

Agamben's Political Paradigm of the Camp: Its Features and Reasons

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In this paper I would like to give critical consideration to the political claim Giorgio Agamben makes in his contention that the camp is the “fundamental political paradigm of the West.”¹ In particular, I would like to treat this contention in relation to the requirements that, I think, render “political theory” a coherent intellectual discipline. Reduced to its most basic form, political theory deals with institutional mechanisms of governance, or, more prosaically, with the rules and authority used to govern collectivities. Every time a part of a collectivity wants to rule over the whole, to use Pierre Clastres’ definition, we must deal with politics.² As a general point, one would like to see by means of theory behaviors, events, and mechanisms explained, which otherwise would remain obscure. At the very least one expects of theoretical work this contribution to lucidity. Thus there must be an ever-repeated going back to those things that a theory purports to illuminate. I do appreciate fine objections or warnings against naïve realism. Nonetheless, I think this so-called “test of reality” must be accepted in however refined a version one would care to make it, and of course the more refined the better.

As an example I can cite Michel Foucault who sets up a dual test for political theory. He asks that political theory be able to speak across “a population of dispersed events,” that it not impose a reductive explanatory principle on complex phenomena; and, further, that alongside its explanatory capacity to render legible a field of “dispersed events,” it must add a willingness to test its hypotheses against real situations.³ This dual test comes out of Foucault’s longstanding concern with methodology. In “On the Archaeology of the Sciences: Response to the Epistemology Circle,” he identifies as the key obstacle to understanding complex social practices the prior commitment to models of explanation unsuited to what they intend to explain.⁴ In *Discipline and Punish*, Foucault follows this insight when he notes that the study of “the juridical structure of society alone” does not get at “the concrete systems of punishment.”⁵ Similarly, in his Lecture of January 14, 1976, he states that the problems and topics that are central to the canon of political philosophy cannot offer adequate resources for studying the shifts that occurred in the age of disciplinary power. This is because the approach the canon recommends specifically eschews the analysis of *how* institutions work in favor of the question of defining *what* constitutes sovereign power.⁶

I would like to examine Agamben’s propositions about the camp from this perspective; I wish to focus on the explanatory capacity of his political theory. It is a striking feature of Agamben’s approach to politics that his reasoning typically proceeds from extreme cases or threshold states, such as the position of a concentration camp inmate or the juridical aporia of the state of emergency. Such extreme examples provide far more than illustrations of Agamben’s theses about the biopolitical determination of the West. They are, in his view, both the provocation to an explanation for contemporary theory and the definitive test against which the explanatory claims of other political theories are found wanting. In this respect, Agamben uses “limit” cases that are said to test the explanatory adequacy of “traditional” political theory and defends his procedure as more adequate to the requirements of explanation. He takes the rationale for this position from Kierkegaard’s view that the

“exception explains the general as well as itself. And when one really wants to study the general, one need only look around for a real exception.”⁷

Amongst the array of extreme examples he cites, it is the camp that provides the context for an emphatic formulation of the novelty and significance of his work. In his 1995 book *Homo Sacer: Sovereign Power and Bare Life*, Agamben proffers two highly provocative formulations regarding the camp to show how seriously traditional political philosophy, in failing to identify the paradigmatic significance of the camp, misconstrues our contemporary situation. In the first, he states that “[t]here is no return from the camps to classical politics.”⁸ Second, he advances amongst his “provisional conclusions” the thesis that “today it is not the city but rather the camp that is the fundamental biopolitical paradigm of the West.”⁹ When he notes the passing of classical politics, Agamben, presumably like Foucault, wishes to call into question the explanatory utility of contract theories of the origins of state power as well as attempts to found political liberties in the conception of citizens as bearers of “rights.” He adds to this point the more radical view that political theory’s focus on the democratic nation-state rather than the camp obscures the real seat of authority in the West. This addition, which promises to identify the fundamental mechanism of political authority, is emphasized in the way Agamben opposes the camp to the city. In this case, he wants to show the fundamental reconfiguration of politics that his focus on the camp entails: there is, he says, a need to address a query to the “social sciences, sociology, urban studies, and architecture” concerning the models these discourses use “to conceive and organize the public space of the world’s cities.”¹⁰ Attention to the camp space illuminates aspects of prevailing circumstances that are not otherwise evident. It is in the camp, in other words, that the features of institutional authority and rule (or mechanisms and relations of power) are presented in their fundamental form, and this makes the camp – rather than the state or the city – the privileged “paradigm” for analyzing the practices, however expansively defined, of Western politics.

Agamben gives two specific reasons for the paradigmatic significance of the camp-space: the camp is the space of exception that, in Kierkegaard’s words, “explains the general as well as itself,” and law is disclosed within this space to be a relation of force. Together, these reasons form the crux of his claim that the camp has general significance. He holds that the legal category for the camp is the state of exception and that this juridical setting of the camp discloses general tendencies of legal institutions in democratic and authoritarian states alike, especially regarding the “essence of law” as a relation of force. Agamben’s thesis that the legal relation is reducible to force entails an extremely artificial view of the mechanisms of coercion and authority, as these mechanisms work in complex social organizations. I think this makes his doctrine more or less useless for the purpose of social criticism. It is one thing to hold, as Foucault does, that the philosophical discourse of liberal rights tends or in any case has tended to exclude consideration of the real violence involved in legal institutions; it is quite another to think that the Nazi camp reveals the essence of law as it has evolved in the West.

