

ON AGAMBEN

Sovereignty and Life

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Boundary Stones

Giorgio Agamben and the Field of Sovereignty

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After Sovereignty

Jean Bodin's *Six Books of the Commonwealth*, published in 1576, contains one of the most consequential political injunctions of the modern era: "We must now formulate a definition of sovereignty because no jurist or political philosopher has defined it, even though it is the chief point, and the one that needs most to be explained."¹ Since the mid-sixteenth century, the problem of sovereignty has been central to political theory. From Bodin to Hobbes to Rousseau, the principal questions of politics have evolved in relation to the singular challenge of providing, both in theoretical formulation and juridical practice, a legitimate foundation for increasingly secular forms of constitutional power. In this regard, Bodin's statement is crucial, not because it announces a new politics based on sovereign rule—sovereign political authority predates the modern era by centuries, and depending on how one ultimately defines it, certainly by millennia—but because, in this passage, sovereignty is presented for the first time as a question, a concept in need of a theory. Bodin compels the modern era to place sovereignty under examination, and it is not long before new theories of political legitimacy appear, collectively producing the rich climate of political experimentation

for which the modern era is well known. Instead of treating sovereignty as a foregone socio-political fact, the moderns would come to see sovereignty as a problem, so much so that the question of politics becomes largely indistinguishable from the question of sovereign authority. It is, after all, less than a century after Bodin that Hobbes, stirred by a political optimism we no longer share, inaugurates the long project of grounding sovereign political authority in secular institutions. As a result of this broad shift in Western political discourse, political philosophy since Bodin has been burdened with the immense task, not only of formulating the mechanics of political order, but of justifying them—of giving legitimacy to both the right to rule and the duty to obey.

Today, however, even among the most sanguine liberals, optimism for the modern project has all but vanished. The secular faith that once energized modern thinkers to embrace Bodin's injunction has been replaced by a deeply instrumental and increasingly obscurantist politics. Unconvinced of the possibility of grounding the sovereign right to rule on rational principles alone, and more broadly desensitized by the increasingly cultural manifestations of capitalist production, post-industrial democracies, and most conspicuously the United States, have largely returned to the fundamentalisms of faith and nation in the implicit hope that Bodin's challenge can be placed neatly back into its bottle and we can all quietly return to the orderly naiveté of a politics before theory. For those of us who lament these tendencies, however, the question will not dissipate. Instead, it reappears in a much stronger iteration: if not sovereignty, then what? The challenge posed by this question lingers at the edge of our era's most radical confrontations with politics—both practical and theoretical—and invites us, not unlike Bodin four and a half centuries ago, to re-examine the ground of political authority. In this case, however, the task is not to justify sovereign power, but to conceive of a political community that does not presuppose it.

The work of Giorgio Agamben attempts to do just that, placing at its center the project of conceiving a community beyond the tradition of sovereignty. If we are to emerge from the modern era and formulate a theory of politics adequate to the contemporary conditions of life, as Agamben broadly suggests, the modern political project, with its patriotic narratives and exhausted antagonisms, must be altogether abandoned. "All representations of the originary political act as a contract or convention marking

the passage from nature to the State in a discrete and definite way must be left wholly behind" (*HS*, 109). In place of the conventional narratives of socio-political genesis, Agamben installs a new political horizon—what he has called the “coming community.” It is a project that involves not a reshuffling of terms, but a sustained awareness of the inseparability of politics and subjectivity. By abandoning the traditional juridical question “What legitimates power?”—and by following Michel Foucault in refusing to take sovereignty and the state as the standpoints from which to understand power relations—Agamben roots his analysis of politics in a critique of sovereign power’s capacity, which is in fact an operational necessity, to produce (and reproduce) forms of subjectivity that consent to, and even defend, the conditions that make sovereignty, and the subordination it entails, possible. By situating politics squarely within an ontology of the subject and by refusing any absolute separation between political life and life-as-such, Agamben underscores the convergence of power and subjectivity that has, since the earliest appearance of the sovereign command, quietly materialized beneath the political mythologies sanctifying the “right to rule.” It is, then, at the intersection of the juridical model of power (What legitimates sovereignty?) with the biopolitical model (What is the subject?) that Agamben’s work resides. This project, which extends the work on biopower begun by Foucault, is vast and for this reason remains largely unfulfilled, but the questions it raises, particularly around those liberal forms of political legitimacy that continue to shape our political imaginary—concepts such as democracy, the general will, citizenship, the state, and even the well-meaning essentialism embedded in certain discussions of human rights—are worthy of our attention.

There is plenty of room for pressing Agamben to provide us with a more pragmatic, and thereby more convincing, account of the new politics he outlines. There is clearly a need for this, and eventually for a discussion of the coming community that moves us decidedly beyond analogies to tangible actions, but here I focus on what Agamben does succeed in providing, particularly in his most influential book to date, *Homo Sacer*. In its pages, Agamben assesses the theory and practice of sovereignty, tracing it across the modern era to the earliest days of Roman jurisprudence, revealing in this way the limits of sovereignty as a political first principle. The genealogy he traces opens the door for a critique of Western political discourse, thereby offering us an opportunity to identify areas where a new

politics, liberated from the theoretical privilege of sovereignty, might focus its attention. In what follows, I offer a brief appendage to this project.

Much of Agamben's discussion of sovereignty turns on the figure of the banished individual. It is a provocative line of research, revealing not only how sovereignty manifests itself as a positive force, but also how its effects carry over to those who appear to be excluded from it. However, despite the depth of analysis and a careful explanation of the structural parallels between the exile and the sovereign, comparatively few pages are devoted to the actual transgressions of these banished individuals. We hear much about the judicial framework of banishment, its origins in the figure of the Roman *homo sacer*, its "excluded inclusiveness" with respect to the law, its evocative resemblance to the sovereign exception, but little about the specific actions that, for one reason or another, elicit banishment as a punitive response. This is somewhat surprising. Within the context of a project broadly concerned with alternatives to sovereign formations of power (i.e., to arrive at "a politics freed from every ban" [*HS*, 59]), there is potentially much to be gained by pursuing things further. It is true, of course, that Agamben refers us to "the person who goes into exile as a consequence of committing homicide" (*HS*, 110), and to the ancient figure of the *homo sacer*, whose transgressions expel him from both human and divine law, but the specific character of the transgressions made by this figure, while mentioned, are left largely unexamined. Left unaddressed is why these actions, and *these* actions in particular, call forth exceptional measures. Exactly what forms of subjectivity and their associated behaviors elicit non-traditional punitive responses from the state? Why, instead of conventional forms of punishment, do certain forms of political life warrant exile? I believe that in answering these questions, we not only add something to our understanding of what sovereignty is, but also to what it is not—that is to say, we come nearer to knowing what forms of political life constitute an incompatible counterpoint to sovereignty. If it is possible to arrive at a viable politics beyond sovereignty, these forms of political life may help show the way.

