

The Gospel According to Giorgio Agamben: Reflections on *Homo Sacer* and the Rights of Man

Adam Lebovitz

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Caption: Giorgio Agamben, still from Pasolini's *Gospel According to St. Matthew* (1964), in which he portrays the Apostle Philip.

I. Introduction

“The Holocaust appears as the hidden truth of the Rights of Man.”¹ The polite adjective “counterintuitive” hardly seems sufficient to describe this audacious epigram, yet it is the major premise of *Homo Sacer: Sovereign Power and Bare Life*, an endlessly inventive foray into political philosophy by the Italian theorist Giorgio Agamben. First published in 1995, *Homo Sacer* has found increasing favor within the academy, and has proved enormously influential in shaping our contemporary discourse on human rights and civil liberties. A decade later Agamben’s star has yet to wane, and the journalist Daniel Binswanger writes that his “radical and fearsome” message “has caught on among today’s young intellectuals like wildfire,”² while Mark Greif calls attention to “the growing influence of the Italian philosopher’s work.”³ Each new installment of his political thought (*Homo Sacer* is the first book in a recently completed tetralogy) is eagerly dissected by legions of admirers, inside the ivory tower and beyond, hoping to discover within it a set of guiding principles that will reinvigorate a moribund political Left. And yet the rising prominence of Giorgio Agamben ought to alarm defenders of the modern human rights regime, because his message is bleak, and deeply cynical: human rights are an instrument of repressive power, tightening our bonds even as they claim to free us. “Declarations of rights represent,” in Agamben’s carefully-chosen words, “the originary figure of the inscription of natural life in the juridico-political order of the nation-state.”⁴ But though it is often cited, this phrase is little-understood, and there have been few sustained attempts to unpack its densely coiled layers of meaning. Below I hope to systematically reconstruct Agamben’s innovative critique of human rights, laying out in clear language his intricate and often willfully opaque argument. And although the primary purpose of this essay is expository rather than polemical, I will pay careful attention to those junctures at which his logic seems to break down or lapse into contradiction, in the hopes that my discussion of *Homo Sacer* illuminates its limits as well as its strengths. For in unseating the

¹ Jacques Rancière “Who is the Subject of the Rights of Man,” *South Atlantic Quarterly*, Spring/Summer 2004, p. 301. In the passage quoted, Rancière is paraphrasing the argument of *Homo Sacer*.

² Daniel Binswanger, “Preacher of the Profane,” *Sign and Sight*, October 17, 2005, online at <http://www.signandsight.com/features/399.html>

³ Mark Greif, “Apocalypse Deferred: Giorgio Agamben’s *State of Exception*,” *n+1*, No. 2, Spring 2005, p. 232.

⁴ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, translated by Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), p. 127.

“hypocritical dogma of the sacredness of human rights,”⁵ Agamben substitutes his own gospel, rigid and inflexible, that understands human rights in one sense only, as a technology of sovereign domination. His terrifying vision of a totalitarian state that uses civil and political rights to advance its own insidious agenda is compelling, even intermittently brilliant, but finally only partial and incomplete.

II. The Gauntlet

But we might pause at this point to ask a very basic question: if radical critiques of the human rights regime are in no short supply, why focus in particular on the version presented by Agamben in *Homo Sacer*? As startlingly original as his analysis of human rights often seems, it is hardly without precedent. Greif, for instance, claims that “the most important and basic tradition that seems to lie behind Agamben’s politics is the deep hostility to human rights, derived from Marx” in his now-forgotten monographs *The Holy Family* and “Reflections on the Jewish Question.”⁶ One also hears echoes of Foucault (the power stratagems lurking behind the seemingly benevolent practices of the modern state) and Hannah Arendt (human rights reduce man to a creature, a grotesque caricature of “naked humanity”) reverberating throughout *Homo Sacer*. But despite these intellectual debts, Agamben’s philosophy of human rights is wholly his own, a major contribution to political thought that merits careful examination.

Rights, he admonishes the reader, are not a check on power but rather a deliberate strategy by the sovereign state to inscribe the very “natural life” of its subjects within a repressive “juridico-political order.”⁷ In developing this postulate, Agamben throws down a dense theoretical gauntlet to all political thinkers who would seek to elaborate a comprehensive theory of human rights, or to preserve a place in modernity for those laws and procedural safeguards long considered synonymous with political freedom. For Agamben the catastrophic carnage of the past century, the funereal parade of “concentration camps and genocide,” represents not a historical anomaly but a “sort of negative-teleological endpoint of the West,” the logical culmination of its originary confusion between biological being and the politically qualified life, *homme* and *citoyen*.⁸ Solemn

⁵ Giorgio Agamben, *The Coming Community*, translated by Michael Hardt (Minneapolis: University of Minnesota Press, 1993), p. 86.

⁶ Greif “Apocalypse Deferred” p. 238.

⁷ Agamben, *Homo Sacer* p. 121; p. 127

⁸ Slavoj Žižek, “Against Human Rights,” *New Left Review* 34, July/August 2005, p. 124.

proclamations of statutory freedoms modeled after the French *Déclaration* have not only failed to forestall the state-sponsored atrocities of the modern era, from Guernica to Srebrenica, but they have also been in a very real sense complicit in their commission.

Even for Agamben these words mark a profound departure from previous thinking about universal rights. In *The Coming Community* (1990) he had denounced the “vacuous declarations of human rights” as a duplicitous and “hypocritical dogma,” but without the theoretical scaffolding of *Homo Sacer* and its biopolitical thesis his denunciation remained a non-sequitur, and he declined to further explore its implications.⁹ The startling originality of the anti-rights position presented in *Homo Sacer* is so persuasive, in part, because it is so unexpected, representing a major theoretical advance over Agamben’s previous work. Dozens of self-described “radical” political philosophers have followed in the footsteps of Karl Marx by contemptuously disparaging “bourgeois” freedoms, but few since Marx himself have so cogently contextualized their critique within a systematic narrative of the “historico-political destiny of the West.”¹⁰ Whether due to its rigorous syllogisms, its political timeliness, or an irrational exuberance for its author, the indictment of the rights of man returned in *Homo Sacer* stands as one of the definitive accounts of the present era, an “increasingly influential recasting” of citizenship and terror for an age that often resembles a permanent state of emergency.¹¹ If it hazards overstatement to suppose that all future exchanges on the rights of man will be darkened by the long shadow of *Homo Sacer*, suffice to say that Agamben has set the terms of the present debate among human rights theorists. Yet with exception of a handful of articles,¹² there have been few attempts to understand Agamben’s argument in all its complexity, much less to offer a convincing refutation. Academia, as much as nature, abhors a vacuum, and what follows below is my own attempt to fill this void.

⁹ Agamben, *The Coming Community* p. 86. Note the moralistic tone of this jeremiad – universal rights, in the tradition of Marxism, are denounced as chimerical, but they are presented as merely ineffective rather than actively pernicious.

¹⁰ Agamben *Homo Sacer* p. 182

¹¹ Miguel E. Vatter, “Schmitt and Strauss as Readers of Hobbes and Spinoza,” *The New Centennial Review* 4:3, 2004, p. 161.

¹² I am thinking in particular of Frances Daly, “The non-citizen and the concept of ‘human rights,’” *Theory & Event*, Vol. 3, No. 1, 2004. Daly does give a strong close reading of Agamben’s theory of human rights, but remains fixated on his notion of the refugee, and neglects many important aspects of the overall argument.

III. Sacred Rights and Sacred Men

Walter Benjamin writes cryptically in his Seventh Thesis on the Philosophy of History that “[t]here is no document of civilization which is not at the same time a document of barbarism.” This obscure formulation might well serve as an epigraph to *Homo Sacer*, an ambitious reworking of traditional notions of sovereignty and the liberal state that detonated in “the intellectual world like a bomb” upon its initial release.¹³ A timely meditation on the unutterable violence that lurks behind every exercise of law, *Homo Sacer* mobilizes an impressive range of sources and texts in the service of its basic precept: under the sign of mass democracy sovereign power begins to subtly exercise dominion over the natural, biological life of its subjects. That is to say, with the advent of popular sovereignty at the end of the 18th century “[l]ife in and of itself is for the first time offered up as a political category,”¹⁴ and with it the ineradicable, omnipresent possibility of death. From the *levée en masse* that merged military predominance into population demographics to the insidious eugenic programs of the 19th and 20th centuries that sought to purge the body politic of deviants, citizens increasingly found their political identities coinciding with their natural bodies.¹⁵ The ramifications of this shift are staggering, and if bare life is as old as the city-state itself, it is only in the modern era, announced by the clarion call of the French Revolution and its “sacred rights of man,” that its cataclysmic consequences come clearly into focus.

