

## Revisiting Agamben's *Homo Sacer: Sovereign Power and Bare Life* – A Critical Review

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### Abstract

Agamben is one of the most influential living thinkers in the world, and within the constellation of his oeuvre, the highly influential *Homo Sacer: Sovereign Power and Bare Life* (1998), explores the relationship between sovereignty, law, and the human condition, focusing on how modern political power is related to human life and how this power can inclusively exclude people from the protection of the law. In this book, Agamben examines the paradox of sovereignty, its relation to the state of exception, and the production of bare life within this framework, which he terms *homo sacer*. Furthermore, his book insight into sovereignty, biopolitics, and exclusion are crucial for understanding contemporary issues like state of exception, state surveillance, migration crises, human rights violations, and democratic erosion, especially in an era of rising political instability and authoritarianism, urging a rethinking of power structures and inclusion. Therefore, this book will serve as a trajectory not only for understanding the Western political sphere but also for the liberal democratic context of the subcontinent.

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Agamben is one of the most influential living thinkers in the world. His intellectual trajectory is situated within a critical genealogy of seminal thinkers, including Aristotle,

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Hegel, Freud, Heidegger, Schmitt, Benjamin, and Arendt, whose theoretical frameworks underpin his philosophical inquiries. In the constellation of his oeuvre, the highly influential *Homo Sacer: Sovereign Power and Bare Life* (1998), explores the relationship between sovereignty, law, and the human condition, focusing on how modern political power is related to human life and how this power can inclusively exclude people from the protection of the law—an aspect that has not been firmly explained in any previous book. This book divides into three parts (the logic of sovereignty, homo sacer, and the camp as biopolitical paradigm of the modern) where, he combines deep theoretical analysis with historical examples and cross-disciplinary references, drawing from philosophy, law, political theory, theology, and classical studies.

In first part of this book, Agamben deals with 'the doctrine of sovereignty' where he examines the concept of sovereignty, especially the power to decide the exception—a situation where the normal legal order is suspended. Drawing on Schmitt's theory of sovereignty — “sovereign is he who decides on the exception” — Agamben argues that sovereignty is defined by the ability to suspend law and determine when it applies. He argues that sovereignty's central logic is to isolate individuals as bare life—humans who exist outside the political order but remain subject to sovereign power. Echoing Schmitt, he insists that sovereign is at the same time both outside and inside the juridical order. Since the sovereign has the legal power to annul the validity of the law, as Agamben said, therefore, the position of the sovereign is beyond the law. In Agamben's view, the state of exception becomes a crucial mechanism for understanding how sovereign power manipulates the relationship between law and its own suspension. For Agamben, the state of exception represents, “the originary relation of law to life is not application but abandonment” and ‘law only survives the exception— law nurtures itself in the midst of exceptions and law is lifeless without it’. Therefore, the framework of exception persists through the abandonment of the law and the creation of a legal void, and it is upon this framework that sovereign power constructs the biopolitical body or bare life. To understand the culmination of sovereignty, the state of exception, law, and bare life, we can examine how people in Bangladesh have been killed in the name of the war against drugs and terrorism. These individuals were not protected by the law but were instead exposed to violence, resulting in lives that could be taken with impunity.

To elucidate more, in *Homo Sacer*, while explaining the modern paradigm of the 'exception,' Agamben analyzes the essence of the law, using Kafka's novel *The Trial* as the backdrop for his explanation. The novel's central character, Joseph K., finds himself ensnared in a legal case, yet never learns the nature of the charges against him. He descends into a condition where he cannot distinguish whether he is free or imprisoned. The state of exception is precisely this condition in which the boundaries between detention and freedom, and between the various norms of life, become indistinguishable, rendering them impossible to differentiate. It is a condition in which the law remains operative even in the absence of any legal order. In *The Trial*, Joseph K. is ultimately executed in the name of the

law, though he remains ignorant of his crime. Through the priest's parable about the nature of the 'Law,' Agamben illuminates the ontology of the law—what it is in itself and how it endures. According to the priest's tale: A man from the countryside seeks entry to the 'Law' and approaches a doorkeeper guarding its threshold. When the man inquires if he may enter, the doorkeeper responds affirmatively, but not at that moment. Yet, that moment never arrives. As the man ages and his sight fades, he asks the doorkeeper, "*Everyone seeks the Law, so how is it that in all these years, no one other than me has sought to enter?*"<sup>1</sup> The doorkeeper then reveals the profound truth: "*This door was meant only for you; no one else may pass through it. It has always been open.*"<sup>2</sup> But why, then, could the man never enter? Agamben, referencing Derrida and Cacciari, explains the paradox of the law's power: How can something be opened if it is already open? If the door to the law is always open, how can the man from the countryside ever open it or pass through it? He argues, from an ontological perspective, that something already open cannot be opened further. Derrida argues that the law secures itself through its very refusal to secure: The law keeps itself without keeping itself—kept by a doorkeeper who keeps nothing. This reveals the essence of the law: *being in force without significance*. In this dynamic, Joseph K. becomes the victim of an *inclusive exclusion*—he exists both inside and outside the law simultaneously. Thus, he becomes a *sacred life*, a figure who can be killed without the act being considered a crime.