Answers to these questions promise not only to elucidate sovereignty by exposing what it fears most, but in doing so, should offer some indication of what the "coming politics" must overcome if, as Agamben maintains, "the concepts of *sovereignty* and of *constituent power*, which are at the core of our political tradition, have to be abandoned or, at least, to

be thought all over again" (*HS*, 112). If the future of political community entails conceiving a politics without sovereignty, then perhaps, even more than for Bodin and his generation, our task today is to formulate an understanding of sovereignty precisely so that we can conceive of ways to think beyond it. Ironically then, and certainly for different reasons, Bodin's injunction has never been more urgent.

The Sovereign Field

A necessary condition for the possibility of banishment is a boundary—real or virtual, terrestrial or divine—outside of which one may be abandoned. It is not by coincidence that we see this same conceptual demand also appear in the modern definition of sovereignty, where the twin elements of political authority and a bounded territorial jurisdiction are united. The union of these two elements form a simple, yet entirely apt, definition of what sovereignty came to mean in early modern Europe, and of which most subsequent definitions are merely a variant: "supreme authority within a bounded territory." The connection between authority and territory is fundamental, and it is precisely on the basis of this relation that banishment is a possibility. Given this, instead of approaching the concept of sovereignty from the point of view of the "legitimation of power" (i.e., the establishment of authority), I will do so from the standpoint of the "*extension* of power," or, more precisely, by examining the necessary, though conventionally underemphasized, bond uniting authority with territory.

While it is obvious that a claim to legal authority must entail reference to the reach of its application, ordinarily this aspect of authority has been treated as a secondary consideration. It is tempting to conclude that it is the obviousness, perhaps even the banality, of jurisdictional matters—that law *must* have a zone over which its power is legitimately exercised—that has drawn attention toward the more abstract considerations of how authority is justified. The preponderance of our modern concern has been with those non-arbitrary reasons—drawn from natural law, divine mandate, heredity, constitutional assemblies, or otherwise—that justify granting to a person or an office not merely coercive power but, as R. P. Wolff has put it, "the right to command and correlatively the right to be obeyed."² What we have been most often concerned with

is the legitimacy that adheres to the rights vested in political authority, rather than with the necessary correlate of all conceivable definitions of sovereign power, namely, its jurisdiction: the territory, the bodies and the objects over which the right of command holds sway. However, despite the historical bias, the question of jurisdiction is, in fact, the more fundamental problematic for political thought because it directly addresses the mechanisms of inclusion that structure every political community. Consequently, the question most at issue is not “What is authority?” but rather, “What is the field of authority?”

The classic typology of authority, defined as power that is recognized as legitimate not only by those holding positions of privilege but also by subordinates, all too easily envisions authority as a power distinct from those who are affected by it, namely, those individuals whose recognition, support, and obedience constitute the legitimacy authority enjoys. For this reason, it is altogether more helpful to engage the question of authority from the site of this obedience itself, rather than from within the confines of a conceptual debate that seeks to ascertain what constituent authority *is* apart from, or prior to—the social environment in which it is exercised. The point here is that authority, of which sovereignty is the most extreme form, is a context-dependent concept, and to overlook this fact is to treat the authority embodied by sovereignty as a force existing independent of the field in which it is deployed. Instead, the social space in which sovereignty authority is exercised is ultimately the very condition by which power is made sovereign. As Michael Hardt and Antonio Negri have suggested, sovereignty is “two-sided.” “Sovereign power is not an autonomous substance and it is never absolute but rather consists of a relationship between the rulers and ruled. . . . Those who obey are no less essential to the concept of the functioning of sovereignty than the one who commands.”³ Consequently, sovereign power ought not to be envisioned as a force from the outside, but rather as an integral part of the political field itself, inseparably linked to the ongoing process of legitimization. Sovereignty is the embeddedness of authority within a field of application—comprised of both a space and a multitude, a territory and a citizenry—and it is this *legitimized connection between authority and territory* that warrants further attention, because if politics is to be placed on a new footing it must do so by reformulating this relation.

With respect to the law, therefore, it is never enough to simply ask

how the state extends its laws over a territory, for this presumes too quickly the primacy of the law with respect to jurisdiction and compels us to speak of the law as self-sufficient and entirely independent of the masses on whom it is imposed. Likewise, is it not enough to ask how states secure popular support, that is, how reasonable ideas are sold to a rational public, for here too the scenario assumes that the public arrives to give consent, and thereby legitimacy, to a form of power that precedes it. Instead, we find that territory (sovereign jurisdiction) comes *before* the law; that legality is an epiphenomenon of sovereignty; and that the primary work of sovereignty is not to impose the law, but to maintain a stable, coherent order within a territory such that the logic of a legal system, once created, will be capable of making statements that are juridical true. Here again, it is useful to understand sovereignty as two-sided; however, if one is not careful, even this formulation can easily slip from a co-constitutive relation, in which ruler and ruled arise in tandem, to a far too intentional scenario, in which rulers work outside the modes of social production to manufacture the subjects they desire. Quite the contrary. If sovereignty is truly a relational concept, those who rule participate in maintaining social stability, not by enforcing it from the outside, but by inhabiting it and—just like those over whom they rule—by recognizing themselves within it.

It is therefore essential to maintain a firm terminological distinction between the ruler and sovereignty. These terms must be neither collapsed nor treated as synonymous. They represent two distinct aspects of political life, the first referring to that person, assembly, or constitution invested with the authority to command within a given territory, the second referring to the field of application that comes prior to the rule of law and makes command possible by making obedience normal. Thus, as Maurizio Lazzarato has observed, “The fundamental political problem of modernity is not that of a single source of sovereign power [a ruler], but that of a multitude of forces that act and react amongst each other according to relations of command and obedience.”⁴ Consequently, every study of sovereignty that begins with an analysis of the ruler will inevitably remain inadequate, invariably producing a theory of the subject as a legal being. The conventional image of the sovereign ruler standing outside the law, perched above it, must therefore be dismissed as an inadequate political myth that preserves a misconceived Hobbesian political theology. Only by abandoning this notion of the sovereign set outside the law, only if we

categorically refuse to pose the question of power from the vantage of the state, can we begin to grasp the complexities of biopolitics. The study of sovereignty must therefore begin with a study of those seemingly mundane forms of political life that are caught up in relations of power and self-recognition, rather than with the political logic of the state and its rulers. The conditions for obedience are, therefore, not legal, nor are they, temporally speaking, merely pre-legal. Rather, the stabilization of the sovereign field is an ongoing, immanent process that subtends all activity within a jurisdiction, ordering all of its social actors, including he who wears the crown, as well as those who envision themselves as oppositional.

