homo Sacer*, 107, 88; Agamben, *State of Exception*, 80.

"Bare life" is the translation of the Italian *nuda vita*, which is Agamben's rendition of Walter Benjamin's *bloßes Leben* typically translated as "mere life." Agamben's deployment of the concept is also informed by Hannah Arendt's writings on refugees. See Agamben, *Homo Sacer*, 65; Walter Benjamin, "Critique of Violence" *Walter Benjamin: Selected Writings Volume 1, 1913-1926*. Eds Marcus Nullock and Michael Jennings. Cambridge: Harvard University Press, 1996, 236-52; Giorgio Agamben, *Means without Ends*. Stanford: Stanford University Press, 2000, 15-26; Hannah Arendt, *The Jewish Writings*. United States of America: Schocken Books, 2007, 264-274; Hannah Arendt, *Origins of Totalitarianism*. New York: Harcourt Brace, 1976, 267-302.

26. Agamben, *Homo Sacer*, 176-9; see also Agamben, *State of Exception*, 2; Agamben, *The Use of Bodies*, 198.

27. Agamben, *Homo Sacer*, 185; see also Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*. New York: Zone Books, 2008.

It is interesting to note that many of the historical figures of bare life that Agamben invokes in the beginning of *Homo Sacer* are imposing avatars of anomie, much closer to the traditional conceptions of civil war as a threat to the existing juridico-political order, than the passive victims of sovereign violence he subsequently describes, from the bandit and the outlaw, to the

*Friedlos* and the werewolf. Perhaps the most puzzling example is the Roman legal figure of *Homo Sacer* itself, which was originally associated with the threat of Plebeian insurrection outside and against the Roman state during the initial *secessio plebis* in 494 BCE and was only slowly incorporated in the legal system, before, ultimately, being assumed by Roman emperors, marking the end of the republic and “the birth of the new absolute power” in Agamben’s words. See Kurt Raaflaub, “From Protection and Defense to Offense and Participation: Stages in the Conflict of the Orders.” *Social Struggles in Archaic Rome; New Perspectives on the Conflict of the Orders* (2<sup>nd</sup> ed.). Ed. Kurt Raaflaub. Malden: Blackwell, 2005, 194-5; Andrew Lintott, *The Constitution of the Roman Republic*. Oxford: Oxford University Press, 2009, 31-3; Andrew Lintott, *Violence in Ancient Rome*. Oxford: Oxford University Press, 1968, 24; Agamben, *Homo Sacer*, 72; see also Livy, *The History of Rome*. Books 1-5. Indianapolis: Hackett, 2006, 122-3 (2.32-3), 229-30 (3.55).

28. Hobbes, *Leviathan*, 76-7.

29. Hobbes, *Leviathan*, 77, 109.

30. Agamben, *Homo Sacer*, 37.

This has significant parallels to Foucault’s reinterpretation of Hobbes and may very well have been influenced by it. See Foucault, *Punitive Society*, 13-40; Foucault, *Society must be Defended*, 89-110.

31. Agamben, *Homo Sacer*, 109.

32. Agamben, *Homo Sacer*, 179, 38, 12; see also Agamben, “What is Destituent Power,” 70, 72; Agamben, *Use of Bodies*, 266, 274-5.

33. Agamben, *Homo Sacer*, 109.

34. Schmitt, *On the Concept of the Political*, 47; Carl Schmitt, *Theory of the Partisan: A Commentary/Remark on the Concept of the Political*. East Lansing: Michigan State University Press, 2004.

35. The limitations of such an analytical totalization of the sovereign state, which threatens to subsume everything to the state of the exception, is amply illustrated by Agamben’s recent critique of the “frenetic, irrational and unprovoked emergency measures adopted against a supposed epidemic.” Although it should be acknowledged that his original intervention was written at an early stage in the global COVID-19 pandemic and was based on the (Italian) National Research Council’s underestimation of the virus and did raise some relevant questions about emergency powers whereas his subsequent commentaries defending and elaborating on his initial article became more and more absurd (particularly the recurring comparison of contemporary public health measures with National Socialist Germany). The majority of the present essay was composed prior to the pandemic and Agamben’s unfortunate interventions. See Giorgio Agamben, *Where Are We Now? The Epidemic as Politics* (second edition). London: Eris, 2021, 11; *passim*; see also D’Eramo, Marco, “The Philosopher’s Epidemic.” *New Left Review*: 122:2 (2020), 23-8; Sotiris, Panagiotis, “Against Agamben: Is a Democratic Biopolitics Possible.” *Viewpoint Magazine* (2020) available via [<https://viewpointmag.com/2020/03/20/against-agamben-democratic-biopolitics/>] (accessed 6/4/2020); Adam Kotsko, “What Happened to Giorgio Agamben.” *Slate* (2022) available via [<https://slate.com/human-interest/2022/02/giorgio-agamben-covid-holocaust-comparison-right-wing-protest.html>] (accessed 28/8/2022).