Agamben, like Nietzsche, began his career as an academic philologist, and is at his most persuasive when pinpointing the precise meanings of ancient grammar and locution. The title of his book is drawn from a long-forgotten legal tract by the Roman lexicographer Pompeius Festus, who mentions in passing that those condemned to death in the early years of the Empire were designated “sacred men,” meaning that they could “*be killed and yet not sacrificed*.”¹⁶ Rather than undergo the rite of execution as a full member of the polity with all the accompanying dignity of a citizen, the *Homo sacer* is simply liquidated, carelessly “disposed of like waste,” slaughtered anonymously like livestock in the abattoir. For Roman jurists the sacredness of life denoted not its inviolability but on the contrary its infinite exposure to “an unconditional power over death,” its complete and

¹³ Binswanger op cit.

¹⁴ Agamben *Homo Sacer* p. 122 (“biological life and its needs had become the politically decisive fact”); Anne Caldwell, “Bio-Sovereignty and the Emergence of Humanity,” *Theory & Event* 7:2, Spring 2004, 26.3.

¹⁵ Agamben *Homo Sacer* p. 188

¹⁶ Agamben *Homo Sacer* p. 8; italics in the original

utter expulsion from the world of men.¹⁷ In transposing the doctrine of *Homo sacer* to the contemporary period, in proclaiming that “in our age all citizens can be said...to appear virtually as *homines sacri*,” Agamben implies that little has changed in the intervening two millennia; the “hypocritical dogma of the sacredness of human life” unceasingly espoused in the industrialized West still carries the grisly imprint of its origins, even if the memory is so deeply repressed we no longer know how to recognize it.¹⁸ Hence, to join with the architects of 1789 in founding human freedom on “the natural, unalienable, and sacred rights of man” is to ensnare oneself unwittingly in the sovereign web of biopolitics,¹⁹ feeding the despotic powers it originally sought to diminish. Completing this dialectical somersault, Agamben proposes that in the end the vaunted rights of man only ratify the murderous prerogatives of sovereign power, and that the vociferous demand for *egaliberté* is ultimately a confidence trick, a sinister sleight-of-hand covering up the low hum of a cruel machine “that seeks to bring human life under the control of the law in order to exercise unlimited mastery over it.”²⁰ But however arresting his speculative etymology, it can only illuminate his argumentation; it assuredly cannot substitute for it. If, as Agamben posits, “the very democratic public space is a mask concealing the fact that, ultimately, we are *Homo sacer*,” it remains to be seen how, exactly, the best intentions of our liberal political philosophers have gradually paved a sleek expressway to a totalitarian hell.²¹

¹⁷ Greif “Apocalypse Deferred” p. 234; Agamben *Homo Sacer* p. 90

¹⁸ Agamben makes the connection between past and present explicit: “This is what, in our culture, the hypocritical dogma of the sacredness of human life...[is] meant to hide. *Sacred* here can only mean what the term meant in Roman law: *Sacer* was the one who had been excluded from the human world and who...could be killed without committing homicide.” Agamben *Coming Community* pp. 85-86; Agamben *Homo Sacer* p. 111.

¹⁹ “Biopolitics” is Agamben’s neologism for the rule of State power over natural life, although the concept is largely derived from Foucault’s pioneering investigations in *The History of Sexuality Vol. I*. To recap: Foucault charts a “profound transformation” of the concept of sovereignty, from the power over death in antiquity to the power over life in modernity. At this caesura, the locus of repressive power migrates from violently oppressive institutions such as taxation and the judiciary to life-sustaining administration such as welfare and demography. Sovereignty is eclipsed by bio-power. Agamben makes two subtle but highly significant revisions to this thesis. First, while Foucault locates a discontinuity in the 18th century where Sovereignty (the territorial state) metamorphoses into Bio-power (the State of population), Agamben maintains that these two forms of rule are indistinguishable – that “Western politics is a biopolitics from its very beginning,” founded as it is on the exile of the underclass (representing pure *zoe*) from the *agora*. All sovereignty is always-already a form of bio-power. Second, while Foucault emphasizes the microphysics of power, the diffuse network of coercive technologies that target the body, Agamben’s analysis is unapologetically fixated on the State and its allied apparatuses. Michel Foucault, *The History of Sexuality Vol. I*, translated by Robert Hurley, (New York: Vintage Books, 1978); Agamben *Homo Sacer* p. 181. For an excellent comparative reading see Katia Genel, “The Question of Biopower: Foucault and Agamben,” *Rethinking Marxism*, January/February 2006, Vol. 18, No. 1.

²⁰ Vatter “Schmitt and Strauss” p. 162

²¹ Žižek “Against Human Rights” p. 124

IV. Ambiguity

“The Declaration of the Rights of Man,” states Hannah Arendt emphatically, “was a turning point in history. It meant nothing more nor less than from then on Man, and not God’s command or the customs of history, should be the source of Law.” For Agamben this synopsis is accurate but incomplete, since the framers of the 1789 document speak not exclusively of Man, but instead of a Janus-faced creature who is both *homme* and *citoyen*, simultaneously Man and Citizen. Agamben considers this “ambiguity of the very title” to be decisive, as he stresses repeatedly in his writings on the refugee crisis and the rights of men: “it is unclear whether the two terms are two distinct realities, or whether they are to form, instead, a hendiadys in which the first term is always already contained in the second.”²² For generations academics and activists have accentuated the “potent ambiguity” ingrained in “our own Western rights tradition,” but before Agamben few had declared its initial equivocation to be its quintessence.²³ Perceptive students of Agamben’s *oeuvre* often reflect that the principal motif in his political writings is the trope of indistinction, a blurring of boundaries, the indeterminacy of inside and outside. His lexicon overflows with similar expressions, from the “thresholds” that conclude each segment of *Homo Sacer* to the “ambiguous terrain” of sovereignty that he describes in his chapter on euthanasia to the “zone of absolute indeterminacy between anomie and law” that he defines as the state of exception.²⁴ Integral in this context is his extended citation of Walter Benjamin, who contends that the archetypal trait of the tyrant is not his ruthless resolution but his ultimate “inability to decide.” Sovereignty, he implies, operates in a twilight region where, as Kafka confirms in his baroque novel *The Castle*, order can be perpetuated by postponing and deferring decisions indefinitely.²⁵ The physiognomy of law is shapeless and amorphous, “indeterminate and endless”; in retaining its dual personality, in refusing to spell out the exact nature of its relationship to life, it

²² Arendt *Origins* p. 290; Agamben *Means Without End* p. 19

²³ Gary B. Herbert, “Clarity and Confusion in the Human Rights Debate: An Editorial,” *Human Rights Review*, October-December 2003, Vol. 5, Issue 1, p. 7.