Let me be clear. It is not Agamben’s tendency to dramatic overstatement that I wish to consider; nor do I wish to reflect on the suggestive way he opens up and frames new fields for scrutiny. The insights in his writing often come from the connections he sets up between figures of literary-philosophical significance (such as Kierkegaard, Benjamin, and Kafka) on one side and figures whose writing specifically has political topics and problems in view (such as Foucault, Arendt, and Schmitt) on the other. The poetic dimension of Agamben’s choice of figures and themes is tied with his way of doing political theory from the vantage point of the margins. Like many others in the post-Marxist tradition, his deep suspicion of

the political institutions of the West is rooted in literary utopianism. His work accordingly holds up to scrutiny assumptions regarding the distinctive values of the West, especially in the field of human rights. Still, it needs to be asked whether Agamben's work provides a worthwhile way of looking at modern politics. I will argue here that the virtues of offering a perspective from the outside, as it were, are not sufficient to make his a useful perspective for the kinds of problems political theory deals with. My discussion is divided into three parts. In the first part, I will set out Agamben's account of the features of the camp-space. Next, I will examine the reasons he gives for the paradigmatic significance of the camp against the criteria that, to my mind, distinguishes successful political theory. Finally, I would like to consider Agamben's claim to be doing political theory. It is true that certain suggestive aspects of his thought have established his reputation as a salient reference point in contemporary discussions of biopolitics. However, the question I want to consider here is not whether Agamben has had suggestive things to say on political topics, but whether his approach to political questions is useful as political theory.

1. The Camp: Its Features

Agamben uses the camp for his historical project of casting the present as a time of crisis and transformation. Specifically, he thinks that the camp brings to a point of culmination the tensions that underpin the functioning of law. He hence distinguishes the camp from other forms of confinement on account of the particular laws that institute it. Agamben describes the particular functioning of the law in the camp by way of a contrast with penal law:

Prison law only constitutes a particular sphere of penal law and is not outside the normal order, the juridical constellation that guides the camp is... martial law and the state of siege. This is why it is not possible to inscribe the analysis of the camp in the trail opened by the works of Foucault, from *Madness and Civilization* to *Discipline and Punish*. As the absolute space of exception, the camp is topologically different from a simple space of confinement. And it is this space of exception, in which the link between localization and ordering is definitively broken, that has determined the crisis of the old "*nomos* of the earth."¹¹

Agamben's position that the camp is the harbinger of the "crisis" of coordination of the relations between localization (nation) and ordering (state), on account of its legal status as "the absolute space of exception," services various strategic and rhetorical aims. As to the latter, the mood of Agamben's writing on the camp is characterized by the pious tone of someone noting salient, momentous, but hitherto unrecognized features of our political context:

There is no return from the camps to classical politics. In the camps, city and house became indistinguishable, and the possibility of differentiating between our biological body and our political body – between what is incommunicable and mute and what is communicable and sayable – was taken from us forever. And we are not only, in Foucault's words, animals whose life as living beings is at issue in their politics, but also – inversely – citizens whose very politics is at issue in their natural body.¹²

This presentation of the camps as rendering "classical politics" a conceptual and practical dead end is one way through which Agamben marks the historical portent he sees in the camp situation. The pious tone is relevant for the consequences of his political diagnosis of

our times insofar as it validates the relevance of categories such as “hope” for a different relation between life and law. More specifically, the rhetoric paints an extreme scenario, which corroborates the chief thrust of his analysis that a momentous historical juncture has been reached. Although more could be said regarding the contribution this tone makes to his argument, I limit my analysis here to the theses regarding the law that he extracts from the camp situation.

Considered strategically, Agamben’s manner of tracing the historical emergence of the camp to the state of exception and martial law, rather than depicting it as a development of ordinary law or even criminal law,¹³ aims to correct the “prejudice” under which the camps of the Second World War are seen as an anomaly to juridical explanation and political experience.¹⁴ It is important for his general theses regarding the law that the camp be recognized as doing more than disclosing certain tendencies of legal institutions – these tendencies need to be seen as common to both democratic and authoritarian states.¹⁵ Just as Agamben contends in his later work *State of Exception* that the state of exception constitutes the paradigm for the functioning of law – the core topic of juridical history and theory and not an anomaly to be considered solely in terms of questions of fact¹⁶ – so too in *Homo Sacer* he takes the camp less as an anomaly that can be grasped in terms of “the events that took place there” than as “the hidden matrix and *nomos* of the political space in which we are still living,” which can be made accessible by a study of the “specific juridico-political structure” that underpins its existence.¹⁷

The distinctive characteristics of the camp-space are the result of the development of inbuilt tendencies of Western legal-political systems, and its function as a “killing machine” therefore has a general scope.¹⁸ On the other hand, Agamben asserts that it is because the camp-space represents the extreme case of the fracturing of the historical coordination of life and law that it discloses the constitutive fictions of the law as lethal force over life and foretells the potential ruin of law’s hold over life.¹⁹ There are, he speculates in this vein, two forces in history: a force that institutes and a force that deposes or renders inoperative.²⁰ This schematization of history frames and encourages his messianic references to the prospect of “playing with” or “studying” the law as if it were a disused object.²¹ It also drives his characterization of the significance of the law, which, at the extreme end of its application in the state of exception that governs the camp, manifests as pure force.

A conceptual event in the form of a specific conception of the relation between law and human life works itself out in the history of the West, finally displaying its essence in the camp. The camp thus has a general epistemological value. In the camp, the juridical substratum of the whole legal and political edifice of the West breaks through and becomes visible. In making plain the “truth” of the rule of law, otherwise masked or disguised, the camp also displays the crisis point of modernity.