In the early pages of *Homo Sacer*, Agamben quotes a well-known passage from Carl Schmitt's *Political Theology* that embodies this point. In it, Schmitt argues that the law can only exist under pre-given conditions that permit the source of its authority to go unquestioned. This, according to Schmitt, is the primary function of sovereignty. As a constituting power, sovereignty creates the ground upon which both the rule of law and those subject to the law are found to be entirely compatible. Sovereignty creates, or rather *is*, the condition in which something like juridical evidence becomes possible. Schmitt explains,

The exception appears in its absolute form when it is a question of creating a situation in which juridical rules can be valid. Every general rule demands a regular, everyday frame of life to which it can be factually applied. The rule requires a homogeneous medium. This factual regularity is not merely an "external pre-supposition" that the jurist can ignore; it belongs, rather, to the rule's immanent validity. There is no rule that is applicable to chaos. Order must be established for juridical order to make sense. A regular situation must be created, and sovereign is he who definitely decides if this situation is actually effective. All law is "situational law." The sovereign creates and guarantees the situation as a whole in its totality.⁵

That law cannot be applied to chaos is another way of stating that law is not the essential function of sovereignty. The work of sovereignty precedes the law, creating a regular "frame of life," which the law preserves and codifies but does not instantiate. Thus, the sovereign field precedes and enables the judicial decision. This decision—a legal decision that is readily obeyed—must have a territory to which it is applied. Not a neutral space, but a space that is capable of being obedient. Here, the anarchist maxim "If no one obeys, no one can rule" comes to mind, and its simple truth

remains undeniable. Obedience comes before the law; it is the ground of the law and literally makes the law plausible. This is what Schmitt has in mind when he writes that there is no law applicable to chaos, and when in the course of this analysis, I speak of territory, or of jurisdiction, or of field, this fundamental preparedness is what I am referring to. All sovereign authority depends upon this condition of receptiveness in order to function. Among the questions to be asked, then, is how this “field of order” comes to appear as orderly? Why is the refusal to obey so rarely exercised? And how does the connection between administration and territory become so intimate that those bound by a jurisdiction and subject to the law’s application find themselves absorbed into the scenarios of sovereignty in ways that are increasingly coherent and naturalized, thereby concealing the mechanisms of legitimatization that make possible the bond between sovereignty authority and its field?

And even in those cases that presumably exceed the law’s application and appear to lie well beyond the sovereign field, that is, in various “states of exception” from the law, sovereign power still exerts its force, though perhaps in an impoverished sense. This is the case made by Agamben in *Homo Sacer*, which is worth our consideration because the bond between authority and territory must not be understood as a relation that is merely internal, or to use Agamben’s language, *inclusive*. In fact, the political distinction between inside and outside, inclusion and exclusion, structures the basic logic of sovereignty itself, insofar as sovereignty maintains a boundary not between the legal and the illegal, both of which participate fully in the logic of legality, but between the legal and the non-legal, that is, between the lawful and the outlaw, between the citizen and the exile. Consequently, when the legitimacy of this boundary is challenged, when the edges of the sovereign field are made to appear arbitrary, the challenge is directed at the heart of sovereignty itself, and as we shall see, those actions that warrant banishment share the characteristic of having called into question the legitimacy of this boundary.

Ex-capere

Somewhat infamously, Agamben contends in the pages of *Homo Sacer* that the camp—be it refugee or concentration—is the paradigm of the present juridico-political order. Regarding the camp not as an historical

anomaly but as the current condition of political life, Agamben argues that the extra-legal circumstances that the camp makes possible have been gradually extended to entire civil populations. In a short essay entitled “What Is a Camp?” Agamben writes, “*The camp is the space that opens up when the state of exception starts to become the rule.* In it, the state of exception, which was essentially a temporal suspension of the state of law, acquires a permanent spatial arrangement that, as such, remains constantly outside the normal state of law” (*MWE*, 38). The camp, it is argued, is the function not of law but of a state of exception in which the law is suspended; and it is because camps constitute this space of the exception that “everything is truly possible in them” (*MWE*, 39). Not unlike Hobbes’s “state of nature,” the camp represents extreme potentiality, the thoroughly unconditioned. However, unlike the state of nature, the camp is not completely without relation to the law, for it is the law—or more accurately, sovereign authority—that brings the camp into being, and it is in relation to the law that the camp is rendered exceptional. The ability of sovereignty to simultaneously generate both a “state of exception” and juridico-political order provides *Homo Sacer* with its central theme, and it is in reference to this double movement that Agamben concludes that the “exception” (*l’eccezione*) refers to what is “*taken outside (ex-capere)*, and not simply excluded” (*HS*, 18).

Insofar as the camp’s inhabitants have been stripped of every legal right and political status, their ontological condition is reduced to what Agamben refers to as “bare life” (*nuda vita*, in reference to the Greek *zōē*), a term he further refines by referencing the ancient Roman figure of the *homo sacer*. The *homo sacer*, one who can be killed without committing homicide, is not entirely synonymous with bare life, but rather represents bare life insofar as it is included within the political order. In other words, the inhabitants of the camp, those in exile, or those who have otherwise been removed from the proper jurisdiction of the law, are made *homo sacer* precisely because, despite being placed outside of the law and its protection, they retain a (extra-legal) relationship with the law by having been excluded from it. In the final chapter of *Homo Sacer*, Agamben characterizes the relation between bare life and *homo sacer* in reference to those who have been excluded from the law:

his entire existence has been reduced to a bare life stripped of every right by virtue of the fact that anyone can kill him without committing homicide; he can save himself only in perpetual flight or a foreign land. And yet he is in a continu-

ous relationship with power that banished him precisely insofar as he is at every instant exposed to an unconditional threat of death. He is pure *zoē* [bare life], but his *zoē* is as such caught in the sovereign ban and must reckon with it at every moment. (*HS*, 183)

Reduced to this state, the occupants of the camp—unmediated by traditional forms of political belonging, ordinarily expressed in the form of rights—encounter juridico-political power from a condition of comprehensive political abandonment. The camp is, for Agamben, an absolute biopolitical space in which power is exercised not against juridical subjects but against biological bodies. It is, in effect, a space in which sovereignty exists but the law does not, a territory in which actions are neither legal nor illegal.

