Bio-Sovereignty and the Emergence of Humanity

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I. Introduction

1.   From the moment life became accessible as an object of political power, its role has been ambiguous: conducive to freedom and oppression, security and danger. No one has shown the ambiguities of a power focused on life better than Foucault, who went so far as to describe the dream of modernity as genocide (Foucault 1978: 137).[1] The paradoxes of a modern power at once devoted to and contemptuous of life provides one explanation for the twentieth century's attention to human rights. Emerging from fear rather than hope, the enunciation of rights which would once, as Arendt remarks, have been seen as an inviolable part of the human condition, results from the ways the most minimal conditions of being human are endangered by politics (Ignatieff 1997: 18; Arendt 1973: 297).

2.   Since World War II, human rights have undergone an extraordinary expansion. We can now recognize an international rights regime formed by international rights declarations; regional and international courts; NGOs and other groups who monitor rights; and new norms of state behavior giving human rights greater weight. The proliferation of references to human rights in and of itself implies the presence of the bearer of such rights -- the human being, or 'man,' (Douzinas 1996: 122). That referent, however, has become more than a discursive object. At least since the end of the Cold War, humanity has emerged as a material political group in the same manner that the "people" became a concrete group with the rise of the representative nation-state.[2]

3.   What political power represents humanity is less apparent. The United Nations, as the closest thing to an international political organization, appears such a power. But the decisions of the U.N., as well as its capacity to act, remain wholly circumscribed by the nation-states composing the U.N. Global or world civil society is also often treated as the political voice of the human. Such groups do indeed wield political influence on the actions of states. But they lack the power to enforce human rights. That task falls ultimately to the existent sovereign powers. As those powers become increasingly involved with humanity, they can no longer be fully captured by the concept of a nation-state sovereignty committed to particular peoples. Given the novelty of this emerging form of sovereignty and of humanity, we have few tools for understanding the meaning of each term, or the relations between them.

4.   Indeed, that such a relationship could exist between humanity and political power has long been doubted. Since the French Revolution, the sheer breadth and presumed anonymity of humanity has resulted in skepticism about its political effectiveness. Arendt, who had a profound investment in the possibility of universal rights, found herself compelled to acknowledge that whether or not humanity could guarantee the rights of individuals belonging to it "is by no means certain" (p. 298). Such hesitations have been less evident since the end of the Cold War. Nearly by default, the main explorers of the emerging international rights regimes have been Kantian inspired cosmopolitanists. Those scholars have been readily inclined to treat international human rights as a globalization of the rights and dignities accorded by liberal democracies and as a limitation of sovereign power. Yet how the globalization of rights which emerged out of the modern sovereign state should limit the very power they owe their existence to is far from obvious.

5.   Standing against Kantian visions of a cosmopolitan humanity is the profound skepticism of Carl Schmitt. Expanding his scathing critique of liberalism to the international field, Schmitt insisted any political formation of humanity would prove impossible (1996: 55). For Schmitt, the characteristics of humanity would undermine the features defining politics: the role of the sovereign exception and the friend-enemy distinction. Schmitt was clearly wrong to insist humanity could constitute no political group. At the same time, he astutely foresaw such a world would risk turning life into an indifferent value.

6.   The nature of this relationship between humanity and sovereignty has been the subject of the recent work of the Italian philosopher Giorgio Agamben. Agamben's depiction of sovereign power and bare life can be read as an account of how sovereignty and humanity operate in tandem in international politics today. Asserting those who still use the terminology of modern liberalism, such as "sovereignty, right, nation, people, democracy, and general will by now refer to a reality that no longer has anything to do with what these concepts used to designate -- and those who continue to use these concepts uncritically literally do not know what they are talking about," Agamben offers a forbidding analysis of human rights (Agamben 2000: 109.0). His own focus is primarily on national sovereignty and citizenship. But the liminal concepts of sovereignty and homo sacer he portrays can also be understood

as accounts of international entities. They point to a more qualified assessment of the relation between rights and power than cosmopolitanism. Humanity, rather than serving as a limit on sovereignty, appears as its medium and product.

7. Expanding the analyses of Foucault, we might say that much as early modern states addressed themselves to an equal, free, rational individual while producing a docile trained body, contemporary claims to enforce human rights grounded in individual dignity instead produce and depend upon a "raw spectacle of humanity" (Malkki 1996: 390). To understand this alliance we must separate sovereignty from the liberal vision of power as formed of consent and limited by law and rights. As sovereignty expands beyond the nation state form, it increasingly operates as bio-sovereignty: a form of sovereignty operating according to the logic of the exception rather than law, applied to material life rather than juridical life, and moving within a global terrain now almost exclusively biopolitical.