At the same time, Agamben wishes to use what he takes to be the specific “legal” features of the camp to read off the specific threshold state of human life in political space. The inhabitants of the camp are denationalized and stripped of their rights as citizens. They thus mark the point at which their own blood becomes fused with law and subject to political determination.²² In the camp, the political relation takes shape in the terms of the “ban”; life that is excluded from the hold of the legal categories of nationality and citizenship is forcefully exposed to political calculations. Agamben understands this inclusion in the sphere of political calculation to be the effect of the legal mechanism that places it there, namely the exclusion of the camp from normal law in an “absolute space of exception.”²³ The project of the camp is the realization of the logic of sovereign power as Agamben defines it: to exercise a self-authorizing power over life.²⁴ It is for this reason that in *Remnants*

of *Auschwitz*, he defines this space as the “absolute biopolitical space” and describes its significance in *Homo Sacer* as giving what is un-localizable (i.e., life stripped of its relations to national territories and state organization) a permanent and visible location.²⁵ In one of the most striking conclusions to this chain of argumentation, Agamben contends that the status of the camp as the realization of the potential of sovereignty rules out the effectiveness of recourse to legal instruments to contest it. The camp shows the propensity of the law to be a killing machine; hence, despite the fact that there are historical precursors as well as more contemporary examples, Agamben focuses his analysis on the Nazi death camps because these camps realize the potential of sovereign power in its relation to life as a killing machine.²⁶

I would now like to critically consider Agamben's “reasons” for placing the camp in this paradigmatic position. The “reasons” he gives, such as his understanding of the “state of exception” as the norm and his related thesis regarding how the “force of law” emerges into view in the camp, makes the orientation of Agamben's approach to politics clear. This approach is determined by his commitment to a particular conceptual vocabulary. Specifically, Agamben identifies the vocabulary of law and sovereignty and their hold on life as the key to politics. However, Agamben's work on politics, despite its tendency to liberally supply aberrant cases and evocative situations for analysis, eschews the “test of reality.” It fails to contribute to the lucid understanding of current political circumstances because the ideas it uses as the pivot for its analyses are neither answerable to circumstances nor sufficiently attentive to the subtleties of competing theories. I would like to systematically set out the deficiencies of Agamben's approach to political topics and problems in light of the criteria that I think distinguish the kinds of approach more suitable to the task of political analysis. To be brief, political analysis needs to keep in view the accountability of theory to cogent explanation of social practices. The speculative style of Agamben's analyses leads him to commit the same fault Foucault ascribed to classical political philosophy: as political theory Agamben's work founders because his core fidelity is not to explain complex events but to defend concepts with dubious explanatory value.²⁷

2. The Camp: Its Reasons

Agamben claims that his focus on the camp allows him to innovate in a useful way outmoded concepts of traditional political theory. However, several aspects of Agamben's work call into question its competency as political theory. Four aspects in particular stand out: i) the ahistoricity of his theory; ii) the lack of any serious consideration given to the topic of law's legitimacy; iii) the fact that he treats the subjects of law as totally passive “bodies” and excludes thereby the possibility of resistance; iv) the empty response Agamben makes to these points of criticism regarding the totalizing nature of the dark picture he paints of our current times by gesturing to a vague “future” in which the law would be “deactivated” and become a token for “play.”

There are other objections that could be made. We could, for instance, question the appropriateness of the sources – including literary-philosophical works – he relies on to dissect political problems. One of the innovations of Foucault's work that allowed him to develop the counter-thesis of the “disciplines” to the narrative of the modern emancipation of the individual was the imperative that the study of mechanisms of social order be guided, not by the traditional questions and topics of political philosophy, but by paying attention to the practices and manuals of modern institutions.²⁸ Foucault described this approach as “ascending” from an analysis of practices to a more general concept or picture of what

it studies and contrasted it to the “descending” model of applying philosophical concepts to social practices.²⁹ I mention this point because Agamben clearly adopts the idea of necessary innovation of outmoded concepts from Foucault’s use of it.³⁰ Despite this, the four points mentioned above show that Agamben’s claim to innovation is unwarranted and that what stymies it is his fidelity to an artificial conceptual construction. In what follows, I will refer to Foucault as well as to other noted theoretical positions in political sociology to flesh out alternative ways of analyzing organized social environments. The topics and issues covered in these alternative approaches show the deficiencies that follow from Agamben’s reasons for focusing on the situation of the camp. These alternative approaches are not presented here as flawless models that offer definitive answers to pressing political questions; the results of any political inquiry are open to debate. These alternatives are referred to in order to show the elements and factors that competent political theory needs to consider when it puts forward a credible characterization of political circumstances. In particular, each of these alternatives attempts to link the credibility of ordinary perception of circumstances with a more critical or systematic perspective on the factors involved in such perception. Agamben, by contrast, looks past such ordinary perception in favor of his radical and artificial conceptual construction. Let me now consider in more detail the four aspects of Agamben’s work that call into question its capacity to explain complex social organization.

i.

Agamben’s claim that the camp space reveals the essence of law pivots on two ideas: first, that the state of exception has become the norm and second, that the law’s tendency to violence, its “essence,” has become more pronounced. Agamben’s “exception” is a state in which normal operations of law are abrogated and the sovereign power exercises the power of life and death over its subjects. These subjects are then reduced to what he calls the bare life of *homo sacer*, basically to the status of the inmates of the Nazi extermination camps. The “exception” is fundamentally defined by the fact that it is an exercise of power that is *not* an exception, limited in any way – in duration, in scope, by definite aims, etc. – but is an “ordinary” state, holding sway indefinitely and universally:

If Nazism still appears to us as an enigma, and if its affinity with Stalinism (on which Hannah Arendt so much insisted) is still unexplained, this is because we have failed to situate the totalitarian phenomenon in its entirety in the horizon of biopolitics. When life and politics – originally divided, and linked together by means of the no-man’s land of the state of exception that is inhabited by bare life – begin to become one, all life becomes sacred and all politics becomes the exception.³¹

This situation in which the exception has become the norm displays the essence of law. The Nazi camp had a specific function: the extermination of inmates, whose very presence there is made possible by application of physical force. In all his statements about the camp situation, the most important thing Agamben wants to show is that law is a mask for a real relation of force. However, it is one thing to accept that the reference to the possibility of force is implicit in all systems of law, and quite another to see in this reference law’s “essence,” that law can be reduced for its essential part to submission to superior force. It is because he makes the operation of sovereignty in the camp an insight into the essential structure of law that Agamben needs to defend this latter thesis. Now, it is true that Agamben arrives at this position regarding the law through a complicated process of argumentation.