The life that resides within the state of exception, exemplified here by the camp but perhaps best seen in those who have been sent into exile, is, however, not a new historical formation. In contrast to Foucault, for whom biopower represents a historical shift in paradigm, Agamben maintains that the inclusion of bare life within the political order is absolutely ancient; what makes the current situation noteworthy is the degree to which the realm of bare life has come to coincide with politics proper. Sovereign power has always placed biological life at its center only now the modern state has made this explicit, rendering the distinction between the human and the citizen, between fact and right, all but indistinguishable. What is revealed in this conclusion, and what speaks most directly to the primacy of the sovereign field, is that law, together with the broad array of legal institutions that administer it, forms a secular canopy that both legitimates sovereign authority and obscures the ancient connection between sovereignty and bare life, or between authority and the pre-legal order of its jurisdictional territory. In the early pages of *Homo Sacer*, Agamben observes, “In this sense, biopolitics is at least as old as the sovereign exception. Placing biological life at the center of its calculations, the modern State therefore does nothing other than bring to light the secret tie uniting [sovereign] power and bare life, thereby reaffirming the bond . . . between modern power and the most immemorial of the *arcana imperii* [i.e., the Roman ‘mysteries of state’]” (*HS*, 6). Bare life, then, has in some sense always been what is at stake for politics and as such is inseparable from the exercise of sovereign power. “*It can even be said,*” Agamben concludes, “*that the production of a biopolitical body is the original activity of sovereign power*”

(*HS*, 6; emphasis in original). Or put somewhat differently, the bare life that exists within the state, as the state's internal exception, constitutes the field of obedience that enables the judicial machinery of the state to function. Bare life, then, the object of biopolitics, is precisely that which, within the state, is made obedient prior to the law. When, on occasion, the contingency of this obedience is brought to light—for instance, in the case of political anarchy, or in the event of natural, economic, or military crises—sovereignty responds rapidly. To do otherwise would be to risk “bring[ing] to light the secret tie uniting power with bare life”; that is, it would be to risk revealing the concealed (naturalized) bond uniting authority with territory—which as we have seen, is constitutive of sovereignty itself.

Agamben argues correctly that the primary function of sovereign power is not to establish the law but to determine that which exceeds the law, arguing that the state of exception is more fundamental to sovereignty than the law itself, if only because it is precisely within this semi-political realm, into which the law cannot extend, that the obedience necessary for sovereignty resides. Referencing Jean-Luc Nancy, Agamben addresses this point, claiming that sovereignty is the “law beyond the law to which we are abandoned” (*HS*, 59). Consequently, bare life, that which has been excluded (banished) from the law, nevertheless “finds itself in the most intimate relation with sovereignty” (*HS*, 67), and it is ultimately this inclusive relation between bare life and sovereignty, or, as I would add, between territory and authority, that “constitutes the original—if concealed—nucleus of sovereign power” (*HS*, 6).

The exception marks the site at which the legal enters into relation with the non-legal. By establishing a threshold between law and non-law the exception effectively produces them both.⁶ The sovereign exception is, for both Schmitt and Agamben, the condition for the possibility of juridical order, for it is through the state of exception that sovereignty creates and guarantees the order the law needs for its own validity. Agamben makes this point in a commentary that refers us back to Schmitt: “The state of exception is thus not the chaos that precedes order but rather the situation that results from its suspension” (*HS*, 18)—when chaos ends, what remains is the order before the law, a sovereignty unmediated by the law. This situation, which is neither chaos nor law, characterizes the state of exception, and the form of life that corresponds to this state is bare life. The sovereign decision, then, decides not the licit and the illicit but the originary inclu-

sion of the living within its field of order. And this decision “concerns neither a *quaestio iuris* nor a *quaestio facti*, but rather the very relation between law and fact” (*HS*, 26). This is of particular importance for, as I will argue in what follows, the sentence of banishment, the sanction which speaks most directly to the exclusionary relation (insofar as it is a literal exception, *ex-capere*, a “taking outside”), has been applied, in the most ancient of political settings, not to actions that break the law, the merely illicit, but to those activities that threaten *the relation between the law and its ground*.

But in order to understand the sentence of banishment and its special place in relation to constitutional sovereignty, it is first necessary to highlight a few aspects of Greek and Roman jurisprudence. For it is only after understanding Aristotle’s use of banishment in the *Politics*, as well as the concept of *persona* in Roman law, that banishment, and the civil death this implies, becomes clear.

Gods Among Men

The practice of banishment is ancient. Explicit mention of the ban as a means of punishment dates back to at least the Hammurabic Code, where it is prescribed against incest, and the juridical history of classical Greece testifies to a long-standing familiarity with the practice.⁷ Despite this, it comes as a surprise to find Aristotle, in book 3 of the *Politics*, speaking of banishment as an acceptable remedy, not for actions that threaten the peace of the state through criminal actions or violence, but for deeds, or rather, ways-of-being, that break no laws whatsoever. Aristotle speaks of banishment within the context of a discussion of a very curious political difficulty, namely, how the *polis* should deal with threats to its stability that are *legal*. The difficulty here is self-evident: how does one guard against something that threatens the state precisely by adhering to the laws and highest ideals of the state and its community? In the course of weighing the obvious difficulty of legislating against that which, on the one hand, is thoroughly obedient to the law, while, on the other, *in virtue of being the way it is*, it disturbs the stability of that law, Aristotle raises the subject of banishment:

If, however, there be some one person, or more than one, although not enough to make up the full complement of a state, whose virtue is so pre-eminent that the virtues or the political capacity of all the rest admit of no comparison with his or theirs, he or they can be no longer regarded as part of a state; for justice

will not be done to the superior, if he is reckoned only as the equal of those who are so far inferior to him in virtue and in political capacity. Such a one may truly be deemed a God among men. Hence we see that legislation is necessarily concerned only with those who are equal in birth and in capacity; and that for men of pre-eminent virtue there is no law—they are themselves a law. Any would be ridiculous who attempted to make laws for them. . . . And for this reason democratic states have instituted ostracism; equality is above all things their aim, and therefore they ostracized and banished from the city for a time those who seemed to predominate too much through their wealth, or the number of their friends, or through any other political influence. (1284a, 4–22)⁸

It is a remarkable passage. Aristotle's testimony attests to the fact that the deepest concern of the *polis* is neither law nor justice, but the condition for the possibility of both. In both cases—in the efficient enforcement of law and in the evenhanded rendering of justice—a comparison among equals it required. Where this comparison is not possible, law and justice are also impossible, for “legislation is necessarily concerned only with those who are equal.” Upon the appearance of a person whose virtues are so elevated that they “admit of no comparison,” the state literally withdraws from them and they are no longer regarded as belonging to it. Equating the *polis* to a ship at sea, Aristotle adds that “mythology tells us that the Argonauts left Heracles behind for a similar reason; the ship Argo would not take him because she feared that he would have been too much for the rest of the crew” (1284a, 23–25).⁹ Thus, the ban's entrance into Western political philosophy is by way of *an abandonment of the state from an individual*, rather than the expulsion of an individual from the state. This is essential, for only by viewing banishment from the vantage of *the state's refusal to rule* can we begin to understand the gravity of the threat posed to the state by those worthy of being banished.