²⁴ The schematic diagram at Agamben *Homo Sacer* p. 38 encapsulates this *idée fixe*. Figures such as the *muselmann*, the comatose patient, and the Roman *Flamen Diale* serve a similar purpose. As one critic complains, not unjustly, Agamben’s characteristic move is to resolve “contradictions between concepts whose connections would require extensive empirical research by invoking the figure of a ‘zone of indistinction’ or ‘inclusive exclusion’ to insist the fundamental terms depend on or produce one another—without showing how, or tracing practical political relations within this fine haze.” Greif “Apocalypse Deferred” p. 235

²⁵ Quoted in Giorgio Agamben, *State of Exception*, translated by Kevin Attell (Chicago: University of Chicago Press, 2005), p. 56.

retains what Christopher Diffey labels the “intangible ubiquitous force of effective indecision.”²⁶ Consequently, the true subject of the *Déclaration* is neither Man (biological life) nor the Citizen (politically qualified life) but *Homo sacer* (politicized-biological life), the pure manifestation of bare life. The draughtsmen of the *Déclaration* address an individual who is “at once citizen and member of universal humanity – without fully being either.” Agamben underlines this point at several junctures, since it is the axiom from which the vast majority of his numerous objections to the Rights of Man can be derived. Whereas under the Bourbon monarchy the organic life of subjects “was politically neutral and belonged to God,” at the onset of the republic “bare life...now fully enters into the structure of the state and even becomes the earthly foundation of the state’s legitimacy and sovereignty.”²⁷ Ultimately, as Agamben makes clear, the *Déclaration* underwrites not only a new political status for those subject to its peculiar jurisdiction, but the emergence of a new ontological condition as well, an alteration in the very experience of being human and the gradual dissemination of a set of shifting guidelines, measures, and standards deployed in order to determine where the boundaries of human life can be drawn.

Having articulated the paradoxes and ambiguities that for Agamben represent the essence of the Rights of Man, it is possible to delve more deeply into the form and content of his critique and to rehearse at length his principal objections to the 1789 *Déclaration des droits de l’homme et du citoyen*. Undoubtedly the key passage occurs at the opening of the chapter suggestively entitled “Biopolitics and the Rights of Man.” In an impatient burst of mordant lucidity Agamben admonishes his naïve reader:

It is time to stop regarding declarations of rights as proclamations of eternal, metajudicial values binding the legislator (in fact, without much success) to respect eternal, ethical principles, and to begin to consider them according to their real historical function in the modern nation-state. Declarations of rights represent the originary figure of the inscription of natural life in the juridico-political order of the nation-state. Agamben 1998 p.127

With this opening salvo Agamben pulls back the shroud of secrecy and mystification in order to reveal the obscene, occluded secret of the human rights enterprise, its unavoidable collusion with state power. His point of departure, the impotence and debility of the rights of man, is familiar enough, as is the sardonic hermeneutic of

²⁶ i.e., the modern subject cannot be certain whether his position in the legal structure is juridical (Citizen) or zoological (Man). Diffey coins this phrase in the course of a close reading of *The Scarlet Letter* inspired by Benjamin. Christopher Diffey, “Postponing Politics in Hawthorne’s *Scarlet Letter*,” *MLN* 111.5, April 1996, p. 853; Agamben himself supplies the best example of the disturbing interdependence of law and ambiguity: the Decree of the Protection of the People issued by the National Socialist party shortly after its accession to power. “This laconic statement neither orders nor prohibits anything. But by simply suspending the articles of the Constitution...it becomes impossible to know or articulate what is licit and illicit.” Agamben *The Time That Remains* p. 106.

²⁷ Caldwell “Bio-Sovereignty” p. 25; Agamben *Homo Sacer* p. 127

suspicion redolent of Marx and Nietzsche. His destination, however, the production and inscription of “bare life,” is thoroughly novel, and warrants a closer examination. The two sentences quoted above can be broken down into three suppositions: (1) the conviction that in the absence of a provision for autonomous enforcement, the rights of man are little more than a grand illusion (hence his biting aside “in fact, without much success” and his ironic repetition of the word “eternal”), (2) the tacit assumption that all actions of the state, no matter how evidently benign, tend to amplify its omnipotence and increase its power over life, and (3) the belief that in 1789 the state concurrently renders all of its denizens as naked life while draping it in the fictive garb of “Man” and “Citizen,” temporary vestments which proved as delusional as the Emperor’s new clothes.²⁸ Running through his labyrinthine logic like an Ariadne’s Thread is an extreme, almost anarchic wariness of the sovereign state. At the midpoint of his intriguing composition “Form-of-Life,” Agamben champions “the possibility of a nonstatist politics,” bringing to the surface a recurring theme of his literary corpus that is usually voiced in *solte voce*. Analogously, Agamben writes rapturously in “Beyond Human Rights” of dissolving the Westphalian “trinity of state-nation-territory,” replacing the outmoded nation-state with a diffuse diaspora of “political communities based on the notion of collective displacement,” its borders perforated like a Klein Bottle.²⁹ Not surprisingly, in neither of these ecstatic visions of deliverance is any mention made of rights, positive law, or negative liberties; for Agamben those who celebrate the hard-won civil rights wrested from the state brazenly flaunt the medals of their defeat, mistaking the badge of their servitude for the emblem of their freedom.

V. Statism

In tentatively dividing Agamben’s commentary on the human rights regime into five distinct aphorisms, we might phrase the second one thus: rights granted with the imprimatur of the sovereign only reinforce and intensify the repressive power of the state. Actual emancipation can only arrive when the state of exception (the interlacement of extralegal violence and law in a complex scheme of interdependence)³⁰ is dismantled, washed

²⁸ What Daniel Heller-Roazen transcribes as “bare life” is the Italian *la nuda vita*, which many prefer to translate as “naked life.”

²⁹ Agamben *Means Without End* pp. 7-8; p. 23; Mira Siegelberg, “Arendt’s Legacy Usurped: In Defense of the (Limited) Nation-State,” *Columbia Current*, December 2005.

³⁰ Like many of his trademark concepts, the state of exception *factif* defies easy summary or condensation. It has three main traits: (1) the state of exception temporarily interrupts the democratic rule of law, ostensibly in order to preserve it during a political crisis; paradoxically law only comes into being by suspending itself (2) it occupies a grey zone between legality and illegality - it is the “attempt of state power

away in the magma of a spontaneous social revolution and a new mode of being human. To seek liberation from law within the juridical framework is to stay entrapped within the horizon of official authority, bounded within the sphere of sovereignty. Like the animal in Kafka's story "The Burrow," who is "obsessively engaged in building an inexpugnable burrow that instead slowly reveals itself to be a trap with no way out," each attempt to construct a bulwark against social domination through codified law only ensnares one deeper in the quicksand of biopolitics. Or, as Agamben himself puts it in *State of Exception*, it is nonsensical to jam the machinery of discipline and coercion only "in order then to reaffirm the primacy of a norm and of rights that are themselves ultimately grounded in it."³¹ Yet even after one has assimilated Agamben's internal logic, it is reasonable to query how, precisely, this recondite formula (rights = non-rights) functions, how it is that the assertion of human rights only enhances the primacy of the Leviathan it purports to bridle. Agamben's specialized vocabulary and disdain for detail often prove infectious among his various interpreters, so that in navigating the secondary literature the reader is often presented with restatements of the original point in place of clarification. We might draw two interrelated inferences from a close reading of his political writings in order to coax his thought process out into the open. First, declarations of rights serve above all as a power grab; their form and not their content holds the key to their meaning. The historian K.M. Baker circles around this conceit in branding the *Déclaration* a "speech act" and an instrument of "usurpation," based on a study of the Abbé Sieyès and his political thought:

Thus the revolution, Sieyès already announces in effect, will be a revolution of the deputies; entrusted with legislative power, they will seize constituent power on behalf of the nation even in the absence of any explicit charge to do so. In this revolutionary usurpation of power, the gap in legitimacy will be filled by "presenting the peoples with the tables of their essential rights, under the title of *Declaration of Rights*."³²

That is to say, irregardless of the noble aspirations that they might codify, through the very act of enunciation they exalt the state as the guardian of peoples, and more importantly assert its exclusive privilege of determining what rights the newly-constituted citizenry will retain. The French National Assembly, one might note, was an illegal ad hoc body, with no more natural dominion over the former kingdom than a sewing club; it legitimated itself largely through the fiction of the rights of man, casting itself as the medium who alone could commune

to annex anomie" (3) because in the state of exception any citizen can be killed, it is the mechanism that allows sovereign power to rule over bare life. See Agamben *State of Exception* p. 59 and Agamben *Means Without End* p. 4

³¹ Agamben *Means Without End* pp. 139-140; Agamben *State of Exception* p. 87

³² Keith M. Baker "The Idea of a Declaration of Rights," in *The French Idea of Freedom*, edited by Dale van Kley (Stanford, CA: Stanford University Press, 1992) p. 169

with the popular spirit, the elusive and spectral General Will. Thus Costas Douzinas echoes Agamben in his recognition that the “modern sovereign comes into its omnipotent life by proclaiming rights of citizens.” Cunning rhetorical appeals to the multitude are the cornerstone of modern sovereignty, which after 1789 had lost its ideological underpinnings in absolutist political theology.