For instance, he holds that the application of law to concrete situations of fact depends on the possibility of the suspension of law. From this perspective, the camp situation cannot be located outside the juridical order; it is, on the contrary, an ever-present possibility of law, the possibility of the state of exception. But how does this thesis regarding the suspension of law in the state of exception contribute to Agamben's interest in understanding law's "essence" and "potential"? The answer to this question can be clearly seen in his use of the camp situation. On one level, this situation is the limit-case of the relation between life and law under the conditions of the state of exception. More crucially, the emphasis Agamben gives it, the lengths to which he goes to describe the murderous events that occur there show that if the camp is the paradigm of politics today, this is because the inbuilt potential of law as, in Agamben's words, a "killing machine" is realized there. Indeed the very duality of the law – that it can be suspended and in force – is in Agamben's eyes a situation of deceit that is unmasked in the camp when this dual aspect is reduced to a relation of force.

The difficulty here is that Agamben, given the ahistoricity of his theory, is unable to provide an account of why the state of exception has become a problem at this particular point in time. Similarly, he claims that the law is more likely to bring violence into play *now*, in the present historical juncture, than ever before, a claim that pertains to questions of fact. Agamben, however, cannot draw a link between the thesis concerning law's "constitutive violence" and current circumstances because he pays no attention to issues such as historical relationships between political institutions and policing mechanisms, which disciplines like political sociology deal with.

Agamben's ontological theses regarding the "essence" of the law do not help in attending to the historical problem his theory needs to be able to address: namely, to show the process by which "the state of exception has become the norm." More generally, it is difficult to see how his commitment to such theses sheds any light on the workings of the law.

ii.

Agamben sees the purported "legitimacy of law" as a ruse of the liberal state, which in the social contract narrative claims legitimacy for law on account of its protection of otherwise vulnerable life. This position may usefully be compared with Foucault's comments on the same topic. Foucault addresses the topic of law's legitimacy from two different angles. First, he sees in political philosophy's interest in the question of the features that qualify sovereign power as legitimate a tendency to avoid the crucial question of *how* "legitimate" power actually operates. In this sense, the account he provides in his work on prisons of how law's violence manifests in penal institutions is a critique of the adequacy of the theory of sovereignty to form an accurate picture of the complex forces and instruments involved in social organization.³² Second, in his 1978–9 lectures on biopolitics, Foucault argues that liberalism is a government of life rather than the exercise of sovereignty over life and death. His analysis of the policy direction of post-war German intellectuals is premised on the assumption that their activities were strategically meaningful. Their social integration and state building initiatives were based on the goal of economic success. Even their "power politics" were staked on rapid economic growth.³³ Foucault's analysis of liberalism follows an injunction comparable to his focus on reformist manuals and prison plans in *Discipline and Punish*. Institutional practices do not function independently of what people think about them. They are intelligible precisely because they embody strategically considered ends (even if these ends are not realized or contained by those strategies).³⁴

The premise of Agamben's analysis, in contrast, renders power senseless. What possible intelligible motives might Agamben's sovereign have for wanting perpetual and unlimited disposition over the physical existence of its subjects in the manner of a Nazi camp warden? This question cannot be raised in Agamben's scheme. Moreover, it is precisely because the law is not – as Agamben's analysis assumes – an objective mechanism that could function independently of what people think about it that he obscures how the different ways in which the law is experienced as legitimate (e.g., in its strategic deployment to realize specific ends) can affect its “essential nature.” This renders Agamben's thesis of the “constitutive violence” of the law, if not unintelligible, at least inscrutable. Is it the way political institutions are shaped or the way human individuals are conceptualized in legal doctrine that produces this state of affairs? The deficiencies of this perspective can partly be found in the ontological nature of his framework, which thus has very little to do with an inquiry into institutional features and practices. It aims to pose questions regarding legal institutions and practices at the “fundamental” level of the forces or elements that drive history. His fascination with the terminology of the “exception” as the incisive political vocabulary for our times is a case in point. His use of this terminology marks out extreme situations not as anomalous, but as if they had general significance. This mode of argumentation necessarily looks past the task of analyzing institutional functioning because it imports the grammar of such functioning from the “exceptional” situation.

iii.

Agamben treats those subject to law as totally passive “bodies.” His focus on the camp situation is telling because this is the only situation where his doctrine seems to work: in the extermination camp, action does not meet other actions, but bodies. Foucault insisted that this type of situation was not a relation of power, but one of submission to force.³⁵ Similarly, sociological models of social interaction differentiate the study of social organization defined as actions influencing other actions from situations of crude force.