As we have seen, the state maintains order not through law but through obedience. The law merely stands in to obscure the constant possibility that this obedience may at any moment collapse, rendering feeble even the most draconian statutes. The order of the state is only as robust as the order of obedience that embraces it. The biopolitical question, the question which for Agamben lies at the heart of politics, is therefore always a question of obedience and order, not law. Consequently, it is not those who break the rules of law that are banished from the *polis*; rather, it is those who wield political influence, those who “predominate

too much,” either directly or indirectly, that are ostracized. As the passage demonstrates, ostracism is not employed against those who break rules, but against those who, through monetary or social influence, threaten to alter the political order itself. Continuing the discussion of banishment, Aristotle recounts the parable of Periander:

The story is that Periander, when the herald was sent to ask counsel of him, said nothing, but only cut off the tallest ears of corn till he had brought the field to a level. The herald did not know the meaning of the action, but came and reported what he had seen to Thrasybulus, who understood that he was to cut off the principal men in the state; and this is a policy not only expedient for tyrants or in practice confined to them, but equally necessary in oligarchies and democracies. Ostracism is a measure of the same kind, which acts by disabling and banishing the most prominent citizens. Great powers do the same to whole cities and nations, as the Athenians did to the Samians, Chians, and Lesbians; no sooner had they obtained a firm grasp of the empire, than they humbled their allies contrary to treaty; and the Persian king has repeatedly crushed the Medes, Babylonians, and other nations, when their spirit has been stirred by the recollection of their former greatness. (1284a, 29–1284b, 3)¹⁰

It is against the possibility of a different political future that banishment is marshaled, and it is within this same context that Hobbes tells us in chapter 18 of *Leviathan* that “the people of Athens, when they banished the most potent of their Commonwealth for ten years, thought they committed no injustice; and yet they never questioned what crime he had done, *but what hurt he would do.*”¹¹ Thus, even when no criminal action has taken place, and in the complete absence of malicious intent, the banished individual threatens to bring about, from the point of view of the current order, a destabilized future. The subversiveness of these individuals is therefore not achieved by breaking the law but by threatening to establishing new ones, or more accurately, by threatening to become a law unto themselves. For these individuals, recognized by Aristotle as “gods among men,” there is no law, for “they are themselves a law.” In being-what-they-are, these individuals obtain autonomy and, most dangerously for the state, command admiration. It is this influence that is most threatening. They are models, exemplars of behavior, and consequently represent an alternative principle of order. It is a point I will return to.

We know from Aristotle, of course, that justice is possible only if proportionality is possible. In his remarks on banishment, the removal of the

most successful and influential should be read as a means of achieving what the rules themselves cannot—namely, a proportional society. But one can push this reading further. It is not for the sake of being too wealthy or having too many friends that these figures are candidates for ostracism, rather it is because they play the game too well, follow the rules too cleverly, or with too much good fortune, that they call to attention the essential frailty of rules—their essential limitation when it comes to fair play and, ultimately, to justice—and thereby invite exile. And so, before ending his discussion, Aristotle draws the following, equally unanticipated, conclusion: “where there is an acknowledged superiority,” he writes, “the argument in favor of ostracism is based upon a kind of political justice” (1284b, 15–17).¹² Justice, of course, can never exist independently of context—we know this, at the very least, from the writings of Hobbes—because justice and the proportionality it strives to maintain are inextricably associated with a “frame of life” that precedes justice. If it is true that the banishment of “influential” citizens is one means by which political justice is preserved, then we have in this passage one of the earliest, and certainly one of the most incisive, statements regarding the political utility of banishment. The state resorts to banishment when the social order within which one can decide on, or measure, the relative justness of an action is threatened by an influence that the law is powerless to regulate. Once again, it is not because these individuals are too wealthy or have too many friends that they are banished. It is because extraordinary amounts of wealth or friendship engender influences that threaten to *overwhelm* the law, not by breaking it, but by challenging the orderly ground upon which it rests and in reference to which it is capable of adjudicating. In these cases, when the everyday “frame of life” that holds chaos in check is threatened, the exercise of banishment serves the aims of justice—which is to say, the aims of order, for the ban is uniquely qualified to preserve order when the law no longer can.

Loss of *status*

Although important in the Greek context, it is in Rome that the most significant use of banishment occurs. Among the civil penalties of the Roman republic, exile was unquestionably among the most important, but in order to understand its significance we must first consider the basic political ideas upon which the concept was based and from which its punitive

nature was derived. In 1901, A. H. J. Greenidge outlined the two prevailing ideas of the Greco-Roman world upon which the concept of *exilium* rested. The first was the principle that legal rights were the result of membership in a *civitas* and could not be derived from any other sources. Second, these rights were exclusively granted and honored by one *civitas* and, consequently, no one could hold citizenship simultaneously in two different states. Within the Roman context, the act of taking citizenship in a second state implied the automatic removal of citizenship in the first.¹³ These two basic principles created the conditions necessary for the introduction of banishment, largely because both principles hinge on the concept of citizenship. But to properly understand the meaning and function of citizenship we must situate it in relation to another concept: *persona*.

Under ancient Roman law, *persona* referred to anyone or anything capable of bearing rights, and the technical term for the position of any individual regarded as a *persona* was *status*. In the Institutes of Justinian (529 C.E.), we have the definitive explication: "The *status* of a Roman citizen was composed of three elements: *libertatem, civitatem, familiam* [freedom, citizenship, and family]."¹⁴ First, *status* entailed liberty. A *persona* was free and, unlike a slave, could bear rights. Secondly, *status* consisted of citizenship. For the Romans, the state was a privileged body separated from the rest of the world by the exclusive possession of certain public and private rights that were granted to its citizenry. It was an essential part of the *status* of a Roman citizen that they possess citizenship in the state, beyond which were the citizens of other states and the *barbari*. Finally, *status* involved membership in a family. In Rome, family ties were established not through blood but through a system of legal privileges that granted to the head of the family alone, usually the father, an independent will (*sui juris*). The head of the family held absolute authority over all other members through the exercise of *patria potestas*, and since persons under the power of another could not hold property, the father was sole property owner of the family and, accordingly, what the son acquired was de facto acquired for the father. Moreover, the son himself was a real possession of the father and in some cases could be killed by the father without it being considered legal homicide.