36. Agamben, *Homo Sacer*, 57, 109, 38, 51.

37. Agamben, *State of Exception*: 54, 59; Benjamin, “Critique of Violence.”

On the limits of Agamben’s reading of Benjamin see also List, “Benjamin Against Agamben.”

38. Agamben, *State of Exception*, 59.

39. Agamben, *State of Exception*, 86.

40. Agamben, *State of Exception*, 88.

41. Giorgio Agamben, *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*. Stanford: Stanford University Press, 2011, xi.

Such an analysis had already been announced in the introduction to *Homo Sacer: Sovereign Power and Bare Life* only to be abandoned immediately afterwards in favor of an essentially Schmittian account of sovereign power. See Agamben, *Homo Sacer*, 5-6; see also Leland Durantaye, *Giorgio Agamben: A Critical Introduction*. Stanford: Stanford University Press, 2009, 209; Flohr, “Agamben’s Inclusive Exclusion of Boétie,” 108-9.

42. Michel Foucault, *The History of Sexuality, Vol. 1: The Will to Knowledge*. London: Penguin, 1998, 93-4, 88-9; Foucault, *Society must be Defended*, 76; see also Mikkel Flohr, “Regicide and Resistance: Foucault’s Reconceptualization of Power.” *Distinktion: Journal of Social Theory*: 17:1 (2016), 38-41.

43. Agamben, *Kingdom and the Glory*, 276.

44. Agamben, *Kingdom and the Glory*, xi, 242-5.

45. Agamben, *Kingdom and the Glory*, 108.

46. Agamben, “What is Destituent Power,” 65; see also Agamben, *Use of Bodies*, 263.

47. Agamben, “What is Destituent Power,” 70; see also Agamben, *Use of Bodies*, 266.

48. Agamben, “What is Destituent Power,” 72; see also Agamben, *Use of Bodies*, 274-5.

The inherent limitations imposed by the deployment of Schmitt’s state of exception on the reading of any attempt to overcome the juridico-political order are neatly exemplified by the final threshold of *The Highest Poverty*, where Agamben concludes that the Franciscans’ attempts to create a form of life and community outside of the law and property ultimately failed, because they defined this project “negatively with respect to the law” and were therefore incapable of moving beyond it. See Giorgio Agamben, *The Highest Poverty: Monastic Rules and Form of Life*. Stanford: Stanford University Press, 2013, 144-5.

49. See Kotsko, Agamben’s *Philosophical Trajectory*, 104, 112-9, 204.

50. This is easily missed since *Stasis* was translated into English in 2015, a year before the translation of *The Use of Bodies* was published.

51. Strangely the preface suggests that the advent of “global civil war,” seemingly referring to the War on Terror (the seminars that the book is based on took place in 2001), may have rendered the entire analysis irrelevant. I will not pursue this undeveloped claim, although it may be of interest to note that it reappears once in *State of Exception*, where Agamben attributes it to Hannah Arendt’s *On Revolution* and Carl Schmitt’s *The Theory of the Partisan* without any further explanation. Arendt only mentions it in passing, while Schmitt provides an analysis of the threat to the international political order posed by universal ideologies (such as communism and liberalism) that cannot be spatially contained and thus threaten to result in “world-wide civil war.” See Giorgio Agamben, *Stasis: Civil War as a Political Paradigm*. Stanford: Stanford University Press, 2015, ix, 24; Agamben, *State of Exception*, 3; Arendt, *Totalitarianism*, 17; Schmitt, *Partisan*, 66-8, 35-8; see also Carl Schmitt, “The Großraum Order of International Law with a Ban on Intervention for Spatially Foreign Powers: A Contribution to the Concepts of Reich in International Law.” *Writings on War*. Cambridge: Polity Press, 2011, 90-5; Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*. New York: Telos Press, 2003; Müller, *Dangerous Mind*, 104-15; Benno Teschke “Fatal Attraction: A Critique of Carl Schmitt’s International Political and Legal Theory.” *International Theory*: 3:2 (2011), 188-91, 197, 216.