II. Sovereignty, Exception, and Bare Life

8. Recent attention to Schmitt's cause celebre, the definition of sovereignty in terms of the decision on the exception, is not surprising. Interest in the sovereign exception historically occurs at moments of systemic crisis when the basis and form of political authority become uncertain. Today, intensified forms of political and economic globalization are rendering the source and limits of sovereignty opaque. International military interventions are increasing that opacity. Often justified by the demands of humanity and a language of exception, such interventions undermine any simple definition of sovereignty as control over one's own territorial boundaries and respect for the boundaries of others. The extent to which sovereignty operating with reference to the exception predominates today, and the consequences for the life subject to that power is the focus of Agamben's *Homo Sacer.*

9. *Homo Sacer* is a curious book, subject to mixed reviews. Agamben's classification of the concentration camp as a contemporary paradigm has been well noted (Norris 2002; Hussain 2000; Fitzpatrick 2001; Edkins 2000b). But his naming of the book's "protagonist" as homo sacer, combined with his strong ties to Benjamin, indicate an equally central focus on the way the sacralization of life conveyed in human rights discourse allies itself with sovereign power. That concern is not immediately evident. Agamben himself presents the book as an effort to clarify the relation between the individualizing techniques of bio-power meticulously described by Foucault and the less meticulously described power of the state. This presentation is surprisingly misleading; it captures neither the efforts of Foucault, nor the efforts of Agamben himself. In suggesting Foucault ignored the state and did not fully develop its relation to the individual, Agamben ignores both Foucault's work on governmentality and his ambiguous post-*History of Sexuality* treatment of sovereign power.[3] From this standpoint, Agamben's effort to "carry out" the work Foucault did not is unnecessary. Agamben's claim, however, is not wholly misleading. Foucault's analysis of the relation between the state and individuals in terms of governmentality as the shaping of the conduct of citizens is not Agamben's primary interest. Nor is Foucault's presentation of sovereignty and bio-power as opposing forces the one Agamben adopts.

10. Agamben's ultimate concern is with the type of broader questions Foucault distanced himself from. In contrast to his analyses of the human sciences, which uncovered specific "epistemes" shaping different orders of knowledge, Foucault made no similar effort to identify the basic parameters under which bio-power could emerge. Agamben does. His inquiry leads him to more desultory conclusions than Foucault. For the two fields of sovereign power and bio-power that Foucault treated as separate, and hence as potential limits upon one another, are treated as parts of the same power by Agamben. Refusing to identify sovereignty with liberalism, Agamben shows that sovereignty operates within the bio-political field of life before it takes the form of a juridical power.

11. Agamben's argument for repositioning sovereignty outside the paradigms of liberalism draws heavily from Schmitt's account of sovereignty as the decision on the exception, as well as from Benjamin's account of the origins of law in the rule over life. Agamben indicates the weight he attributes to the relation between law and life almost immediately. What is at stake in the concept of the exception is "the limit concept of the doctrine of law and the state, in which sovereignty borders (since every limit concept is always the limit between two concepts) on the sphere of life and becomes indistinguishable from it" (1998: 11). The field of the exception is thus the space where the liberal separation of law and life collapses.

12. To trace the emergence of a sovereignty bio-political rather than liberal, Agamben begins by expanding Schmitt's definition of sovereignty as the decision on the exception into a definition of sovereignty as having the structure of the exception. Schmitt himself does not explicitly make this claim, but it is implicit in his account. *Political Theology* opens with the famous definition: "Sovereign is he who decides on the exception" (1985a: 5). Here the decision, and hence the power of sovereignty, still plausibly appears as a limited and discrete moment. Within a few pages, Schmitt clarifies this definition. The power to decide on the exception entails the power to decide on normal order as well. The sovereign therefore decides on the total situation, or on order as such (p.13).