The sum of all legal capacities accorded to a *persona*, the possession of which gave one *status*, was collectively indicated by a term that had once referred to the mention made of the citizen in the registers of the census,

caput, meaning head. These legal capacities flowed from the three basic elements of *status* mentioned above, and if a citizen ever changed his *status*, that is, if he lost one of these three elements of *status* through the loss of liberty, the loss of civic rights, or a change in family position, he underwent what was termed a *capitis deminutio* (i.e., loss of *caput* or *status*). As we learn from the Institutes, *capitis deminutio* took three forms—greater, middle, or lesser—depending on which of the three elements of *status* was primarily affected. Thus, the three elements of full Roman *status* were not permanent, and it was quite possible for a person to undergo significant changes in one or all of these elements.

Chapter 16 of the Institutes directly addresses the manner in which a change in *status* was brought about:

The *capitis deminutio* is a change of *status*, which may happen in three ways: for it may be the greatest *capitis deminutio*, or the less, also called the middle, or the least. 1. The greater *capitis deminutio* is, when a man loses both his citizenship and his liberty; as they do who by a terrible sentence are made “the slaves of punishment;” and freedmen, condemned to slavery for ingratitude towards their patrons; and all those who suffer themselves to be sold in order to share the price obtained. 2. The less or middle *capitis deminutio* is, when a man loses his citizenship, but retains his liberty; as is the case when anyone is forbidden the use of fire and water, or is deported to an island. 3. The least *capitis deminutio* is when a person’s *status* is changed without forfeiture either of citizenship or liberty; as when a person *sui juris* becomes subject to the power of another, or a person *alieni juris* becomes independent.¹⁵

In the middle variant of *capitis deminutio*, as well as in the greater, the loss of citizenship also entailed the loss of position within the family, because only citizens held the right of belonging to a family. However, unlike the greater form of *capitis deminutio*, in which liberty is lost, in the middle variant, liberty is preserved but the person who undergoes this change of *status* loses citizenship and thus, before the eyes of the Roman judiciary, is made a stranger (*peregrinus fit*).

But making a stranger of a citizen did not proceed directly, as we learn from an important passage in Cicero’s oration *Pro Domo*. Here we are told that it was an established maxim of Roman law that no one could cease to be a citizen against his will: “Has not this principle been handed down to us from our ancestors, that no Roman citizen can be deprived of his liberty, or of his *status* as a citizen, unless he himself consents to such a

thing?”¹⁶ Consequently, the loss of citizenship required by the middle form of *capitis deminutio* could not be brought about by force, because, as Cicero testifies, the state was prohibited from compelling anyone to abandon their citizenship against their will. Since the middle variant of *capitis deminutio* did not entail a loss of liberty (free will), the question arises as to how the loss of civil *status*, and the banishment entailed in it, was enforced.

The answer to this question is telling. Those condemned to banishment—those who lost citizenship without loss of freedom—were *indirectly* compelled to abandon citizenship by their own choosing. The means used to bring this about can be found in the passage from the Institutes quoted above, and specifically in the reference to being “forbidden the use of fire and water.” The reference is to an ancient *interdictio* prohibiting Roman citizens from providing the sentenced person with the necessities of life.¹⁷ Unable to access food, fire, and shelter, the sentenced person was driven *to withdraw himself* from the city—by his own volition. In *Pro Domo* we are given the following explanation:

The Roman citizens who left Rome and went to the Latin colonies could not be made Latins, unless they themselves promoted such a change, and gave in their names themselves. Those men who had been condemned on a capital charge, did not lose their rights as citizens of this city before they were received as citizens of that other city to which they had gone for the sake of changing their abode. Our ancestors took care that they should do so, not by taking away their rights of citizenship, but only their house, and by interdicting them from fire and water within the city [*Id autem ut esset faciendum, non ademptione civitatis, sed tecti, et aquae et ignis interdictione faciebant*].¹⁸

Accordingly, those who were condemned in this manner did not lose their citizenship until they were admitted as citizens of another state, in accordance with the legal principle that forbade Roman citizens from holding dual citizenship. Compelling an individual to find refuge in another state was therefore accomplished, not by depriving them of their civil standing within Rome, but by literally forbidding them access to the basic necessities of life. The “forbidding of fire and water” (*aquae et ignis interdictio*) thus served as an indirect means of inflicting a sentence of banishment. While exile (*exsilium*) was not explicitly included in the *interdictio*, and the person was technically free to remain within the city and submit to the penalty of being a domestic outcast, in effect the *interdictio* was banishment. The individual was placed outside of the law even within the confines of the

state—removed from the order and protection of the sovereign field even while residing within the territory of Rome. The origin of exile under the *interdictio* was, therefore, *not* the physical removal of the individual from the state, but the abandonment of the individual to the dire consequences of the law's complete withdrawal.

By simply refusing to rule, the Roman judiciary brought about the desired end without ever commanding it. Indeed, in the case of those subject to the *interdictio*, as opposed to the forceful banishment to, for instance, an island, it was the individuals themselves who bore ultimate responsibility for their own exile. The law, by refusing to rule over certain individuals, by deciding not to include them within the sovereign field, effectively placed the fate of each individual into his or her own hands. As was the case for Aristotle, banishment is here the consequence of a refusal to rule, a withdrawal of the state from an individual.¹⁹

Civil Death

Speaking of the punitive effects of exile, and specifically of deportation, the Institutes equates banishment with civil death (i.e., the fate of those no longer living under law): “If a man, convicted of some crime is deported to an island, he loses the rights of a Roman citizen; whence it follows, that the children of the person thus removed from the list of Roman citizens cease to be under his power, exactly as if he were dead.”²⁰ And in modern times, exile is still equated with civil death, for example, in Cesare Beccaria’s *On Crimes and Punishments* (1775):

He who disturbs the public tranquility, who does not obey the laws, who violates the conditions on which men mutually support and defend each other, ought to be excluded from society, that is, banished. . . . The whole should be forfeited, when the law which ordains banishment declares, at the same time, that all connections or relations between the society and the criminal are annihilated. In this case the citizen dies; the man only remains, and, with respect to a political body, the death of the *citizen* should have the same consequences with the death of the *man*.²¹

The importance of these passages rests in the parallel that is made between death and exile—a theme that can be found throughout the history of the ban. From the vantage of the state, whose concern is with political

order, not justice, the civil death brought on by exile is as effective as bodily death. The death of the citizen leaves standing “the man only,” a condition that draws us back to Agamben’s discussion of biopolitics.