52. Agamben, *Stasis*, 7-9, 18; Agamben, “What is Destituent Power,” 66-7; see also Nicole Loraux, “War in the Family.” *Parrhesia*: 27 (2017), 13-47; Christian Meier, *The Greek Discovery of Politics*. Cambridge: Harvard University Press, 1990, 157-85.

Agamben initially traced the relationship between sovereign power and bare life back to the assumption of tribunal sacrosanctity by Emperor Augustus (see note 27). However, he did also invoke the supposedly homologous Greek distinction between natural life (*zōē*) and political existence (*bios*), drawing on Aristotle, from the beginning of the *Homo Sacer*-series, albeit without providing an account of its political origins. Note also that this interpretation of Aristotle is disputed. See Agamben, *Homo Sacer*, 84, 1ff; James Finlayson, “Bare Life” and Politics in Agamben’s Reading of Aristotle.” *The Review of Politics*: 72:1 (2010), 105–116; but see also Kotsko, *Agamben’s Philosophical Trajectory*, 83–4.

53. Agamben, *Stasis*, 2.

54. Agamben, *Stasis*, 12–3; see also Agamben, *Homo Sacer*, 107, 88; Agamben, *State of Exception*, 80; Agamben, “What is Destituent Power,” 66.

55. Agamben, *Stasis*, 17.

56. Agamben, *Stasis*, 11–13; Agamben, “What is Destituent Power,” 67.

57. On the biblical figure of Leviathan see Job 41:1–34 and Job 40:15–24 for Behemoth; See also Hobbes, *Leviathan*; Thomas Hobbes, *Behemoth, or, The Long Parliament*. Oxford: Oxford University Press, 2010.

58. Agamben also notices the presence of a few guards and plague doctors inside the city, but they remain irrelevant for the present argument. See Agamben, *Stasis*, 47–9.

59. Agamben, *Stasis*, 42

60. Note that this invocation of the people comes closer to what he previously described as the People although there are also significant displacements, which will be explored in the following.

61. Thomas Hobbes, *On the Citizen*. Cambridge: Cambridge University Press, 1998, 137; see also Hobbes, *Leviathan*, 110.

62. Agamben, *Stasis*, 45.

63. Agamben, *Stasis*, 43–5.

64. Agamben, *Homo Sacer*, 177.

See also note 16 on the concept of the “total state.”

65. Agamben, *Stasis*, 46–7.

66. Agamben, *Stasis*, 51.

This is a recurring theme in contemporary political thought: the Invisible Committee has suggested the distinct lack of a people in contemporary western societies and Wendy Brown dedicated an entire book to the undoing of the demos by neoliberalism. See The Invisible Committee, *To Our Friends*. Los Angeles: Semiotext(e), 2015, 44; Wendy Brown, *Undoing the Demos: Neoliberalism’s Stealth Revolution*. New York: Zone Books, 2015.

67. Agamben, *Stasis*, 46–7, 38.

68. Agamben, *Stasis*, 52–3; see also Hobbes, *Leviathan*, 218–9.

69. Agamben, *Stasis*, 46.

Agamben’s seems to derive his conception of constituent power from Schmitt’s reading of Emmanuel Sieyès’ “What is the Third Estate?” (1789) in *Constitutional Theory* (1928), which reduces it to another instance of sovereignty in spite of the fact that Sieyès never used the concept of sovereignty to describe constituent power. This reading is also at the heart of Agamben’s critique of Antonio Negri, who makes the case for a concept of constituent power that is separate from and fundamentally opposed to sovereign power; Agamben, on the other hand, insists that the two cannot be differentiated. See Carl Schmitt, *Constitutional Theory*. Durham: Duke University Press, 2008, 125–9; Emmanuel Sieyès, *Political Writings*. Indianapolis: Hackett, 2003; Agamben, *Homo Sacer*, 43–4; Antonio Negri, *Insurgencies: Constituent Power and*

*the Modern State*. Minneapolis: University of Minnesota Press, 1999; see also Antonio Negri and Michael Hardt, *Assembly*. Oxford: Oxford University Press, 2017, 32-7.