13. It is nevertheless Agamben who underscores the conditions necessary for that

expansion of sovereign power. While sovereignty, to establish order, must in some way separate inside from outside, that process is counter-intuitive. For "what is excluded in the exception maintains itself in relation to the rule in the form of the rule's suspension. *The rule applies to the exception in no longer applying, in withdrawing from it.* The state of exception is thus not the chaos that precedes order but rather the situation that results from its suspension." (1998: 17-18). Consequently, an order born of the exception emerges not by tracing a simple line of inclusion and exclusion, but by "including something through its exclusion" (p. 18). In that inclusive exclusion, sovereign power forms itself by creating "a zone of indistinction between outside and inside" (p.19).

14.   Under normal "non-exceptional" circumstances, that zone of indistinction remains hidden. Only the effect of the sovereign decision appears. If the generative moment of sovereignty is considered, the site of sovereignty changes. Viewed as the structure of the exception, and not only as the decision on the exception, sovereignty does not simply decide on the limit. It is rather "the unlimited power that makes limits" (Norris 2000: para. 16). [4] More strongly, "it is the limit, and hence carries the limit with it in its movement as it carries itself" (Norris 2000: para 17).[5] Sovereignty, as the condition for any establishment of spatial differentiation, cannot itself be localized (Agamben 1998: 19). This generative sovereignty cannot be confined to the form of a limited law that lays down the line between power and its absence, only indirectly touching life. What then is the relationship between a sovereign power whose very structure is the exception, and life?

15.   The difficulty of identifying any such relation is the very feature often criticized in Schmitt. As Schmitt's critics adeptly recognize, at least part of Schmitt's commitment to sovereignty as the decision rests on Schmitt's interest in the authority of sovereignty to decide, not on the specific substance of the decision. Some of his readers therefore suggest Schmitt falls back into the very neutralization of content he derided in liberalism and neo-Kantianism. Schmitt ends up "with only an existential positivism that mirrors the logical positivism he so intensely despises" (McCormick 1997:245). The premise of that critique is that a formal structure has no reference to material life.[6] Agamben's distinction is to insist this formal structure of power is also material; it corresponds to a specific type of life.

16.   As he explains, the "logico-formal" thesis of the exception or ban is not only "a thesis concerning the formal structure of sovereignty but also has a substantial character since what the ban holds together is precisely bare life and sovereign power" (1998: 109). Agamben borrows the term "ban" from Jean-Luc Nancy to refer to a relation of exception that simultaneously includes and excludes life. Because a law made of the exception defies any separation of inside and outside, it cannot function like liberal law, applying itself to a life external to law. Instead, sovereign law emerges through the incorporation of life. Following Schmitt, Agamben insists the condition for any order is the power to establish a "normal, everyday frame of life" (Schmitt 1985: 13; Agamben 1998: 26). Before the law draws any distinction between the forbidden and the permissible, it must first include life in the sphere of law (p. 26).[7] Unlike Schmitt, Agamben emphasizes that in being so included, life is placed within the same structure of exception characterizing law. Life is not the point external to law and "indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable" (p. 28). To a sovereign law generated by tracing a space of indeterminacy between inside and outside, belongs a form of life that lives only in that indeterminate space.

17.   If Schmitt teaches Agamben that law emerges in including life, it is the Benjamin of "The Critique of Violence" who insists on the precariousness of a life so bound to law. In that essay's famous commentary on capital punishment, Benjamin suggests the "true origin of law juts" into appearance. Law reveals itself to be less about punishing transgression than exerting its power over life, and doing so for the sake of law, not life. That power is the basis for Benjamin's recognition of something "rotten" in law (Benjamin 1978: 286). Benjamin describes the life so ruled as "mere life." That mere life, Benjamin notes, is the life treated as sacred in the classical world, and complicit with guilt. Mere life is the life isolated out of the "the total condition that is man" (p. 297-299). For Benjamin, our attributions of sacredness to life refer back to a mere life ruled over by a law that endlessly reproduces the very violence it claims to separate itself from. The juridical power of sovereignty to define transgression results from the capture of life in the structure of the sovereign exception. Far from being separate or opposed, Agamben asserts "the production of a bio-political body is the original activity of sovereign power" (p. 6).

18.   The meaning and status of that biopolitical body is far from straightforward. Agamben translates Benjamin's mere life as homo sacer, or bare life.[8] The Roman category of homo sacer refers to someone who, having committed a particular type of crime, can be killed without punishment, but cannot be sacrificed. Homo sacer is formed of an exclusion from both human and divine law (p.81). That exclusion, moreover, has the form of an exception. Homo sacer is set outside the law by the law, since anyone may kill homo sacer without falling under the law's prohibition on homicide. Sovereign power and homo sacer share the same structure. The two are more intimately related: the object of the sovereign decision is homo sacer and its status. "The syntagm homo sacer names something like the originary 'political' relation, which is to say, bare life insofar as it operates in an inclusive exclusion as the referent of the sovereign decision . . . human life is included in the political order in being exposed to an unconditional capacity to be killed" (p.85).[9] Homo sacer reveals the condition of political belonging in the West. Homo sacer is a mode of

political subjectification defined not by contract or rights, but by exposure to the sovereign decision on life or death.