In next part of this book Agamben examines the concept of the *homo sacer*, an ancient Roman legal figure, and how it relates to the structures of sovereignty. Agamben uses this figure to explore how modern political systems exercise “power over life and death” (*vitae necisque potestas*). For Agamben, “the life of *homo sacer* is a life that cannot be sacrificed but that can be killed without trial, and whose killing makes no appeal before the law”<sup>3</sup>. Moreover, it explores the relationship between law, life, and sovereignty, arguing that modern political systems continuously create conditions where life is stripped of rights and reduced to a vulnerable, unprotected existence. He argues life of *homo sacer* is a victim of “double exclusion”. The double exclusion signifies that individuals who are rendered as “sacred” are divested of their intrinsic sanctity; they exist in a state where they are subjected to execution without legal adjudication, and their killing remains devoid of justice. Though Agamben acknowledges his debt to Foucault, he argues that biopolitics is not inherently incompatible with sovereign power, as Foucault sometimes implies, nor is it exclusively modern. Instead, Agamben asserts that biopolitics is the foundational form of politics, with the core function of sovereign power being to produce bare life as the basic political element, serving as the link between *zoē* and *bios*. Therefore, for him, the idea of bare life denotes — he who has been banned, in fact, simply set outside the law and made indifferent to it but rather abandoned by it, that is, exposed and threatened on the threshold in which

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<sup>1</sup> Kafka F, *The Trial* (Oxford University Press 2009) 155.

<sup>2</sup> *ibid.*

<sup>3</sup> Agamben G, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press 1998) 73-87

life and law, outside and inside, become indistinguishable. The war, extrajudicial killings, confinement, and human rights violations that we are experiencing, citing these examples, Agamben suggests it seems to him “perhaps we are all now a kind of *homines sacri*”<sup>4</sup>.

In the third part of this book, Agamben explores the concept of the camp (e.g., concentration camps or refugee camps) as the ultimate biopolitical space, representing a core feature of the modern political and legal order. Agamben argues that the camp is not limited to its historical examples (such as Nazi concentration camps) but has become a global paradigm in the modern world. This conceptualization not only reflects historical atrocities but also resonates with contemporary practices of exclusion and control, positioning the camp as a critical framework for understanding the complexities of modern political life, as contemporary states increasingly function in similar ways. For Agamben, camp represents such a space of exception where the distinction between the political and the apolitical, the exception and the rule, the legal and the illegal become blurred and counts as the ‘hidden matrix and new biopolitical nomos’ of contemporary political space. Here the inhabitants are excluded from political life (bios) and subject only to the sovereign power's control. Agamben examines the reduction of camp inhabitants to “bare life,” devoid of legal rights and existing merely as biological entities. He suggests these individuals are outside the protection of the law, which paradoxically legitimizes the policy of killing and violence against them. However, Agamben’s concepts of bare life and the state of exception offer a compelling lens through which to examine contemporary migration issues. Migrants, particularly those in refugee camps or detention centers, often embody this condition. These spaces render them politically invisible, reducing their existence to survival under state control. Similarly, undocumented migrants live precariously, outside the legal and political order, exposed to its force but denied its protections, reflecting Agamben’s vision of life caught in a liminal state between inclusion and exclusion. By reducing migrants to bare life, states perpetuate systems of exclusion and dehumanization, framing migrants as threats rather than individuals with histories and rights. The state of exception legitimizes these exclusions, creating spaces where the rule of law is suspended and human dignity is undermined.

Although many have criticized Agamben's concept of “bare life” for lacking consideration of gender, religion, race, culture, and sexuality,<sup>5</sup> and for focusing solely on the juridico-political dimension while neglecting the social dimensions involved<sup>6</sup> as well as reducing life to mere biological existence, overlooking its generative and relational aspects<sup>7</sup>.

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<sup>4</sup> *ibid* 84.

<sup>5</sup> Alexander G Weheliye, *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Duke University Press 2014); Ewa Płonowska Ziarek, ‘Bare Life on Strike: Notes on the Biopolitics of Race and Gender’ (2008) 107 *South Atlantic Quarterly* 89.

<sup>6</sup> Hosna J Shewly, ‘Abandoned Spaces and Bare Life in the Enclaves of the India–Bangladesh Border’ (2013) 32 *Political Geography* 23.

<sup>7</sup> Roberto Esposito, *Bios: Biopolitics and Philosophy* (University of Minnesota Press 2008).

Furthermore, Girard posits that Agamben's treatment of homo sacer, the figure of the sacred victim who can be killed without consequence, lacks a comprehensive understanding of sacrificial dynamics, neglecting the historical and cultural dimensions of sacrifice that shape human societies.<sup>8</sup> However, the significance of this book lies in its exploration of several key themes: first, that the primary function of sovereign power is the production of "bare life"; second, that the foundational political relation resides in the state of exception, which fosters the politics of the 'ban'; and third, that the camp serves as the modern nomos of biopolitical governance.

In conclusion, Agamben's insights in this book, which delve into sovereignty, biopolitics, and exclusion, are crucial for understanding contemporary issues such as the state of exception, state surveillance, migration crises, human rights violations, and democratic erosion, especially in an era of rising political instability and authoritarianism, urging a rethinking of power structures and inclusion. Therefore, this book will serve as a framework for understanding both the Western political sphere and the liberal democratic context of the subcontinent, exploring how these states function, how sovereign powers exercise their authority to produce 'killable' lives, and how various repressive laws are enacted in the name of security management.

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<sup>8</sup> Pierpaolo Antonello, 'Sacrificing Homo Sacer: René Girard Reads Giorgio Agamben.', *Forum Philosophicum* (2019).