70. Agamben, *Homo Sacer*, 35-7; Agamben, *State of Exception*.

71. Agamben, *Stasis*, 22.

72. Agamben, *Stasis*, 53.

73. Agamben, *Stasis*, 53.

74. See Koselleck, *Futures Past*, 45; See also Hannah Arendt, *On Revolution*. London: Penguin, 1990, 42-58.

75. Agamben, *Stasis*, 58.

76. See also Agamben, *Stasis*, 69.

77. The biblical descriptions of the Kingdom of God draw heavily on the Jewish anticipation of the messianic banquet. See Brant Pitre, “Jesus, The Messianic Banquet, and the Kingdom of God,” in *Letter and Spirit*: 5 (2009), 145-161; Matt 8:11-12; Luke 13:28-29.

78. Agamben, *Stasis*, 58; 64-7; 2 Thess. 2:1-12.

79. Agamben, *Stasis*, 59-60; see also Hobbes, *Leviathan*, 276, 412-3.

80. Agamben, *Stasis*, 69.

81. Agamben, *Homo Sacer*, 53-8; Agamben, *State of Exception*, 63-4, 71-3; Giorgio Agamben, *Nudities*. Stanford: Stanford University Press, 2011, 104-112; Agamben, “What is Destituent Power,” 69-71. See also note 3 in this essay. For a useful general introduction to the contemporary development and use of the concept of “destituent power,” see Saul Newman, “What is an Insurrection? Destituent Power and Ontological Anarchy in Agamben and Stirner.” *Political Studies*: 65:2 (2016), 287-9.

82. Agamben, “What is Destituent Power,” 69; Benjamin, “Critique of Violence,” 245-6, 251-2; Georges Sorel, *Reflections on Violence*. Cambridge: Cambridge University Press, 1999; see also Agamben, *State of Exception*, 63-4; James Martel, “Anarchist all the Way Down: Walter Benjamin’s Subversion of Authority in Text, Thought and Action.” *Parrhesia*: 21 (2014), 6-7.

Note that Benjamin’s essay seems to have been written, at least in part, as a reflection on the right-wing Kapp putsch of 1920 and its defeat by a general strike (subsequently repressed by the social democratic government). See Howard Eiland and Michael Jennings, *Walter Benjamin: A Critical Life*. Cambridge, Harvard University Press, 2016, 130-3.

83. Agamben, *Means without Ends*, 8 (emphasis added); see also Giorgio Agamben, “I am sure that you are more pessimistic than I am ...”: an interview with Giorgio Agamben.” *Rethinking Marxism*: 16:2 (2004), 121.

Note that *operaismo* does not carry the connotations of moral celebration of (wage) labour, productivism and/or anti-intellectualism commonly associated with the English term “workerism.”

84. Michael Hardt and Paolo Virno, “Glossary of Concepts.” *Radical Thought in Italy: A Potential Politics*. Eds Michael Hardt and Paolo Virno. Minneapolis: University of Minnesota Press, 1996, 263; Mario Tronti, “The Strategy of Refusal.” *Autonomia: Post-political Politics*. Ed. Sylvère Lotringer. Los Angeles: Semiotext(e), 2007, 34, 31-2; Durantaye, Giorgio Agamben, 18; Jason Smith, “Form-of-Life and Antagonism: On *Homo Sacer* and *Operaismo*.” *Agamben and Radical Politics*. Ed. Daniel McLoughlin. Edinburgh: Edinburgh University Press, 2016, 197-204.

85. Note also that Agamben initially cited a recent interview with Mario Tronti as the source of the concept of “destituent power.” Tronti was one of the founding figures of *operaismo*, he was involved in the central journals *Quaderni Rossi* (‘Red Notebooks) and *Classe Operaia* (‘Working Class’) and published the highly influential *Workers and Capital* in 1966, before returning to the

fold of the Italian Communist Party and developing an interest in the works of Schmitt in the 1970s. See Agamben, "What is Destituent Power," 70; Adriano Vinale and Mario Tronti, "On Destituent Power: A Conversation with Mario Tronti." *Ill Will* (2022) available via [<https://illwill.com/on-destituent-power>] (accessed 24/5/2022); Alberto Toscano, "Chronicles of Insurrection: Tronti, Negri and the Subject of Antagonism." *The Italian Difference: Between Nihilism and Biopolitics*. Eds Lorenzo Ciesa and Alberto Toscano. Melbourne: Re.press, 2009, 109-28; Steve Wright, *Storming Heaven: Class Composition and Struggle in Italian Autonomist Marxism*. London: Pluto Press, 2017; Matteo Mandarini, "Notes on the Political Over the Longue Durée." *Viewpoint Magazine* (2014) available via [<https://www.viewpointmag.com/2014/09/02/notes-on-the-political-over-the-longue-duree-2/>] (accessed 3/4/2020).