19.   Although homo sacer is the figure who will "unveil" the mysteries of sovereignty (p.8), Agamben's account of sovereignty is equally indebted to Greek thought. As Agamben reports, something of homo sacer appears in Aristotle's distinction between *zoe* as the natural life shared by all animals, and *bios* as a specific political way of life. The good life of the polis emerges from a distinction between natural and political life, and their integration into the exception. What at first appears an opposition between natural life and political life is rather an implication "of bare life in politically qualified life" (p. 7), political life is defined by the exception of natural life. Agamben here treats *zoe* (natural life) as bare life or homo sacer. That usage is strange. He finds a Roman category in a Greek world that would not have known it, and appears to treat bare life as identical to natural life.[10]

20.   Despite periodic uses of bare life and *zoe* interchangeably, their distinction is essential to his argument. Bare life is distinct from natural life because its precarious status is due to its capture by sovereign power. As Agamben explains, homo sacer is "the hinge on which each sphere [*zoe* and *bios*] is articulated at the threshold at which the two spheres are joined in becoming indeterminate. Neither political *bios* nor natural *zoe*, sacred life is the zone of indistinction in which *zoe* and *bios* constitute each other in including and excluding each other (p. 90). Like sovereignty, homo sacer is a creature of the limit; it belongs to the zone of indeterminacy generated by sovereignty. [11] Homo sacer, regardless of whether it lives a life of happiness or misery, is defined by its dependence upon sovereign power for its status. This nexus, in which sovereignty emerges by capturing life in the exception, defines the nature of political belonging in the West. The terminology we are familiar with from modernity, especially of contract and rights, are, on this analysis, secondary phenomena.

III. Internationalizing Sovereignty and Homo Sacer

21.   Agamben emphasizes homo sacer as a domestic figure grounding citizenship, and sovereignty as a power over domestic citizens. For the most part, he conceives the world outside or around bare life and sovereign power as a generic outside. However, his presentation of homo sacer and sovereignty as creatures straddling inside and outside suggests neither can be conceived in domestic terms alone. The space of indeterminacy characterizing sovereign power must touch upon another community or the international space where different political groups interact. Those crossings open up a space in which sovereignty can no longer be anchored to the territory of the nation state, nor to one political community.

22.   The increasing difficulty of localizing sovereignty in its former areas is one reason sovereignty is often seen as declining. Agamben's account of sovereignty as a space of indeterminacy is an important counter to those assumptions. The concept of bio-sovereignty lets us recognize the presence of sovereignty where older concepts built around the nation-state find only its disappearance. Insofar as sovereignty is a general power of regulating boundaries, whose only ground is homo sacer, it has no necessary tie to particular territories or peoples. The impossibility of locating sovereignty in a precise territory or group does not signal a collapse of sovereignty, but its transformation. Agamben's depiction of sovereignty as a moebius strip (p. 37), where the perpetual twisting of inside and outside forecloses any possibility of their separation, is particularly pertinent for an ever more internationalized world.

23.   If sovereignty operates as a regulation of indeterminacy, spanning domestic and international space and cutting across particular political groups, what relation can such a power have to life? Agamben's more concrete analysis of the French Declaration of the Rights of Man and Citizen offers us a way to approach this question. The ambiguities of the French Declaration are not new. They have been most famously noted by Arendt, whose account influences Agamben. Both see the world wars of the twentieth century as exposing the real basis of the Declaration, and its deficits. The French Revolution established the model of the state form dominant until World War I and still influential today: a "functional nexus between a determinate localization (territory) and a determinate order (the state) . . . mediated by automatic regulations for the inscription of life (birth or nation)" (Agamben 2000: 42.3). That model broke down with the end of World War I, as a variety of groups emerged within European states who refused them all protection.