A second strand of the critique is only hinted at. Violations of the *Déclaration* and its Fourteen Articles, its authors specify, can only be redressed by the state through a profusion of what Agamben calls “regulatory provisions,” building a permanent and expansive role for the central government into supposedly unassailable “citadel of human rights.” Hence the provision in Article Twelve that “the guarantee of the rights of man and of the citizen requires a *force publique*,” thus founding the modern network of police surveillance so familiar from the twentieth century. The conflict of interest presents itself readily: the state is both the entity most likely to abrogate human rights on a large scale, and at the same time is the ombudsman charged with monitoring such violations. As the American legal scholar Stephen Carter sagely recalls (meditating on the U.S. Constitution, although he could easily be contemplating the relentlessly legiscentric *Déclaration*), to the extent that the rights of man are not wholly imaginary, it is because they rely on the judiciary for their enforcement; “this is just a long way of saying that the state grants the right,” and can withdraw it at its pleasure.³³ Thus the lofty rights of man “won by individuals in their conflicts with central powers always simultaneously prepare a...new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves.”³⁴ Outfitted with his newly discovered human rights, the French citizen flew to his freedom on wings of wax.

VI. Juridicization

But this rather unsubtle antistatism³⁵ is only a minor variation on a familiar refrain. Much more interesting is his third corollary, the proposition that the rights of man confuse the juridical person with his biological life form, and so for the first time weld sovereignty inextricably to natural life. “Human rights,” as Agamben intones ominously, “represent first of all the originary figure for the inscription of natural naked life in

³³ If the reader gleans nothing else from *State of Exception* he should gain an appreciation for how tenuous liberties are in an age where the exception has become the rule. Agamben *Homo Sacer* pp. 130-131; Stephen L. Carter, “Religious Freedom as if Religion Matters: A Tribute to Justice Brennan,” 87 *California Law Review* 1059, p. 1066.

³⁴ Constantin Douzinas, *The End of Human Rights* (London: Oxford University Press, 2000), p. 106; Agamben *Homo Sacer* p. 121.

³⁵ Andreas Kalyvas, for instance, finds little in Agamben’s political program that is not “found in many antistatist discourses, of both the libertarian and anarchist variety.” Kalyvas “The Sovereign Weaver” p. 115

the political-judicial order of the nation-state.”³⁶ There are two interdependent logics at work here, the juridicization of mere life on the one hand, and the genesis of the nation-state on the other. Perhaps we can unpack his notoriously inscrutable prose by taking up each axiom in turn. From 1789 forward rights declarations are addressed to Man as such, the lowest common denominator of the human race, what Hannah Arendt identified derisively as “a specimen of the animal species mankind.” It is difficult to overstate the magnitude of this innovation, “the taking on of biological life itself as the supreme political...task.”³⁷ Among other things, it heralds a dramatic disjuncture in the history of Western political thought. Indeed, Arendt reports that the concept of an “inalienable political right” accorded to “all men by virtue of birth” would have appeared utterly foreign to the philosophers of antiquity; for whom the word *homo* “signified originally somebody who was nothing but a man, a rightless person, therefore, and a slave.”³⁸ Only those who through misfortune, captivity, or exile were stripped of their political standing were forced to fall back, chagrined, on their zoological membership in the human family. Similarly, under the Old Regime rights did not inhere in individuals but in communities, religions, and professions, conforming to a feudal model of social organization that revolved around privilege and tradition in lieu of uniform law. In medieval Europe men and women could be marked as serfs, nobles, Christians, cobblers, or royal subjects, but never as living beings. Even with the dawn of the Enlightenment the abstract, atomistic individual had made only a few tentative steps onto the world stage, until the bloody whirlwind of 1789 put his name on the marquee. “Previous to the 1789 Declaration,” marvels Susan Maslan, “humanity had never been the subject of rights,” and yet the statesmen who “wrote, debated, and finally approved” the fateful decree seemed possessed by an urgent evangelical zeal to spread the gospel of Man, promising to proselytize his newly-minted rights throughout Europe, Africa, and Asia.³⁹ At the stroke of a pen, unalloyed “humanity,” the mere *fact* of existence, was refashioned from a criterion for exclusion to the very substance of citizenship and political agency. Universal rights, the rights of man *qua* man, confuse this primordial

³⁶ Agamben *Homo Sacer* p. 127

³⁷ Giorgio Agamben, *The Open: Man and Animal*, translated by Kevin Attell (Stanford, CA: Stanford University Press, 2004), p. 76.

³⁸ Arendt *On Revolution* pp. 45-46

³⁹ Although the great charters of the American republic are premised on Lockean individualism and occasionally wax poetic about the equality of all men, they resolutely make “no claim to apply beyond the confines of its national authority,” and for that reason are only fleetingly probed by Agamben in his *Homo Sacer* tetralogy. Maslan “The Anti-Human” pp. 361-362

distinction between “natural life” and “political action,” and thus propel forward “the politicization of bare life as such.”⁴⁰ And this germ, once planted in the fertile field of fascism, blossomed in the twentieth century as a poisonous *fleur du mal*.

Symptomatic of this hidden affinity between human rights and the capture of bare life within the iron cage of the state is the writ of *habeas corpus*, introduced by the British crown in 1679. Early modern Europe gave rise to a new discourse of politics, a language suffused with organic metaphors and consonantly fixated on “the body politic,” an obsession epitomized by the famous frontispiece designed by Thomas Hobbes for his masterwork *Leviathan*. The Latin word “corpus” became a staple of the Baroque age, acquiring a renewed importance in fields of study as far-flung as mathematics, science, and political philosophy. Agamben believes that behind this infatuation with anatomy, both natural and political, is a series of transactions that made the fleshly, corporeal body a newfound object of political power. Rights that are supposed to be inherent and congenital are only the reverse side of a sovereignty that now pertained not to men’s souls (as in the medieval Inquisitions), nor to their judicial persona (as under Roman law) but only to their “bare, anonymous life,” symbolized by the “body X” named in the statute of *habeas corpus*, an algebraic variable that can be applied to anyone. “It is not the free man and his statutes and prerogatives, nor even simply *homo*, but rather *corpus* that is the new subject of politics.” Unsurprisingly, Agamben finds that from the very instant of its creation, the tradition of civil liberties carries a dangerous ambiguity that prefigures the perplexities of the rights of man and citizen: the selfsame laws that ostensibly grant mankind autonomy and political agency also tend to reduce him to a vassal and ward of the state, just as the Great Writ prevents arbitrary detention and at the same time licenses “the sheriff to detain and exhibit the body of the accused.”⁴¹ What causes this legal schizophrenia? Why do the first faint stirrings of popular democracy precipitate a new awareness of the body as a locus of political power? The answer is that in the age of the multitude denizens find themselves in an unfamiliar predicament, as both subjects and objects of sovereign power, a contradiction that cannot be sustained. Either sovereignty itself, with

⁴⁰ Arendt *Human Condition* p. 46; Agamben *Homo Sacer* p. 4

⁴¹ Agamben *Homo Sacer* pp. 124; as I stress above, his account of *habeas corpus* and the evolution of rights under common law is far from definitive, and not a few scholars of early modern jurisprudence have questioned its accuracy. The purpose of this section is to understand the mechanics and the logic of Agamben’s position, and not to unveil every argument that has been made against it.

no one to rule over, must become inoperative and obsolete, or else a new legal stratagem must be devised in order to produce bare life. The solution is as elegant as it is devious: through due process and declarations of rights the individual is bifurcated into two bodies, that of Man and that of the Citizen, *corpus* and *civis*. The latter, legal personality, is immediately swallowed by the sea monster Leviathan, becoming a single cell in the “massive (and monstrous) body” politic.⁴² The former, representing the bare essence of biological life, is no longer banished from the *polis* as in ancient times; via the newly-installed human rights regime (protection over the body, care of life)⁴³ it becomes incorporated into very structure of state sovereignty. Law turns its pitiless gaze on the teeming, vital, and organic.