86. Hardt and Virno, "Glossary," 260-1; Paolo Virno, "Virtuosity and Revolution: The Political Theory of Exodus." *Radical Thought in Italy: A Potential Politics*. Eds Michael Hardt and Paolo Virno. Minneapolis: University of Minnesota Press, 1996, 189-212.

This also has significant but unexplored parallels to the *secessio plebis* in 494 BCE where the plebeians withdrew from and thereby efficiently threatened to undermine the Roman Republic as part of The Conflict of the Orders. See note 27 on this topic.

87. Agamben, "What is Destituent Power," 70-1; Agamben, *The Time That Remains*, 95; see also 96-9; Agamben, *Use of Bodies*, 273-4.

It is no accident if this formulation seems familiar to readers of Hegel: Agamben suggests that *katargēsis* was transmitted to Hegel through Martin Luther's translation of this term as *Aufhebung* – a tentative conceptual lineage, which nonetheless suggests the possibility of constituent power as a genuinely dialectical resolution to the interplay of constituent and constituted power – although Agamben is, predictably, rather hesitant about embracing such conclusions. See Agamben, "What is Destituent Power," 71; Agamben, *The Time that Remains*, 99-100; see also G.W.F. Hegel, *Science of Logic*. Cambridge: Cambridge University, 1969, 81-2 (§§ 21.94-21.96 remark); G. W. F. Hegel, *The Encyclopaedia Logic. Part I of the Encyclopaedia of Philosophical Sciences*. Indianapolis: Hackett, 1991, 154 (§ 96 addition).

88. Agamben, *The Time that Remains*, 122.

89. Agamben, "What is Destituent Power," 71-2; see also Agamben, *The Time that Remains*, 23-9; Agamben, *Use of Bodies*, 56-7, 274.

This is in a sense already implicit in Agamben's concept of form-of-life, which designates life that cannot be separated from its form (hence the hyphens between the words) and as such cannot be turned into bare life. Note also that Agamben insists that this "is thinkable only starting from ... the irrevocable exodus from any sovereignty." See Agamben, *Means without Ends*, 3-12, 8; see also Agamben, *Use of Bodies*, 207-13.

90. Agamben, *The Time that Remains*; see also John Roberts, "The 'Returns to Religion': Messianism, Christianity and the Revolutionary Tradition. Part II: The Pauline Tradition." *Historical Materialism*: 16 (2008), 88.

91. Michael Hardt and Antonio Negri, *Multitude War and Democracy in the Age of Empire*. New York: Penguin, 2004, 341-2; see also Virno, "Virtuosity and Revolution," 197; Flohr, "The Problem of Civil War," 64-6.

Agamben acknowledged as much in his 1990 "Marginal Notes on the Society of the Spectacle." "the threat the state is not willing to come to terms with is precisely the fact that the unrepresentable should exist and form a community without either presuppositions or conditions of belonging," concluding "wherever these singularities peacefully manifest their being-in-common, there will be another Tianmen and, sooner or later, the tanks will appear again." See Agamben, *Means*

*without Ends*, 89.

92. Agamben, *Stasis*, 13-4; 16.

93. Agamben, “For a Theory of Destituent Power.”

94. Agamben, *Homo Sacer*, 28-9, 58-9; see also Jean-Luc Nancy, “Abandoned Being.” *The Birth to Presence*. Werner Hamacher and David Wellbery. Stanford: Stanford University Press, 1993, 44-5.

95. Agamben, *Homo Sacer*, 109.

96. Agamben, *The Time that Remains*, 106-7.

97. Agamben, *Homo Sacer*, 55; Agamben, *State of Exception*, 58-9; Benjamin, “On the Concept of History,” 392.

98. Agamben, *The Time that Remains*, 108; see also note 87.