24.   Those refugees, whom Agamben identifies as figures of homo sacer, are the focus of his account of the inter-war crises. The lessons he derives from the refugee, however, are directed toward domestic nation-state citizenship. Precisely because refugees and denaturalized citizens were abandoned by the European states, the refugee forced into open " the difference between birth and nation." In doing so, the refugee "causes the secret presupposition of the political domain -- bare life -- to appear for an instant within that domain" (Agamben 1998: 131). The European states, refusing to recognize refugees, revealed that national citizenship has never really been defined by political categories, but by sheer birth into a nation. What the refugee reveals is the oscillation between natural and political life within the nation-state. Modern citizenship, defined by seventeenth century thinkers as based in natural equality, now appears as neither simply natural, nor political. The

ground of citizenship is rather the life formed by the mixture of the natural and the political: homo sacer.

25.   The figure of the refugee permits Agamben to make a striking critique of liberal social contract citizenship. But his account does little to illuminate the situation of the refugee, or its relation to domestic citizenship. The closest Agamben comes to addressing the relation between refugee and citizen is in his remarks on Arendt's treatment of that relation. He and she both assert that the rights of "man" named by the French Declaration had no independent standing, having immediately vanished into the category of the citizen (Arendt 1973:291; Agamben 1998: 127-128). Writing at the end of World War II, Arendt had reason enough to conclude the rights of man had no authority beyond the "man" invoked as their very source. She could therefore describe man as a "completely isolated being who carried his dignity within himself without reference to some larger encompassing order" (p. 291). Agamben, in contrast, knows well that since World War II, international rights documents have separated the rights of man, which we would now call human rights, from citizenship (Agamben 1998: 133).

26.   This transformation suggests the real novelty of the French Declaration is not its definition of citizenship. What is novel is the new category of a "man" at once citizen and member of universal humanity -- without fully being either. Life in and of itself, is for the first time offered up as a political category. That recognition is not without precedent. Some sense of world citizenship, rather than local belonging, was evoked by the Stoics. The middle ages recognized a "jus gentium" or law of nations. Those laws offered guidance for the treatment of one nation by another, without focusing on either the rights of individuals as members of humanity, or on the rights of humanity as a universal group exceeding different classifications of peoples. The French Declaration, despite its flaws, is among the first official formulations granting the natural life scorned by the ancients a value purely for its own sake.

27.   As Agamben teaches us, wherever natural life and political appear, so too will appear the figure linking them: homo sacer. The complex mixture of these categories were not particularly visible so long as life was wholly defined by nation-state belonging. The refugee, however, indicates contemporary political belonging, and the power regulating it, can no longer be coded by domestic categories alone. Nor can the distinctions between natural and political life be limited to the field of the nation-state. The refugee is the most explicit indication of this impossibility. The refugee exists in a transnational space made of an awkward separation and mixture of domestic life and international life. By definition, the refugee cannot appeal to its own state, or to national citizenship, for protection. The refugee must therefore appeal to some other power to recognize it not as a national citizen, but as a figure of an international life or human belonging meriting protection solely on that basis. A power that offers such protection can no longer be adequately classified under the heading of nation-state sovereignty.

28.   A sovereign power that acts in the name of and for a life defined solely by its belonging to humanity is a power that has become global. To take these emerging global dimensions of sovereignty and life as straightforward indications of an all-inclusive humanity would be a mistake. New forms of global sovereignty and global human life remain defined by the categories of natural life, political life and homo sacer defining the Western tradition. In the classical world and the modern world, natural and political life once included and excluded one another to constitute local or national forms of being. Today, those same patterns reappear in global relationships between national life and international life, which constitute and exclude one another as the ground of the sovereign exception. In an international world, the ground of the sovereign decision is humanity as such. And what sovereignty decides is the status of that humanity.

29.   The equivocal status of a humanity dependent on the sovereign decision increases as national sovereignty breaks down without wholly disappearing, and without being clearly integrated into a new form of supranational sovereignty. As the boundaries of the nation state become more porous, sovereignty as the power to determine boundaries becomes more pervasive. The status of life, in a parallel manner, becomes increasingly precarious. More and more, life across the globe exists in a state of crisis, caught within and subject to a sovereign power itself indeterminate. This indeterminate sovereignty increasingly ranges over all territories and all peoples: over humanity as such.