VII. The Nation-State

Having established that the *Déclaration* breaks with virtually all Western legal conventions in applying law directly to life, Agamben teases out the geopolitical repercussions of enshrining bare life at the center of the *polis*. Human rights, Agamben conjectures, catalyzed the transformation of the territorial state into the nation-state, a gradual but finally calamitous metamorphosis. Arendt referred to this process as the conquest of the state by the nation, intending to highlight the disastrous spread of nationalism in the nineteenth century, the contraction of civic loyalty and its eclipse by a strictly tribal allegiance to the *völk*.⁴⁴ That the French Revolution sparked this conflagration of racism, *ressentiment*, and xenophobia despite its pretensions to cosmopolitanism is one of the great truisms, and also one of the great mysteries, of political science.⁴⁵ Before the climactic insurrections of 1789 deposed the enervated old order, national borders were often informal, porous, and almost infinitely permeable: “aristocrats, men of letters, and merchants crossed [the frontier] quite naturally.”⁴⁶ And yet the *Déclaration*, beset by a fatal indeterminacy of language, begins by paying homage to the natural rights of men and a nonsectarian “Supreme Being,” and ends by violently overturning this incipient internationalism and drawing

⁴² Danielle Allen, “Invisible Citizens: Political Exclusion and Domination in Arendt and Ellison,” in *Political Exclusion and Domination*, edited by Melissa S. Williams and Stephen Macedo, *Nomos XLVI* (New York: NYU Press, 2005), p. 64.

⁴³ Agamben conjures Foucault in order to bolster his contention that rights are a Faustian compact, exchanging short-term gratification for long-term disaster. “The ‘right’ to life...to one’s body, to health, to happiness” is in fact only the natural corollary of bare life, what Foucault terms the “new procedures of power.” Although this form of biopolitics is in and of itself benign, its structure is perfectly isomorphic with totalitarian government, where care over life reaches its abominable apogee, and it helps to explain how “twentieth-century parliamentary democracies were able to turn into totalitarian states” so effortlessly. Agamben *Homo Sacer* pp. 121-122.

⁴⁴ Arendt *Origins* p. 275; p. 227. Her exemplary case is, of course, the sclerotic Hapsburg Empire, where the weak ties to the centralized state were subverted by Magyar, German, and Serbian ethnic chauvinism, and the irresistible irredentist clamor for self-determination.

⁴⁵ See, e.g. Hans J. Morgenthau, “The Twilight of International Morality,” *Ethics*, January 1948, Vol. 58, No. 2 for a classic account.

⁴⁶ Lucien Febvre quoted in Obrad Savić, “Figures of the Stranger: Citizen as a Foreigner,” *Parallax*, Winter 2005, Vol. 11, No. 1, p. 72.

new lines in the sand, vilifying the foreigner not only as an alien but also a racial enemy. “If the Declaration inaugurated modernity,” insists Costas Douzanis, then it is also responsible for its baleful consequences, including “genocides, ethnic and civil wars, ethnic cleansing, minorities, refugees, [and] statelessness.”⁴⁷ Agamben, borrowing liberally from Arendt’s instructive excursus “The Decline of the Nation-State and the End of the Rights of Man,” urges that this enigmatic phenomenon cannot be understood without first uncovering the deadly intersection of human rights and biopolitics.

The nation-state, an uneasy alliance between ties of blood and ties of geography, was the shape taken by sovereign power after the abolition of the dynastic throne, and it stems directly from the French Revolution and the Rights of Man. As the *Déclaration* traveled on horseback in the form of the Napoleonic Code, spawning countless imitators from Iberia to the Urals, it exerted a twofold impact: people were *individuated* (breaking up the vestigial collective identities of feudalism) and conjointly they were *biologized* (making birth and belonging key political concepts). Inexorably, then, the “only remaining bond between the citizens of a nation-state without a monarch...seemed to be national, that is, common origin.”⁴⁸ A racial state, in other words, was the inevitable outgrowth of a political order that could no longer distinguish between Man (human life) and Citizen (the subject and object of political power). In “Beyond Human Rights,” an early adumbration of *Homo Sacer* and its sprawling tableau, Giorgio Agamben undertakes an expert exegesis of the Declaration of the Rights of Man and of the Citizen, explaining how (in Arendt’s words) the “question of human rights” was quickly “blended with the question of national emancipation.”⁴⁹ It is worth quoting in full:

Nation-state means a state that makes nativity or birth [*nascita*] (that is, naked human life) the foundation of its own sovereignty. This is the meaning (and not even the hidden one) of the first three articles of the 1789 Declaration: it is only because this declaration inscribed (in articles 1 and 2) the native element in the heart of any political organization that it can firmly bind (in article 3) the principle of sovereignty to the nation (in conformity with its etymon, *native* [*natio*] originally meant simply ‘birth’ [*nascita*]). The fiction that is implicit here is that *birth* comes into being immediately as *nation*.⁵⁰

The nation-state is the vehicle that joins *la nuda vita*, the animal life process, to a structured form of political order, turning the womb itself into an organ of the state. As such, it signals a transitional phase between the bounded territorial state of 1648 and the biopolitical regime of 1933, in which “the State decides to assume

⁴⁷ Douzinas *The End of Human Rights* p. 103.

⁴⁸ Arendt *Origins* p. 230

⁴⁹ Arendt *Origins* p. 291

⁵⁰ Agamben *Means Without End* p. 20

directly the care of the Nation's biological life."⁵¹ This is the sense in which Hannah Arendt could speak of the nation-state as an oxymoron, a union of opposites, and an unstable isotope that was destined to implode: the nation-state claimed racial predestination as the fountainhead of its legitimacy, but then sought to govern its inhabitants with a rational code of positive law.⁵² This confusion is reflected in the conjunction of Man and Citizen, terms that until the *Déclaration* often served as antonyms. Numerous historians have protested that "the difference between the natural 'rights of man' and the political 'rights of the citizen' is left unclear" in the *Déclaration*, speculating that either the dual subjects of the *Déclaration* are interchangeable and therefore superfluous, or else that there must exist an insupportable tension between them.⁵³ For Agamben, however, Man and Citizen are neither synonymous nor antagonistic; they are necessarily a dyad, and their intimate interrelation becomes the very "origin and ground of sovereignty" in the French Republic, acquiring "a new and decisive importance."⁵⁴ When segregated and kept apart the categories of Man and Citizen are innocuous, but like volatile gases their combination proves catastrophic. In the Greek understanding of politics one might be a Man, preoccupied with subsistence and biological need, or a Citizen, performing heroic deeds in the space of appearances, but decidedly one could not be both.⁵⁵ Likewise, the absolute monarchy was content to rule over subjects by force alone, and so the life process was almost wholly irrelevant to its calculations of power. 1789 stands this idea on its head: rather than membership in a political community defining the fully human life, species membership more and more came to designate political belonging. During the *ancien régime* the significance of ancestry applied only to the king and the aristocracy, but as sovereignty became generalized so too did the fascination with the "people's genetic heredity," leading to a compulsion to retrace the boundaries of inclusion and exclusion along bloodlines. Questions that, only decades earlier, would have seemed impossibly esoteric, discussions of "What is French?" and "What is German?," were posed with redoubled urgency as

⁵¹ Agamben *Homo Sacer* p. 175

⁵² "The legitimation of nation-states, of course, has been in crisis everywhere for some time, and the most evident symptom of such a crisis was precisely the obsessive attempt to make up in terms of legality, through an unprecedented proliferation of norms and regulations, what was being lost in terms of legitimacy." Agamben *Means Without End* p. 125

⁵³ Savić *Figure of the Stranger* p. 73

⁵⁴ Agamben *Homo Sacer* p. 129

⁵⁵ See Arendt *Human Condition* p. 209 and Jacques Rancière, *The Philosopher and His Poor*, edited by Andrew Parker, translated by John Drury, Corinne Oster, and Andrew Parker (Durham, NC: Duke University Press, 2003), p. 7.