Since he is so often contemptuous of the assumptions of liberalism, it is worth comparing Agamben's position on this question of force with that of liberalism. Classical liberal theory acknowledges the ultimate dependence of order on relations of force; it holds the unification of the aggregate force of society under a single coercive law to be the virtue of the state. The purpose of such force is the protection of the members of its aggregate body. However, there are limits on the capacity of force to decide conflicts internal to this aggregate body. These limits are a central topic in liberal political philosophy, which sees reliance on force to manage social conflicts as a sign of the system's weakness: such reliance places inflationary pressure on force, thus devaluing it. “Force” as it is understood and used in liberal political theory is a differential quantity that has to present itself and be received as a “quality,” as authority, on the pain of dissipation. In *The State and the Rule of Law*, Blandine Kriegel reads the history of theories of the state in these terms, emphasizing the perils of naked reliance on force pointed out in such theories. She notes, for instance, that theorists of the state since Bodin have found the state that restrains itself in its use of force and its extension of powers more powerful than one with unlimited powers.³⁶

The question of force can also be approached from the perspective of other mechanisms that are important for social organization and that presuppose the existence of distinct currencies that pertain to the different media of the social system. Liberal theory acknowledges the findings of political sociology that describes how social order is constituted through, for instance, symbolic integration and economic instruments. Social integration and organization take place in multiple dimensions or media: symbolic (cultural, ideological, etc.),

economic, and political (participation in collective decisions at various levels).³⁷ Talcott Parsons attempted to define the problem of social interaction in terms of “systems of action” that use different “symbolically generalized media of communication” where action influences action. As part of this approach, he maintained the importance of patterns of interaction in establishing and reinforcing expectations for the functioning of such media. When a cultural system changes, this marks the introduction of a new pattern whose meaning is intelligible to and expected by social actors.³⁸ In particular, Parsons was interested to account for the interaction between social, cultural, and personality systems. These relationships are all bi-directional according to him; that is, these symbolic systems are intelligible to agents whose action is susceptible to the “actions” of social and cultural systems of meaning.³⁹ This approach is important not just because of the elements it deploys to explain social organization, but because of the image it produces of such organization. I will return to this point in my concluding remarks to this paper.

The economic system is based on interactions in which actors select actions that will optimize their ends. They want to act “in the most profitable way [to achieve] the highest benefits when costs are substantial.” In this system, the symbolic medium of money is ordered according to a specific set of norms for its use and acquisition. Within the system, money is not replaceable by force. For instance, as a legitimate means for acquiring property, the use of money as a symbolic mechanism of exchange forbids as illegitimate “the use of force” for property acquisition.⁴⁰ Similarly, in the political system, force is understood as an abortive way of managing conflicting goals since it is susceptible to counter-action by the force of others. It thus fails to make decisions that could bind everyone in a social system. The political system uses forms of collective decision-making to maximize the realization of actors’ specific goals. Legitimate political power is a general medium that can make collectively binding and effective decisions in a way that force cannot.⁴¹ Insofar as such mechanisms are effective, they are real; and they need to be understood and analyzed in terms of their actual mechanics and dynamics, not dismissed as masks.⁴² With these comments I do not intend to mount a defence of liberal political philosophy. Rather, I want to ask whether Agamben’s style of analysis allows things to be seen more clearly than they are in sociologically influenced liberal theory.

Agamben’s criticisms of law are directed to the potential he sees realized in the camps to hold life in a relation of exposure to pure force. Of course, the critical stand he takes on law is explicable in terms of the ontological perspective he adopts, but we need to ask whether adopting this stance helps us illuminate current political circumstances. Why, for instance, does he choose to explain what happens in the camp as a potential of liberal law, rather than as a degradation of liberal protections?⁴³ Additionally, how useful are categories crafted in the field of jurisprudence, which have their proper register of application within this field, for the purpose of describing what occurs in extreme situations like the camp? What makes the camp analogy especially unsuitable as a paradigm for understanding the organization of a society is that the “camp population,” unlike society, is not meant to have a future (and here one needs think of all those things that are required for a society to have a future: from material production to symbolic identity, etc.). The murderous contempt shown the camp inmate is simply not a viable option for a state.

iv.

Agamben responds to the criticisms that his account of law leaves little room for resistance with the promise of the “deactivation” of law. In the *State of Exception*, he writes, “One day

humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use, but to free them from it for good.” This new relation to law is one premised on its “deactivation”: “What opens a passage toward justice is not the erasure of law, but its deactivation and inactivity.”⁴⁴ These remarks draw on different sources. On the one hand, the idea that law is deactivated draws on the Jean-Luc Nancy’s notion of “accomplished nihilism.” In this vein, Agamben promises that the semantic and practical functions of law will be exhausted – as a shell of empty functions it will be a token for play. On the other hand, he draws on messianic references to justice that pronounce a politics “free” of sovereign power.⁴⁵ Such remarks are suggestive and no doubt deserve further study for a better understanding of the influences on his thinking. The question that needs to be asked from our perspective is, however, whether suggesting that law will become a tool for play helps shed light on current political circumstances. How can the political significance of such a statement be measured?⁴⁶ Whatever its philosophical provenance, the notion of playing with law does not address any of the significant shortcomings of Agamben’s political theory.

3. Agamben’s Political Paradigm of the Camp and the Tools of Political Theory

Agamben’s understanding of sovereignty is unacceptably beholden to his fascination with the camp. In Agamben, biopolitics reverts back to a totalizing schema and relies on the philosophical canon and speculative schematism for its meaning. According to Agamben’s quasi-historical schema, the camp is the situation in which “bare life” is completely in view. In fact, he says that the camp shows how sovereignty operates; it shows the logical development of its internal logic. Moreover, he asserts that this logic is common to liberal and totalitarian states alike. Perhaps more important still is the fact that Agamben’s examples always take him to cases that fall outside the ordinary settings of social institutions where force is not a one way relation but is inscribed in a thick web of power relations that run in all directions and where various strategies are used by all involved.⁴⁷ Agamben’s characterization of the sinister project of the legal machine that reaches its apogee in the camps misses out on the task of dealing with the complex structures and practices of liberal societies. Or, to put it differently, the only situation where his doctrine seems to work is the extermination camp where action meets, not other actions, but bodies. The artificial radicalism of Agamben’s conceptual construction coincides with the artificial situation where human life is reduced to bare biological functions under the constant threat of extinction. Agamben holds to the artificial situation of his doctrine against the practices and realities – such as the ordinary perception of the experience of the legitimacy of law – that are unresponsive to this doctrine’s guiding concepts and orientation.