IV. Humanitarian Sovereignty

30.   The complexity of the relationship between bio-sovereignty and humanity is most evident in the issue of humanitarian interventions. If such interventions limit nation-state sovereignty, they serve as a ground for bio-sovereignty. Every potential case for intervention -- whether or not it is acted upon -- raises as a question the status of life, and calls for a sovereign decision on life. The post-sovereign world of bio-politics described by Foucault now takes on a new meaning. Foucault argued that in modernity, man's politics placed his existence in question. If, as Agamben argues, sovereignty maintains its power by deciding on the status of life, then a world in which politics places life in question by retaining the power to decide its fate, is not post-sovereign. It is the open expression of the sovereign ban or exception.

31.   Human rights, from this perspective, is the discourse of life in a state of

permanent crisis. Moreover, human rights and sovereignty share the same referent: an indeterminate and precarious bare life. Agamben therefore asserts humanitarian organizations, "despite themselves, maintain a secret solidarity with the very powers they ought to fight" (1998: 133).[12] Humanitarianism, speaking for the very life sovereignty grounds itself in, provides the justification for the "exceptional" measures of sovereign powers. Today's "moral interventions," exemplified in the work of NGO's who categorize and call attention to human rights violations, prefigure "the state of exception from below" (Negri and Hardt 2000; 36). This complex situation, in which humanitarianism and sovereignty work together, should not be taken as a condemnation of humanitarianism. It is rather a sign of the failures of a tradition which requires humanitarianism while reducing its effectiveness.

32.   The apparently emancipatory, law bound discourse of human rights thereby finds itself implicated in very old paradigms of domination. The relation is similar to the way that early modern discourses of rights proved complicit with novel forms of surveillance and regulation. The language of human rights does not stand outside the crises such rights are invoked to counter; it does not stand outside the sovereign powers that produce life as endangered. Neither natural nor exceptional, humanitarian crises belong to a "structure of permanent emergency" which has become "objectified in institutional arrangements" (Edkins 2000a: 146).

33.   Arendt's account of the fate of those caught in such institutional arrangement remains decisive. As she observes, "contemporary history has created a new kind of human beings -- the kind that are put in concentration camps by foes and in internment camps by their friends" (1978: 56). Such permanent "ad hoc" arrangements indicate the extent to which states of exception are increasingly interwoven with law. Nothing has become more "normal" than the creation of internment camps for refugees and displaced persons. Those arrangements have the desired effect of placing camp inhabitants outside the framework of international law and domestic law so as to avoid obligations of asylum and legal rights to refugees (Hyndman 2000: xxv).

34.   The shift from standing law to exception evident in the treatment of refugees also appears in humanitarian military interventions. Those interventions increasingly take place as exceptions to both domestic and international law, exposing "the allied face of human war" (Dillon and Reid 2000: 5). The American led NATO intervention into Kosovo, for example, was carried out as an exception to the U.S. Constitution, the NATO Charter and the UN.[13] The new American doctrine of pre-emptive strikes has made the decision on the exception official policy. Indeed, new forms of post-Cold War warfare are having the general effect of internationalizing the exception. Modern wars typically occurred between two or more legally equal sovereigns. Contemporary conflicts are more akin to police actions. They take the form of a "diffuse and continuous" violence seeking to guarantee order rather than control territory (Guehenno 1995:119). One of the clearest signs of this change in conflict is the growing difficulty in distinguishing between civil and international wars, and between intranational and international wars (Meron 2000: 261; Kaldor 1998: 102). Modern distinctions "between 'war' and peace', 'internal' and 'external' . . . associated with the autonomy of the nation-state, seem to be breaking down" (Kaldor 1998:91). As a result, interventions into what might once have appeared independent nation-states no longer involve "independent juridical territories." They appear rather as "actions within a unified world," aimed "at maintaining an internal order" (Hardt and Negri 2000: 35, 38). The effect is to place the rights of humanity in "the hands of the international community police" (Ranciere 1999: 127).[14]

35.   These dynamics of interventions are one sign that global bio-sovereignty is supplanting nation-state sovereignty. That shift is not always easy to recognize. Humanitarian interventions, for example, often make use of the language of the nation-state. They can easily appear as repetitions of modern nation state sovereignty. This is why Soguk, a scholar critical of the nation state order, argues interventions perpetuate that order. As he argues, interventions, particularly around refugee crises, produce "the specific territorially bound and territorially activated hierarchy of citizen/nation/state on which the very ontology of the state system continues to rest" (1999: 188). Humanitarianism, treating refugees as "aberrant citizens" (p. 194) to be returned to their appropriate nation, seems to reinforce modern territorial sovereignty. Nevertheless, such actions exceed the order of the nation-states. Refugees, as we have seen, embody not only nation-state citizenship, but a human or international status. The moment one sovereign power acts to protect those who belong to other states, or those who have been so severely abandoned by their own states as to have no other category of belonging than humanity, sovereignty reinforces an international definition of life, rights and belonging. In that moment, sovereignty undermines the very identifications and connections of the citizen/nation/state order. A sovereignty ruling over such groups is no longer liberal and national, but bio-political and global.