Because *only* citizenship is removed, the life of the person that is left corresponds neatly with Agamben’s onto-political category of bare life. Whereas the removal of liberty requires either incarceration or bondage, and consequently an intensification of the relation between the individual and the state, the loss of citizenship alone does just the opposite. As Beccaria writes, far from being intensified, in the case of civil death “all connections or relations between the society and the criminal are annihilated.” When liberty is lost through incarceration or bondage, the person remains within the sovereign field insofar as the law continues to apply. In the case of the exile, however, freedom is preserved precisely because the law ceases to apply. For Agamben, in such cases, “*the rule applies to the exception in no longer applying, in withdrawing from it*” (HS, 18; emphasis in original). And the life which remains—stripped of citizenship, deprived of the barest necessities of “fire and water,” and abandoned to foreignness even within the heart of the state—is bare life, a life for which the withdrawal of the law is on the one hand deeply punitive, on the other hand full of potential.

The relation between banishment and death, seen clearly in the *homo sacer* (one who can be killed without committing homicide), is established not only with respect to the *aquae et ignis interdictio*, in which the public’s complicity in withholding the necessities of life is a de facto sentence of death—either real or civil—but also appears in a more direct manner. In a passage from book 38 of the *Roman History* of Cassius Dio, and in reference to Cicero’s own banishment, the logical conclusion of those who are no longer within the law is made clear: “Against Cicero himself a decree of exile was passed, and he was forbidden to tarry in Sicily; for he was banished five hundred miles from Rome, and it was further proclaimed that if he should ever appear within those limits, both he and those who harboured him might be slain with impunity.”²² And in Hobbes, echoing ancient jurisprudence, wherein one who threatens sovereign power is punished not by a penalty of death carried out by the formalities of state but by exposure to life unconditioned by law, chapter 18 of *Leviathan* reads,

because the major part hath by consenting voices declared a sovereign, he that dissented must now consent with the rest; that is, be contented to avow all the

actions he shall do, or else justly be destroyed by the rest. . . . whether he be of the congregation or not, and whether his consent be asked or not, he must either submit to their decrees or be left in the condition of war he was in before; wherein he might without injustice be destroyed by any man whatsoever.²³

In this early modern example we find sovereignty protected by a targeted suspension of law, permitting any citizen to exercise the sovereign right to kill with impunity against those who would challenge sovereign power. The “condition of war” in which those who refuse to consent to sovereign power find themselves parallels the abandonment of those who, like Cicero, find themselves in exile.

In a similar fashion, in Jean Bodin’s *On Sovereignty* (1583), we are told that, according to Roman civil law, “anyone who assumed the authority reserved to the sovereign merited death,”²⁴ and that in response to such an act the Roman Lex Valeria, drafted at the insistence of Publius Valerius, “permitted homicide if one could make out a reasonable case for supposing that the dead man had indeed *aspired* to sovereign power,” arguing, “it was better to have resort to violence than to risk the destruction of both law and government in an anxiety to maintain the rule of law.”²⁵ With striking clarity, Bodin recognizes within Roman jurisprudence what is true of all manifestations of sovereign power, namely, the suspension of the law for the sake of order. When placed in crisis, either by dissent, violence, or even by those who possess too much influence, sovereign power responds with the law’s suspension, because what is at stake, what is always at stake but remains hidden until moments of crisis, is the contingent connection that binds the sovereign right to rule and make laws, with the territory over which it exerts its power and on whose obedience it depends. When this “frame of life” is disrupted, be it by regicide or public dissent, or by economic instability or strong social influence, sovereignty risks losing its power precisely because the legitimacy of the bond between authority and territory risks being undone. Whenever this bond is placed in doubt, the law will be suspended, either in whole or in part.

Those caught in this suspension, those who find their lives conditioned by the law’s withdrawal, are, Agamben observes, not “simply set outside the law and made indifferent to it but rather [are] abandoned by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable” (*HS*, 28). Given the importance of this threshold between the inside and the outside, that is, the boundary

necessary for the possibility of both banishment and sovereign rule, it is certainly no coincidence that among the most ancient prohibitions associated with banishment we find a prohibition against the moving of boundary stones. Before concluding, then, it will be instructive to briefly consider the role boundary stones played in the ancient context.

Boundary Stones

At the outset of this chapter it was stated that sovereignty requires a boundary. The boundary structures political relationships both for that within the sovereign field and for that which lies beyond it. It has also been argued that when the legitimacy of this boundary is challenged, when the edges of the sovereign field are made to appear arbitrary, sovereignty responds with banishment. It should not surprise us, then, to find that within ancient sources the displacement of boundary markers is included among the few original infractions that warrant exile. But the moving of boundary markers is not to be mistaken for theft of property. If this were the case, more obvious forms of property crimes would also be punishable by banishment. They are not. Instead, the moving of boundaries represents a very literal disruption of the relation between authority and territory—a point made clear when we understand the role these stones played in the very earliest narratives of the founding of Rome.²⁶

In book 1 of *History of Rome*, Livy explains that at the founding of Rome on its seven hills, the city was surrounded with a mound and wall. In this way, he writes, the *pomoerium* was extended. Investigating the etymological origin of this term, Livy explains its reference to, “the space which the Etruscans of old, when founding their cities, consecrated in accordance with auguries and marked off by boundary stones at intervals on each side.” He continues,

The part where the wall was to be carried, was to be kept vacant so that no buildings might connect with the wall on the inside, and on the outside some ground might remain virgin soil untouched by cultivation. This space, which it was forbidden either to build upon or to plough, and which could not be said to be behind the wall any more than the wall could be said to be behind it, the Romans called the *pomoerium*. As the city grew, these sacred boundary stones were always moved forward as far as the walls were advanced.²⁷

According to Livy, the *pomoerium* signified a line running by the walls of a city but did not consist of the actual walls or fortifications themselves.²⁸ It was a symbolical wall, and the path of the *pomoerium* itself was marked by *termini*, or boundary stones, which served to demarcate the limit, that is, the *limen*, within which all things were under the authority of Rome and an object of Roman law (in effect, the sovereign field).²⁹ *Termini* also marked the boundaries of a property, and the owner of a property might use *termini* to divide his property for his children. In either case, there was a sacred quality to the stones and the *pomoerium* they traced, and it is for this reason that their disruption is catalogued among crimes punishable by banishment, *eliminium*, literally to take beyond the *limen*.³⁰

In *Homo Sacer*, Agamben refers to Roman boundaries only briefly—one of the few instances where he mentions deeds that warrant the imposition of the ban:

The crimes that, according to the original sources, merit *sacratio* (such as *terminum exarare*, the cancellation of borders; *verberatio parentis*, the violence of the son against the parent; or the swindling of a client by a counsel) do not, therefore, have the character of a transgression of a rule that is then followed by the appropriate sanction. They constitute instead the originary exception in which human life [bare life] is included in the political order in being exposed to an unconditional capacity to be killed. (*HS*, 85)³¹

Along with the breach of duty resulting from the relation between patron and client and the maltreatment of a parent by a child, the ploughing up or displacement of a boundary stone constituted a capital offence punishable by the withdrawal of the law's protection. Once again we find banishment pronounced, not against those who have broken the law, but against those who upset the order upon which the law is founded.