Agamben’s evaluative grid might be attractive to some. But this grid has two problems: its totalizing sweep is too coarse to account for the interaction between specific institutional practices and agents, and it refuses to consider the suitability of its concepts to circumstances. To be sure, arriving at a critical picture of liberal society is not an easy task. It is precisely this normative dimension that critics often found wanting in Foucault’s work. How does the microanalysis of power in a specific institution build up to a picture of an entire social field? Foucault arguably tries to respond to this criticism in the first volume of the *History of Sexuality* when he describes the coordination between specific institutional structures, such as the arrangement of sleeping quarters in boarding schools, that are also biopolitical (immanent to the social field). Biopolitics describes the logic of the administration of life that underpins specific microdisciplines; but it escapes being a generalizing mode of explanation because it is arrived at through an analysis of local aims of power whose effects are not confined

to a specific locale. In this way, Foucault keeps in view the intelligibility of institutional practices. We can also cite *Discipline and Punish* in this regard, where Foucault analyzes specific institutional practices from the perspective of the aims and intentions that ground them. To arrive at his thesis of a disciplinary society, he needs to show that these local aims of power are not confined to their local origins but have a swarming effect as techniques that can be taken up and used in other institutions and contexts. I do not wish to defend the proposition that Foucault keeps his analysis entirely free of speculative elements. I do, however, want to draw attention to the range of factors that warrant the claim of explanatory adequacy, a range remote from Agamben's narrow focus on the camp as the field of legibility for the essence of law.

In the case of the alternatives mentioned, we get a concrete image of the factors involved in the explanation of social organization. None of these theories are flawless. But they do outline the stakes and elements involved in theoretical debates over the explanation of political realities. In contrast, Agamben's theory founders most especially because it does not adequately understand the force or impact of the image of social organization it propagates. The picture that emerges from his work is that of a brutalizing tyrant on one side and an innocent, totally passive victim on the other. This image doubtlessly has a particular way of ordering one's mind in thinking about how issues are to be treated. Part of the work of theory is to come up with judicious images that can direct attention to salient issues. In such work, ordinary perception of things cannot be dismissed as misguided. Both ordinary perception and critique grounded in a moral principle must be kept in view.

Against Agamben's contention to articulate the problems of liberal societies in "fundamental" terms, I have argued that his conception of law and sovereignty distorts the problems and elements involved in cogent political explanation. These distortions can be seen by way of comparison with the complicated pictures of social organization present in alternative theoretical positions that encourage attention to the diverse factors involved in social life. Agamben's theory deprives itself of the possibility of learning from the realities it tries to illuminate and thus of enriching itself in the process of explanation. The price is the impoverishment of theory. Moralizing tone and "messianic hope" are no substitutes for the willingness to accept the test of reality in all its complexity. What they do indicate is perhaps that his theory is too speculative, too ready to forgo the task of analyzing actual practices and institutions in its "philosophical" attachment to articulate the "ultimate" or the "fundamental."

NOTES

1. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Palo Alto: Stanford University Press, 1998), 181.

2. Pierre Clastres, *Society Against the State*, trans. Robert Hurley in collaboration with Abe Stein (New York: Zone Books, 1989).

3. Michel Foucault, "On the Archaeology of the Sciences: Response to the Epistemology Circle," in *Aesthetics, Method and Epistemology: Essential Works of Foucault 1954–1984*, Vol.2 (New York: The New Press, 1998), 297–333, 303.

4. See Foucault, "On the Archaeology of the Sciences," where he advocates dispensing with "ready-made syntheses, those groupings which are admitted before any examination, those links of which the validity is accepted at the outset" (302).

5. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1979), 24.

6. Michel Foucault, "Two Lectures," in *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, ed. Colin Gordon (London: Harvester Wheatsheaf, 1980), 78–108, 95.

7. Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller-Roazen (New York: Zone Books, 1999), 48.

8. Agamben, *Homo Sacer*, 188.

9. *Ibid.*, 181.

10. *Ibid.*

11. *Ibid.*, 20.

12. *Ibid.*, 188. See also his comments on the “‘core’ of the camp” in Agamben, *Remnants of Auschwitz*, 51–52. J.M. Bernstein describes the detail of Agamben’s work on the camp-situation as a “pornography of horror.” See J.M. Bernstein, “Bare Life, Bearing Witness: Auschwitz and the Pornography of Horror,” *Parallax* 10, no. 1 (2004): 2–16.

13. Agamben, *Homo Sacer*, 166.

14. Agamben mentions that the Spanish used internment camps in Cuba in 1896 and that the English used them during the Boer War, but in his view the “pertinent factor” in these cases is that “a state of emergency linked to colonial war is extended to an entire civil population” (*ibid.*, 166). What these camps have in common is a particular juridical circumstance. His focus on the camps in Europe during the Second World War is understandable in terms of his orientation to extreme events and cases, for the interned population is exterminated in these camps. It is in these camps, in other words, that what he construes as the murderous potential of the biopolitical paradigm of the West is realized. It is because he sees this as the “potential” of the West that he condemns the posture of “horror” at the “atrocities” of the camps as a “hypocritical” attitude (*ibid.*, 171).

15. In this respect, Agamben emphasizes that the *Schutzhaft* provisions, which allowed for “protective custody” and were later used by the Nazis for their camps, were first put in use by Social Democratic governments in Germany to detain communists (*ibid.*, 168–9). He also argues that the conversion of liberal states into totalitarian states and back again occurs with ease because the referent – namely, bare life – is constant (*ibid.*, 122).

16. Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2003), 1. It is significant that this path of analysis focuses on the general import of the juridico-political structure of the camp for the status of the “law.”

17. The quotes are from Agamben, *Homo Sacer*, 166.

18. A few remarks regarding “bare life” are in order. The concept of bare life emerges in Agamben’s thought out of a disagreement with Foucault’s account of biopolitics as the logic of the modern state developed at the end of *The History of Sexuality: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1990). Foucault argues here that life becomes the object of political calculation as modern state power increasingly takes the form of administrative power that extends and intensifies its hold by aiming at the particulars of the life cycle of its population. Although Agamben later modifies his view by conceding to some of the distinctive features of modern biopolitics as Foucault described them, in the first volume of the *Homo-Sacer* trilogy Agamben argues that the features Foucault ascribes to the institutional operation of modern political power have their basis in the classical distinction (of Aristotle) between *zoe* and *bios*. In contrast, the description of the camp and the move of making it his key political-theoretical paradigm are both based on the thesis that bare life is the main reference of biopolitics. The concept of “bare life” is, however, more or less completely underdeveloped in his work. Bare life is, according to Agamben’s theory, the main reference of biopolitics, where human life is directly and in its very physical base the object of the operations of power, where the stakes are at or draw close to the life-and-death end of the scale of relations of power. The only way this rather undifferentiated notion makes any sociological sense is to understand it as a perspective intrinsic to a specific set of operations and not as a kind of ontological determination. From this vantage point, we can ask what this set of operations is. What is its logic, and what are the elements involved? Agamben takes up and adopts the notion of the state of exception in order to articulate the logic and consistency of the biopolitical set. On the other hand, Agamben uses the connection of this notion to the concept of sovereignty (in Schmitt) to elevate the camp as the paradigm of modern forms of political organization, liberal democracies included. Some of this rationale as they concern the camp as political paradigm will be discussed below. His remarks in *Homo Sacer* that “bare life” is the key to the “enigma of ontology” is found on 182.

19. There is a strong narrative regarding the constitutive fractures in law that are impossible to mend and which dictate the ruin or “end” of law. The terms of this narrative foreshadow his story of the imminent failure of the biopolitical project of the coordination between life and law (Agamben, *State of Exception*, 56 and 86). It remains to evaluate the descriptive value or evidentiary sources of such claims. His defence of the general significance of the extreme may be related to the historico-political weight he gives to the present moment. From this perspective, Agamben’s analyses tend to hold that because these extreme cases now take shape as typical, they disclose certain characteristics of juridico-institutional operations that had previously been unclear. By contrast, the argument holds that, from our vantage point today, these operations evince their vulnerability and may be seen as the realization of their potential. See, for example, Agamben, *State of Exception*, 64. In addition to Pierre Clastres, Marcel Detienne’s recent call for comparative political

anthropology might be referred to as ways of compensating for the historical and cultural parochialism of some of Agamben's claims regarding the relations between "law" and "life" and their over-investment in particular practices of governance and power. See Detienne, *The Greeks and Us*, trans. Janet Lloyd (Cambridge: Polity Press, 2007), 8–10.

20. Agamben, *State of Exception*, 62–3 and 86.

21. See his references to "playing with the law" in *State of Exception*, 64. See also Catherine Mills' discussion of the meaning of such "play" in her "Playing with Law: Agamben and Derrida on Postjuridical Justice," *South Atlantic Quarterly* 107, no. 1 (2008): 15–36.

22. Agamben, *Homo Sacer*, 149.

23. In *Homo Sacer*, Agamben defines the state of exception as the suspension of the validity of the juridical order: "[W]e shall give the name *relation of exception* to the extreme form of relation by which something is included solely through its exclusion" (ibid., 18).

24. Ibid., 181. See also the discussion in the same text of the "most extreme figure of the camp inhabitant," the *Muselmann* (ibid., 185) and the detailed treatment of this figure in Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller-Roazen (New York: Zone Books, 1999), 41–87.

25. Agamben, *Homo Sacer*, 19–20 and *Remnants of Auschwitz*, 85–6.

26. He refers to Guantánamo Bay in *State of Exception* (4) and gives a brief history of different camps in *Homo Sacer*. For the purposes of this discussion, I am focussing on the main elements of Agamben's discussion and leaving out some of the rhetorical flourishes of his account. For instance, as a way of amending Foucault's formulation of modern biopolitics in the *History of Sexuality* as the "power to make live," Agamben argues that the camp shows biopolitics to have an interest in how "to make survive" (*Remnants of Auschwitz*, 155, cf.). He also claims that "[i]n Hitler's Germany, an unprecedented absolutization of the biopower to *make live* intersects with an equally absolute generalization of the sovereign power to *make die*, such that biopolitics coincides immediately with thanatopolitics," (ibid., 83). The reference of biopolitics to how "to make survive" is at odds with, but also nuances differently, his repeated stress on the "killing machine" as the logic of the West. I also leave out a more extensive consideration of the account of the "anthropological machine," which to some extent frames his account of law. In this account, developed in *The Open: Man and Animal* (Stanford: Stanford University Press, 2003), Agamben queries whether the operation of this machine, which separates the animal from the human, is nearing an end and also whether knowledge of its functioning could help hurry this end. This is one of the order of reasons that could be referred to for the emphasis he places on the camp. The metaphor of the machine works in concert with the destinal characteristics of his philosophy of history. Even his poetic references to the topic of *désœuvrement* feed the thrust of his argument insofar as these references indicate the path of history dictated by the anthropological machine leading to its own exhaustion.