natural law and natural life began to converge imperceptibly. As bare life found itself annexed to the province of law, the rights of man became increasingly difficult to extricate from the rights of peoples; the dividing line that separated Citizen from Foreigner had already migrated from cartography to biology, and its borders were policed not by the soldier but the physician.⁵⁶

All at once the central precepts of central government were altered irrevocably, and states metamorphosed from loose feudal networks of tribute and homage into organic unities that appropriate the vernacular of biology to describe themselves.⁵⁷ Suddenly, “one had the right to kill those who represented a kind of biological danger to others.”⁵⁸ This intricate network of superintendence and “*regulatory controls*” over the purity and composition of society Foucault designates “*a bio politics of the population*,” denoting a suite of “diverse techniques for achieving the subjugation of bodies,” the necessary subordination of the atomistic individual to the greater community.⁵⁹ This radical “eugenic ordering of society,” the eclipse of legal code by the “thematics of blood,” reached its apotheosis with the advent of Nazism, an ideology that “made of natural life the exemplary place of the sovereign decision.”⁶⁰ The significant innovation of National Socialist philosophy was the “oneiric exaltation of a superior blood,” a claim that can be enforced only through “the genocide of others.” Thus the unstated function of the Declaration of the Rights of Man is to bring questions of birth, blood, and nationality to the forefront of political discourse, initiating a conversation that would be disastrously concluded during the Third Reich by invoking the right of species, *völk*, and race. “Fascism and Nazism,” Agamben appends, can only “become fully intelligible when situated – no matter how paradoxical it may seem – in the biopolitical context inaugurated by national sovereignty and declarations of rights.”⁶¹ From their very inception the noble ideals of Man and Citizen rang hollow, until they metastasized in the twentieth century, showing their true aspect in the chilling slogan of “Blood and Soil.”

⁵⁶ Agamben *Homo Sacer* p. 145; p. 143 (“the integration of medicine and politics”); Arendt *Origins* p. 291

⁵⁷ Or, in Agamben’s words, “a biological body that has to be infinitely purified.” Agamben, *Means Without End* p. 34.

⁵⁸ Foucault *History of Sexuality* p. 138; The citation of Foucault here is not accidental; Agamben is more or less summarizing his insights.

⁵⁹ Foucault *History of Sexuality* pp. 139-140

⁶⁰ Agamben *Homo Sacer* p. 129

⁶¹ Agamben *Homo Sacer* p. 130

VIII. The Social Question

Surveying the wreckage of liberal capitalism at the very apex of the Cold War, Hannah Arendt lambasted the predilection of the private sphere, the space of “the maintenance of life,” to encroach upon the common world, the space of public affairs and great deeds. Indispensable to the free citizens of ancient Greece, in contemporary times “the dividing line is entirely blurred, because we see the body of peoples and political communities in the image of a family,” with the paternalistic State assuming charge over the care of life.⁶² This prescient warning is linked to Agamben’s fifth and final criticism of the rights of man, the tendency of human rights to collapse further the distinction between the public and private spheres, becoming a perverse form of apolitical humanitarian charity, to be dispensed to unfortunates. Martin Jay reminds his reader that “rights talk has often functioned as a legitimation for violent resistance to oppressive authority,” while the historian Lynn Hunt has painstakingly reconstructed the original interdependency of revolutions and human rights; surely it was not mere happenstance that the Rights of Man and of the Citizen, for instance, were penned by a committee of revolutionary deputies who had just sounded the death knell of the divine-right monarchy forever.⁶³ And yet Agamben can boldly state that “every attempt to found political liberties in the rights of the citizen is...in vain” because he is supremely confident that rights cannot be politicized or polemized, converted from lifeless texts into active objects of argument and contestation. Jean Jaurés, the avatar of *fin de siècle* French Socialism, once expressed his admiration for the *Déclaration*, retorting that even if it did forge an arsenal of “sovereign weapons” for the bourgeoisie, there was always the chance that “history should one day turn them against the conqueror.”⁶⁴ For Agamben the canon of law belongs exclusively to the armory of the sovereign state, and any attempt by the underclasses to appropriate it for their own ends must necessarily backfire. And perhaps the most important reason is that the very premise of rights is inherently private, an inheritance of the *oikos* and not the *polis*.

⁶² Arendt *Human Condition* p. 28; Arendt’s metaphor of family connects quite nicely to Agamben’s discussion of *potestas*.

⁶³ Martin Jay, “Lafayette’s Children: The American Reception of French Liberalism,” *SubStance* 31.1, Winter 2002, p. 21; Lynn Hunt, “The Revolutionary Origins of Human Rights”, in *The French Revolution and Human Rights: A Documentary History*, edited and translated by Lynn Hunt (New York: Bedford Books, 1996), p. 18.

⁶⁴ Quoted in Ferry and Renault *From the Rights of Man to the Republican Idea* p. 114

Many who have never read Hannah Arendt's seminal *The Human Condition* possess a passing familiarity with its thesis that "freedom is exclusively located in the political realm," a space of agency and equality that is partitioned off from the stagnant, private space of the household. Almost as embedded in the public imagination is her regret that in "the modern world, the two realms constantly flow into each other, like waves in the never-resting stream of the life process itself."⁶⁵ Certainly Agamben is well-acquainted with her accusation that "the primacy of natural life" in modern society has foreclosed the possibility of authentic "political action," since he repeats the charge in the opening pages of *Homo Sacer*, with due deference to Arendt.⁶⁶ In a less lionized text, her comparative history *On Revolution*, she refracts the French Revolution through the lens of the public/private hierarchy, resulting in a withering analysis of the *Déclaration*:

The French Declaration of the Rights of Man...was supposed to rest upon man's natural rights, upon his rights in so far as he is nothing but a natural being, upon his right to 'food, dress, and the reproduction of the species', that is, upon his right to the necessities of life. And these rights were not understood as prepolitical rights that no government and no political power have the right to touch and to violate, but as the very content as well as the ultimate end of government and power. The *ancien régime* stood accused of having deprived its subjects of these rights – the rights of life and nature rather than the rights of freedom and citizenship.⁶⁷

The Rights of Man, then, are nothing other than "the paradoxical rights of the private, poor, unpoliticized individual."⁶⁸ Agamben does not incorporate this reading uncritically into his own, but there is a close correspondence between Arendt's "rights of life and nature" and his own insistence that "declarations of rights" only acquire their true sense "if they are brought back to the common biopolitical (or thanatopolitical) context to which they belong."⁶⁹ Both authors detect in the pronouncement of human rights a dangerous depoliticization that attenuates the revolutionary will of its recipients, the "abdication of freedom before the dictate of necessity," and the introduction of such nonpolitical concepts as "pity" and "compassion for the poor" into the political arena.⁷⁰ The concern for human welfare that manifests itself everywhere from the Parisian *Sans-Culotte* to the mute, suffering African refugee, turns entire populations into victims, objects of sympathy mixed with revulsion, wards of the state who require protection. Totalitarianism is nothing other than "the unconditional unfolding of

⁶⁵ Arendt *Human Condition* p. 37; p. 33

⁶⁶ Agamben *Homo Sacer* p. 4

⁶⁷ Arendt *On Revolution* p. 109

⁶⁸ Paraphrased in Rancière "Who Is the Subject" p. 298

⁶⁹ Arendt *On Revolution* p. 109; Agamben *Homo Sacer* pp. 122-123

⁷⁰ Arendt *On Revolution* p. 61

the *oikonomia*, or the taking on of biological life as the supreme political (or impolitical task).⁷¹ Arendt believes that the only appropriate response to this universalization of the *oikos* is a bold reassertion of the *polis*, a resuscitation of the “right to action” found in premodern modes of citizenship. Part of Agamben’s purpose in composing *Homo Sacer*, then, is to show that citizenship is not an exit from the labyrinth of sovereignty, but only another cul-de-sac. Both Man and Citizen are symptoms of a pathological moment in modernity, wherein the “empire of social necessity” has colonized all facets of public life.⁷²