36.   We should not be surprised then that contemporary sovereignty is ceasing to make use of modern methods of legitimation. Max Weber, influencing generations of scholars, once insisted the distinctive feature of modern democracy was its rule through law. That focus on law is being replaced by Schmitt's definition of a power legitimated on the basis of its capacity to decide. This incorporation of extra-legal and contingent decisions into an order of law is the phenomena Benjamin noted decades ago. In "The Critique of Violence," he pointed out that the space of the exception in modern democracies was being filled out by the police. The police have the power to suspend law when necessary, and create it ad hoc when necessary

(Benjamin 1978: 287). Benjamin's own account treated the expansion of the police within the domestic politics of sovereignty -- and condemned it as such. As bio-sovereignty increasingly operates in an international mode, the police actions of domestic sovereignty are becoming internationalized, further undermining the limited forms of rule that regulate international relations.[15] Sovereignty is coming to operate internationally in the same manner it was always capable of operating domestically: outside the boundaries of law, and ruling directly over life.

37.   The role of the exception and the presence of bare life appear in the capriciousness of international humanitarian interventions. As the great powers intervene in Bosnia or Kosovo or stand aside, as in the early war in Bosnia, in Rwanda, or in the long running war between Turkey and its Kurds; as they debate whether to classify massacres as "ethnic cleansing" or "genocide" depending on the level of obligation they wish to take on; as they bomb populations formed of both the "innocent" and the "guilty," the life addressed appears -- from the standpoint of sovereign power -- as indifferent life whose status is determined by the sovereign decision. Caught in the ban of a sovereign law tracing out new relations beyond old borders, bare life is abandoned by the law without being removed from it, ruled by it without being saved by it, consigned to a state of exception become the rule. These variations in interventions are not simply hypocrisy. They are the modus operandi of a form of sovereign power that has always grounded itself in the capture and valuation of life.

V. Humanity and Sovereignty

38.   The counter point to the optimistic reading of the emerging international rights order and rights as an expansion of liberal cosmopolitanism is bio-sovereignty ruling over bare life in a state of exception. From this alternative perspective, humanity can no longer be treated as a limit upon sovereignty. Humanity instead appears as the ground and object of sovereignty; it has become a political group, represented by a new political power. This possibility is the one doubted by Arendt, and foreclosed by Schmitt. Arendt, immediately after World War II, had questioned whether humanity would be able to guarantee the rights of individuals belonging to it (1973: 298). Schmitt insisted humanity could be no political concept, and that " no political entity or society and no status corresponds to it"(1996: 55). Yet when Schmitt's account of humanity is examined in detail, it is evident he recognized a political humanity was in fact possible. He simply considered it undesirable. In humanity he feared a world lost in equality and consigned to a life perhaps "interesting," but without genuine meaning (1996:35). He feared just as much the opposite. A politically meaningful humanity would raise the possibility of "ferocious" wars fought for the human against the inhuman (1996: 36-37). Neither depiction forecloses a political humanity. The emergence of humanity has nevertheless opened up the "indifferent" world Schmitt anticipated. Curiously enough, it is Schmitt's own understanding of sovereignty that proves not only compatible with a political humanity, but generative of it. How, then, has sovereignty come to rule such a grouping?

39.   Agamben's own analysis of homo sacer foregrounds this question. In the first pages of his work, Agamben called attention to sovereignty as a "borderline" concept. A border line concept, as Schmitt characterized sovereignty, is a form of power or law indistinguishable from the life it rules over (Agamben 1998: 11). As Agamben grasped, more clearly than Schmitt, if sovereignty were to enter into its limit form of indeterminacy, then the life it ruled would become just as indeterminate, and hence, just as precarious. From this perspective, early modern sovereignty, with its separation of territories and people, appears as a limited form of sovereignty. Where sovereignty exists as a limit concept, it is defined not by its rule over particular peoples, but by its regulation of boundaries. An indeterminate sovereignty, from this standpoint, is not a failure to address concrete political groupings. It is a power to draw all life into the limit space of indeterminacy, and decide its fate. This expansive power of sovereignty appears in Schmitt's treatment of sovereignty as the generative structure of order. As the very principle of political order, sovereignty is "essentially unlocalizable," given to a movement of "dislocating" itself (Agamben 1998: 19-20).