27. See Foucault, "Two Lectures," 78–108.

28. Foucault also identified the "very heavy political blockage" that occurs around the use of literature as a path for the diagnosis of political circumstances. See his *Politics Philosophy Culture: Interviews and Other Writings 1977–1984*, ed. Lawrence Kritzmann (London: Routledge, 1988), 310.

29. Foucault uses this terminology in his "Two Lectures," 99.

30. See Agamben, *Homo-Sacer*, 4–5.

31. Ibid., 148.

32. See Foucault, "Two Lectures," 105–6.

33. See Michel Foucault, *Naissance de la biopolitique: cours au Collège de France, 1978–1979* (Paris: Gallimard Seuil, 2004), 191–195. See also Foucault, *The History of Sexuality: An Introduction*, 94–5: "Power relations are both intentional and nonsubjective. If in fact they are intelligible, this is not because they are the effect of another instance that 'explains' them, but rather because they are imbued, through and through, with calculation."

34. This point, which bears on the intelligibility of institutional practices, needs to be distinguished from Foucault's criticism of the view that one could understand power through careful dissection of the motives of one who holds it. In the latter case, Foucault is keen to put in view the institutional effects of power relations which operate without regard for a particular position or person who might occupy it, whereas in the former he emphasizes that power is not some metaphysical force but can be understood in relation to strategies. See Foucault's "Two Lectures," 97: "[T]he analysis [of power] should not concern itself with power at the level of conscious intention or decision . . . it should refrain from posing the labyrinthine and unanswerable question: 'Who then has power and what has he in mind? What is the aim of someone who possesses power?'"

35. Michel Foucault, "The Subject and Power," in *Michel Foucault: Beyond Structuralism and Hermeneutics*, Second Edition, eds. Hubert L. Dreyfus and Paul Rabinow (Chicago: University of Chicago Press, 1982), 221: "When one defines the exercise of power as a mode of action upon the actions of others,

when one characterizes these actions by the government of men by other men – in the broadest sense of the term – one includes an important element: freedom. Power is exercised only over free subjects, and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realized. Where the determining factors saturate the whole there is no relationship of power; slavery is not a power relationship when man is in chains. (In this case it is a question of a physical relationship of constraint.) Consequently there is no face to face confrontation of power and freedom which is mutually exclusive (freedom disappears everywhere power is exercised), but a much more complicated interplay.”

36. Blandine Kriegel, *The State and the Rule of Law*, trans. Marc A. LePain and Jeffrey C. Cohen (Princeton: Princeton University Press, 1995).

37. We can refer here to Jon Elster’s *Ulysses Unbound: Studies in Rationality, Precommitment and Constraints* (Cambridge: Cambridge University Press, 2000). There are also thinkers like Claus Offe who use sociological frameworks but tend toward developing these in concert with core ideas of liberal theory. See Offe, “Civil Society and Social Order: Demarcating and Combining Market, State, and Community,” *European Journal of Sociology* XLI, no. 1 (2000): 71–94. The themes are manifold and I don’t pretend to give an exhaustive account of their place in liberalism. I refer to these examples to indicate the difficulty Agamben faces when he tries to dismiss such themes in favor of the “global” explanatory units of “law” and “sovereignty” without being able to show what this position implies: that symbolic and economic practices are irrelevant to intelligible social organization.

38. See Richard Münch, *Sociological Theory*, Vol. 2 (Chicago: Nelson-Hall Publishers, 1994), 26.

39. *Ibid.*, 47.

40. *Ibid.*, 50.

41. An example from post-war critical theory whose detailed treatment falls outside the scope of the present essay is Habermas’ account of the manifold problems that imperil the sense of collective legitimacy of modern institutions and practices. (See Jürgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy [Boston: Beacon Books, 1975].) Habermas approaches the problem of legitimation crisis in late capitalism from the perspective of motivation. For him, motivations “are shaped through the internalization of symbolically represented structures of expectation” (*ibid.*, 95; see also 79). He explains the pressures on motivation in relation to the depleted force of the supporting fabric of tradition, which had previously provided a collective sense of meaning, and the inability of new institutional practices and values, whether cognitive (science) or moral, to successfully guide expectations in complex environments.

42. Agamben, *Homo Sacer*, 171.

43. Both quotes are from Agamben, *State of Exception*, 64.

44. Giorgio Agamben, “The Messiah and the Sovereign: The Problem of Law in Walter Benjamin,” in *Potentialities*, ed. and trans. Daniel Heller-Roazen (Palo Alto: Stanford University Press, 1999), 162.

45. Foucault is clear on how to categorize such statements. In *The History of Sexuality: An Introduction*, Foucault claims that the ancient functions of prophecy are reactivated when law is contrasted to “promised freedom, of the coming age of a different law” (7).

46. Agamben’s understanding of sovereignty and more generally of how power operates in an organized social environment is not sociologically enlightened. First of all, as we know, power is not the only medium of social integration and control. Others, such as economic or cultural media, are also available and, perhaps in the long run, much more efficient and sustainable. Second, Agamben seems to reduce political power to (the threat of) violence or force applied in one direction. This rather simplistic reduction of the complexity of the power game is not acceptable as a way of dealing with the subtleties of power relations. Talcott Parsons defined the problem of social interaction in terms of “systems of action” that use different “symbolically generalized media of communication” where action influences action. This set the framework for subsequent political sociology. Also, Foucault uses the definition of power relations as “action influencing action” in “The Subject and Power.” On Parsons, see Münch, *Sociological Theory*, 3–103. For illuminating discussions of power from this perspective, see Niklas Luhmann, *Trust and Power* (London: Wiley, 1979); G. Poggi, *Forms of Power* (Cambridge: Polity Press, 2001); and D. Zolo, *Democracy and Complexity* (University Park: The Pennsylvania State University Press, 1992).

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