Exemplars

As we have seen, exile is far from a simple consequence of criminality. As Agamben correctly observes, what is at stake in the ban is not the application of the law to a crime, the determination of the illicit from the licit, but the ground (*solum*) of sovereign rule. What shows the ban to be “more ancient” than the law is its concern, not with the application of justice (the judicious exercise of law), but with the constituting

authority of sovereignty, the ground upon which something like justice can appear and remain plausible.

Banishment, far from being mere punishment for a crime, is enacted when an individual life is deemed virulent to a community, when a life is understood to be *baneful*. Banishment is primarily a response not to an unlawful action and its agent, but to a broad-reaching conceptual threat, to the very conceivability of establishing a *new* law.³² An act that is merely criminal, no matter how despicable, is thoroughly acceptable to the law; it can be accommodated by the law and mitigated by punishment. The threat, to which the ban most typically responds, however, is not of this nature, for the ban, by expelling the body, also forfeits the law's claim over that body. If we refer back to Schmitt, what the ban responds to is not the breaking of a law but the threatening of order, be that through an excess of friends or wealth, as in Aristotle; or by disturbing "the public tranquility," as in Beccaria; or by threatening the life of the ruler directly; or even by displacing boundary stones that mark the limits of sovereign power. In each case, it is Schmitt's "regular, everyday frame of life" that is at risk. When this primary coherence is threatened, when it is challenged either by another ordering principle seeking to replace it, or more commonly, and which amounts to much the same thing, when sovereign authority risks being exposed as arbitrary, there appears a response that analytically cannot be the same as the punitive response that follows the breaking of a law. This response is the ban—a state action for which it is not at all clear, nor can it be clear, whether it is punishment or an escape from punishment.

It is for precisely this reason that we find in Cicero a discussion concerning whether exile is to be regarded as a release from punishment or a punishment in its own right.³³ In more modern times, we find this point referenced in *Leviathan*:

Exile (banishment) is when a man is for a crime condemned to depart out of the dominion of the Commonwealth, or out of a certain part thereof, and during a prefixed time, or for ever, not to return into it; and seemeth not in its own nature, without other circumstances, to be a punishment, but rather an escape, or a public commandment to avoid punishment by flight. And Cicero says there was never any such punishment ordained in the city of Rome; but calls it a refuge of men in danger.³⁴

In *Homo Sacer*, Agamben likewise refers to the ambiguity of banishment as a form of punishment. He remarks, "the age-old discussion in juridical

historiography between those who conceive exile to be a punishment and those who instead understand it to be a right and a refuge . . . has its roots in this ambiguity of the sovereign ban" (*HS*, 110). In each case, it is because banishment is not an act of law, and therefore, is outside the judicial logic of crime and punishment, that the ambiguity of exile appears. Life in exile is dire because the law is absent. The exposure to threats without the possibility of redress—no longer being an object for justice—compels the exile to seek shelter under the jurisdiction of another state. Yet life released from the law, despite the civil death this implies, is also, potentially, and in an extreme manner, a kind of liberty—namely, the potential ground of a new law, or more provocatively, the potential to be a law unto oneself.³⁵

This, of course, leads us back to Aristotle. What the ban properly responds to is not that which perpetrates a crime but that which has influence. The ban responds not to the criminal but to "those who seemed to predominate too much," those whose paradigmatic presence is potentially an alternative to the law and therefore threatens the sovereignty of the law itself—something that obligates not a punishment but a forgetting. The ban is that penalty reserved not for a deed, but rather for a way-of-life whose threat is driven by the capacity to be a model (example) for a new system of order, thereby showing the current order to be violable. When, early in *Homo Sacer*, Agamben argues that "exception and example are correlative concepts that are ultimately indistinguishable and that come into play every time the very sense of the belonging and commonality of individuals is to be defined" (*HS*, 22), it is arguably this life-worthy-of-being-banned, and its paradigmatic character, that he has in mind. The banished individual (just as in the case of banned books or political parties) threatens the state by standing as an alternative to it, and in doing so places the entire logic of law into question. The example is forceful in a way the law is not, for exemplary individuals normalize a community without commanding that this normalization take place. The order produced by law depends on the obedience of the citizenry over which it is applied, and it is the example, for better or worse, that makes this obedience both plausible and possible. Consequently, when there appears within the sovereign field an individual whose influence becomes too great, that is, whose exemplarity becomes too persuasive, the state is compelled to respond, because not doing so would risk exposing the contingency of its own influence. The work of nationalism and patriotism are the most obvious instances of

the state's attempt to shore up its own exemplarity, and it is no coincidence that in both these cases, the expulsion of foreigners and foreign influences is common—as is the strengthening of the boundaries that define the sovereign field.

When Aristotle speaks of those “gods among men” who are the targets of banishment, their presence within a sovereign territory is disturbing precisely because they upset the givenness of obedience. Aristotle claims that “gods among men” are “themselves a law,” and it is in these figures, and these alone, that sovereignty finds its most potent foe. It is not those who break the law, but those who deny the legitimacy of its reach, that is, *the legitimacy of its field*, that represent a genuine alternative to the politics of sovereignty. Once again Aristotle provides insight:

Again, superiority is a cause of revolution when one or more persons have a power which is too much for the state and the power of the government; this is a condition of affairs out of which there arises a monarchy, or a family oligarchy. And therefore, in some places, as at Athens and Argos, they have recourse to ostracism. But how much better to provide from the first that there should be no such pre-eminent individuals instead of letting them come into existence and then finding a remedy. (1302b, 15–21)³⁶

The management of obedience has always been the primary task of sovereignty, and it is in the disruption of this obedience that an alternative to sovereignty appears: not a disruption that leads to a new order and a new obedience upon which a new set of laws are erected, but a disruption that remains open. The task for a politics beyond sovereignty, a difficult and perhaps ultimately impossible task, is to realize a community of those who, by consensus or custom, are laws unto themselves—exemplars or exiles. This vision has, of course, often been ruled out as a political impossibility, but if a community beyond sovereignty is to be realized, this issue must be addressed. The ways-of-life subject to banishment suggest a place to begin.³⁷