This repudiation of Arendt is hardly in evidence in his chapter on “Biopolitics,” where he seems to imply that juridico-political status, what Arendt evocatively named “the protecting mask of a legal personality,” is a necessary defense against tyranny. After all, even under the lawless and capricious Third Reich, detainees were methodically denuded of their citizenship before they were deported to the death camps of the *Ostland*. Elsewhere he writes of these prisoners that they “*had been stripped of every political status and reduced to naked life,*” indicating that the ghastly acts perpetrated at these killing centers were only made possible because the Jews, Roms, and other victims of National Socialism had been deprived of their place in the world, degraded to “the abstract nakedness of being human.”⁷³ In these excerpts it is difficult to differentiate Agamben from Arendt: both seem to accept that formal rights of citizenship can “hinder the absolute deployment of biopolitics,”⁷⁴ while abstract human rights (the rights of Man) only confirm that men and women are living creatures, bare lives. Beginning with the intrusion of the social question into the space of the properly political, when people can be treated not as autonomous persons but as bundles of physical sensations, governments across the political spectrum begin to experiment with population management. Agamben unearths a scandalous continuity between the practices of National Socialism and the efforts of the United Nations to relieve hunger and poverty. The comparison, though shocking, is more than irresponsible charlatanism: where both intersect is the *elimination of the excluded*, whether through physical extermination or economic development. The imploring stare of the Rwandan child and the resigned countenance of the *muselmann* at Auschwitz are the two faces, benign and

⁷¹ Agamben *The Open* p. 76

⁷² Arendt *Origins* p. 298; Rancière “Politics and Aesthetics” p. 20

⁷³ Arendt *On Revolution* p. 108; Agamben *Means Without End* p.40; Arendt *Origins* p. 299

⁷⁴ Kalyvas “Sovereign Weaver” p. 115

malefic, of organic, corporeal life in the grip of sovereign power. In the refugee camp just as in the work camp, man is comprehensible only “in the figure of bare or sacred life,” an animal life bereft of its political vocation. Although Agamben is often maddeningly elliptical, Slavoj Žižek offers a vivid illustration of this continuity between the humanitarian and the inhuman, writing that the ultimate exemplar of *Homo sacer* today “is that of the American war plane flying above Afghanistan – one is never sure what it will drop, bombs, or food parcels.”⁷⁵ As modern democracies strive to guarantee the “happiness of men,” their material comfort and well-being, they ineluctably politicize the very element – “bare life” – that previously “marked their subjection.”⁷⁶ Bare life, then, would appear to be the antithesis of civil rights, the politically qualified life, and the epic life of the *polis*. Only when the rights of man are “progressively separated from and used outside the context of citizenship” do they become problematic, productive of *la nuda vita*.⁷⁷ For the first time in history, the State, entrusted with the very life process of its denizens, can contemplate massacres on an industrial scale. The line of inquiry summarized above is distinctively Arendtian, but as a reading of Agamben and his critique of the rights of man it is partial and incomplete.

As we have seen, Hannah Arendt defends the rights of the citizen against the rights of man, convinced that the only antidote to totalitarian control over the body is to ensure that every individual is granted “a place in the world which makes opinions significant and actions effective.”⁷⁸ Although it is tempting, in light of the above passage, to reach a similar conclusion about Agamben, a close reading of *Homo Sacer* reveals that the practice of citizenship is, for the Italian theorist, only another technology of sovereign domination. That is, the economic-social and the civic-political are only two sides of the same coin.⁷⁹ The Roman concepts of law and *auctoritas* where Arendt seeks refuge from the “unqualified mere existence” of the household and the family have

⁷⁵ Žižek *Welcome to the Desert of the Real* p. 94

⁷⁶ Agamben *Homo Sacer* pp. 9-10; See also the text of the *Déclaration*, where paeans are made to “the happiness of all.” For Arendt this sentiment is worlds away from the “pursuit of happiness” engraved in the Declaration of Independence, but that, alas, is a subject for another essay.

⁷⁷ Agamben *Homo Sacer* pp. 132-133

⁷⁸ The so-called “right to have rights” optimistically envisioned at Arendt *Origins* p. 295

⁷⁹ That coin being, of course, the *souverain*.

already been penetrated and contaminated by the private realm, and the illustrious figure of the Citizen is no more than a marionette dangling on the string of sovereignty.⁸⁰

This is made pellucid in *Homo Sacer*, as Agamben turns his attention to the Roman tradition of *potestas*, the model of political power in the *res publica*. The term circulated widely in Rome to describe the juridical office of the magistrate, but its source is “the father-son relationship,” the private and unquestionable right of the Roman patriarch to condemn his sons to death for transgressions real and imagined.⁸¹ When the Romans were subjects and not citizens, in thrall to the Tarquin kings, *potestas* was entirely restricted to the household. But at the very moment that the Roman Republic came into being, at the trial and execution of the traitorous sons of Brutus, *potestas*, the paternal power over life and death, becomes charged with a political valence: “when we read in a late source that in having his sons put to death, Brutus ‘had adopted the Roman people in his place,’ it is the same power of death that is now transferred...to the entire people.” The republic is only a family writ large, and the magistrate a tyrannical father magnified to grotesque proportions. The executor of laws and the executioner of peoples are in fact one and the same. Thus “every male citizen (who can as such participate in public life) immediately finds himself in a state of virtually being able to be killed,” and the steep price of citizenship is always the “unconditional subjection to a power of death.”⁸² Citizenship is not a space of freedom, but part and parcel of a biopolitical strategy that aims at reducing man to an organism, a living being devoid of grandeur who can be eliminated quietly and conveniently. And on the great voyage from antiquity to modernity, it has been the siren song of human rights that has lured the foolish, credulous, and idealistic to dash out their brains on the rocks, chasing a tantalizing mirage into the treacherous deep.

IX. The Gospel According to Giorgio Agamben

“In 1964,” reports Daniel Morris in a recent edition of *Bookforum*, “Giorgio Agamben, then just twenty-two years old, played Philip the Apostle in Pier Paolo Pasolini’s film *The Gospel According to St. Matthew*.”⁸³ Morris goes on to argue that the experience, though only a minor event in the history of cinema, was to prove decisive

⁸⁰ Arendt *Origins* pp. 300-301

⁸¹ Agamben *Homo Sacer* p. 88; *Potestas* is defined as an *imperium privatum*, a private power.

⁸² Agamben *Homo Sacer* pp. 89-90

⁸³ Daniel Morris, “Life, or Something Like It: The Philosophical Chiaroscuro of Giorgio Agamben,” *Bookforum*, Summer 2004, online at http://www.bookforum.com/archive/sum_04/morris.html

in shaping the contours of Agamben's political philosophy. Like Pasolini, Agamben has joined Marxist politics to the messianic tradition of Christ, exuding a kind of "present day pessimism, reminiscent of the Gnostics, with their mystic counter-utopias and disdain for the world."⁸⁴ Thus Agamben is not infrequently charged with political nihilism, an impractical and even irrational desire to see the world collapse into fire and brimstone, so that a new, unspecified kind of politics might emerge, where people relate to one another not as citizens or life-forms, but as pure means. He writes, in heraldic tones, that:

A political life, that is, a life directed toward the idea of happiness and cohesive with a form-of-life, is thinkable only starting from the emancipation from such a division, with the irrevocable exodus from any sovereignty. The question about the possibility of a nonstatist politics necessarily takes this form: Is today something like a form-of-life, a life for which living itself would be at stake in its own living, possible...only then can a form of life become, in its own factness and thingness, *form-of-life*, in which it is never possible to isolate something like naked life.⁸⁵

Rather than continue the charade of human rights, which are inevitably co-opted to serve the interests of sovereign domination, Agamben urges that we go back to the drawing-board, as it were, and start with a fresh canvas. The current practice of politics is so contaminated with biopolitics that it is beyond redemption. What is needed is a return to pondering the great ontological questions of Being, and what it means to be human. The imperatives of human rights and political struggle seem trivial compared to this weighty task, as Agamben himself states explicitly, writing that "[i]t is more urgent to work on these divisions, to ask in what way...has man been separated from non-man, and the animal from the human, than it is to take positions on the great issues, on so-called human rights and values."⁸⁶ Not surprisingly, most commentators find this analysis inadequate in some way. I would argue that they reach the proper conclusion, but for the wrong reasons.

The typical move on the part of Agamben's critics is to assail him for a lack of pragmatism, and to portray him as a romantic thinker too caught up in his utopian musings to make any substantive contribution to political theory. Certainly, they concede, his ideas are novel and promising, but they are little more than vague gestures towards a future state of bliss, a paradise to come. As such they offer little guidance for activists engaged in fomenting resistance against the structures of social domination. What does it mean, after all, to invent a

⁸⁴ Binswanger "Preacher of the Profane" p. online

⁸⁵ Agamben *Means Without End* p. 8

⁸⁶ Agamben *The Open* p. 16

“completely new politics – that is, a politics no longer founded on the *exceptio* of bare life?”⁸⁷ If this is a call to action it seems impossibly nebulous, and, if it is a demand by a theorist for more theorizing, impossibly self-indulgent. Thus William Rasch asserts, of those dissatisfied with the current political order, that “[w]ith Agamben, they could wait for a ‘completely new politics’ to come; but the contours of such a politics are unknown, and will remain unknown until the time of its arrival. And that time, much like the second coming of Christ, seems infinitely deferrable.”⁸⁸ Waiting for this new politics, he appends, resembles nothing so much as waiting for Godot. In other words, Agamben’s radical refusal to compromise with the status quo easily slides into passivity and the tacit acceptance of injustice, just as the Christian emphasis on the afterlife is often said to excuse oppression in this world. Waiting for a messianic politics to sweep away sovereignty is an inexcusable abdication of political agency, and hence an act of collaboration with evil. Thus, this line of argumentation runs, in forsaking human rights as historically compromised, Agamben is myopically abandoning the one mechanism that has been proven to protect us from the savage depredations of the state. Mark Greif sums up this contention nicely:

And I do think there’s something powerful about the notion of a manifest abjection, an incomprehensible and visible refusal of power, a pure gesture. But it has no place in politics except as the sort of aesthetic symbol that mobilizes those who know how to read it. It is still the *merely* human or *merely* bodily who are most invisible to fellow citizens as well as to leaders; only when the abject have a means of redress within the law can they be seen. Dull as it may seem, the withdrawal of law has to be opposed, the protections of law retained. Fantasies aside, all we really have are rights.⁸⁹

Agamben is depicted as noble but deluded, a Quixote lost in the realm of “fantasy,” oblivious to the suffering of real people (“the *merely* human or *merely* bodily”). If there is “something powerful” in his rhetoric, to actually implement his suggestions would be disastrous – indeed we get the intimation that they are not intended fully seriously, but are only a species of intellectual parlor game, an “aesthetic symbol” accessible only to a narrow coterie of elites. There is, on the one hand, the real world, the world of razor wire, gun turrets, and ethnic cleansing, and on the other hand the ethereal world of theory, inhabited by tenured academics who have the luxury of cogitating on ontology while fascist governments set the world aflame. Yet there is something too easy, too pat, in this formulation. Greif, for instance, seems convinced that political theory is hopelessly impractical,

⁸⁷ Agamben *Homo Sacer* p. 11

⁸⁸ William Rasch, *Sovereignty and its Discontents* (London: Birkbeck Law Press, 2003), p. 148.

⁸⁹ Greif “Apocalypse Deferred” p. 242

and has little to say about the way that we actually live. But if Agamben has demonstrated anything beyond doubt in his political works, it is that our everyday lives are remarkably *undertheorized*, and that sovereignty has an iron stranglehold on our politics precisely because we replicate it unconsciously in so many facets of our daily existence, from our language to our philosophical tradition. If his analysis is accurate, then he is right to claim that sovereignty will not be eradicated until we recognize how deeply entrenched it is in our very way of being human. Neither is the argument that because high theory eschews practical politics it inevitably ratifies the status quo very persuasive. Indeed, Slavoj Žižek has convincingly stood this argument on its head, pointing out that because practical political struggle keeps us constantly on the move, frenetically dealing with the symptoms of social domination, it thereby prevents us from developing an adequate understanding of the big picture. In the nineteenth century it was Theory (communism, anarchism) that ran ahead of Praxis, and helped to link together movements as diverse as worker's rights and anti-imperialism. To lazily label Agamben an impractical dreamer is to forget that the march of progress has often been galvanized not by gradual reforms, the painstaking accretion of progressive legislation, but rather by momentous paradigm-shifts, Copernican revolutions that change the ideological coordinates of society at a stroke. Indeed, what I would identify as the major failing of Giorgio Agamben's theorization of human rights is a failure of precisely this kind of imagination, the inability to recognize that human rights can be transformed and appropriated in a similar fashion. Both Agamben and his opponents in the human rights establishment err in assuming that the rights of man are fixed entities with a specific, immutable meaning. There is another way to understand human rights, however, namely as literary texts that are subject to exegesis and interpretation.

Consequently the anti-human rights position articulated in *Homo Sacer*, what I have called the gospel according to Giorgio Agamben, reveals a certain schizophrenia. On the one hand it is dazzlingly complex and sophisticated, sustained by its subtle detail and its brilliant close readings of historical texts. Yet at the same time, it is crudely rendered and drastically oversimplified, painted clumsily with a broad brush. Human rights, we are informed, are always-already annexed to sovereign power, in order to serve the interests of social control. Because human rights serve as the wellspring of authority for the nation-state, because they adjoin man's identity

as a biological being to his political vocation, their true function, regardless of intent, it to reproduce the figure of bare life, “citizens whose very politics is at issue in their natural bodies.”⁹⁰ But surely this analysis is incomplete. If human rights are often deployed as a stratagem of power, there are also notable historical instances where declarations of rights have been used as a pretext to check the power of the sovereign state, or to dissolve it entirely, as during the 1871 Paris Commune, which was led by an organization calling itself the Society for the Defense of the Rights of Man. As Andreas Kalyvas observes, Agamben overlooks “the fact that rights do not need to be exclusively defined in relation to the state. They can be deployed as instruments of social coordination” as well as social control.⁹¹

It is helpful to conceptualize Agamben’s philosophy of human rights, therefore, through the trope of “gospel,” since the term has connotations of the unquestionably true, the dogmatic, and the partial account, one narrative among others. The tension at the heart of the four gospels of the New Testament is that each book is meant to be authoritative, divinely-inspired, but at the same time partial, incomplete, and occasionally contradictory. The deceptively simple narrative of Christian revelation, describing the life, death, and resurrection of Christ, has been related from a multiplicity of vantage points, so many indeed that a father of the early church was forced to narrow the list of “acceptable” gospels to only twenty-seven. The rights of man are no less perplexing than the rites of the church, and I would maintain, drawing on the work of Jacques Rancière, that they are best understood through this same prism of Rashomon-like indeterminacy. Human rights are what we make of them, and so the reflexive optimism of a Michael Ignatieff and the epic, Gnostic pessimism of a Giorgio Agamben are only two aspects of the same illusion. If declarations of rights have been abused by particular regimes to underwrite terrible new methods of repression and genocide, they have also been appropriated by the dispossessed in order to justify political struggle and social revolution, indeed to call the very essence of state sovereignty into question. Agamben assumes that declarations of human rights are definite objects with fixed meanings, and demands that we “understand them according to their real function in the modern state.”⁹² For

⁹⁰ Agamben *Homo Sacer* p. 188

⁹¹ Kalyvas “The Sovereign Weaver” p. 116

⁹² Agamben *Means Without End* p. 19

Rancière this is nonsense; in obsessing over the “real function” of the Rights of Man Agamben forgets that such rights can underwrite total emancipation as easily as they can license totalitarian oppression. This is Agamben’s final, fatal failure of the imagination: the inability to conceive of human rights as anything other than a clever ruse, or to discern the latent possibility of human liberation, embedded in “the inscription of equality, as it appears in the founding texts, from the Declaration of the Rights of Man to the preamble of the Charter.”⁹³ *Homo Sacer* aspires to be the last word in the debate on the rights of man, but despite its innovative biopolitical approach to the problematic of human rights, outlined above, it remains one gospel among many.

⁹³ Jacques Rancière, *On the Shores of Politics*, translated by Liz Heron (London: Verso, 1995), p. 48.