40.   That sovereign power should be a principle of order, indifferent to the substance of the particular groups it rules, is the very thing Schmitt's critics identify as emptying out the meaning of sovereignty. Andrew Norris makes this point with an example of ethnic identity. The sovereign decision "by definition undermines the validity of ethnic difference and purity even as it asserts that wars must be fought in their name. For it asserts that this difference -- this border -- is one that it creates, and not one whose reality it respects and attempts to preserve" (2000: para 32).[16] Schmitt's critics are exactly right. But if sovereignty is the power to determine limits and rule over them, indeterminate borders indicate the strength of sovereignty rather than its dissolution. Agamben shows us that sovereignty classifies the life it controls not by its content , but by its subjection to sovereign power. As sovereignty exceeds its nation-state form, and operates as the power to determine and redetermine limits, the more life it captures. Bio-sovereignty rules not over one particular group, but over humanity as such.

41.   But if sovereignty can govern humanity without losing its meaning as a principle of order and decision, can humanity serve as a ground of sovereignty? The most obvious challenge a political humanity would seem to pose to Schmitt's politics has to do with the status of the friend-enemy relation. Including all, humanity appears to negate any conflict between groups. Humanity, from this perspective, would destroy

the very meaning of the political. A careful reading of Schmitt, however, suggests that the friend-enemy dynamic does not require a world of different political groups standing against another. His first formulation of the friend-enemy distinction suggested that conflict was one between political communities. He later admitted this relation did not require group conflict. It could instead be characterized by an "intensity" of separation or association which could appear domestically (1996: 32; 38). This change shifts the grounds of the friend-enemy relation, freeing politics "from a fixed reference to community" (Meier 1998: 33-34). In Meier's characterization, the political becomes "released from all natural standards, kept free of every substantial classification . . . able to penetrate everything and to be present everywhere. It emerges as a power that can break into life anytime and anywhere. Its potential ubiquitousness is accompanied by reality's being altogether subject to its gradualization"(p. 34).[17] Because Schmitt refused to circumscribe the friend-enemy relation, he opens up the political to all groups and spaces. Distinctions between groups are no longer necessary for the political distinction of friend and enemy.

42. What would such a humanity consist in? Would it lose all the qualities that made politics meaningful for Schmitt? His remarks on democracy suggest the contrary. He concedes that in democracies birth alone defines belonging, permitting "indifferent" qualities to constitute a substantive identity. The same criteria, he argues, would be relevant for humanity. "If one were serious about a democracy of mankind and really wanted to make every person the equal politically of every other person, then that would be an equality in which every person took part as a consequence of birth or age and nothing else" (Schmitt 1985b:11). A particular democracy and a collective humanity have the same basis. The difference, for Schmitt, is that democracies neutralize the risks of indifferent equality "through the definitive exclusion of all those who do not belong to the state, of those who remain outside it" (p. 12). Humanity, presumably, would be incapable of such a separation. So though democracies and humanity might share the same criteria for belonging, they differ. Belonging, in democracies, would be substantively defined by contrast to other non-citizens. But as we have already seen, once the friend-enemy relation becomes possible within one community, substantive conflicts can occur within one group. Even an all inclusive group would retain the possibility of distinguishing its members internally. Categorical distinctions, which would once have appeared between groups persist -- but within one space.

43. The loss of such distinctions was just what Schmitt feared in humanity. He anticipated humanity would be defined by an "abstract human equality" which "would be without inequality," and therefore a "meaningless, an indifferent equality" (1985b:12).[18] He was not wrong. A number of contemporary scholars insist the peculiarity of humanity lies in its indifferent status. Humanity's particular "authenticity is to be speechless" (Ranciere 1999: 127). It is a "raw humanity and pure helplessness" (Malkki 1996:390); "anonymous corporeality and speechlessness" (1996:389), an "a pure victim stripped of social identity," appearing as "unaccommodated man, poor bare forked animal" (Ignatieff 1997: 5). Humanity's distinctiveness reveals itself in the disconcerting form of a lack of unique qualities. As Schmitt anticipated, humanity as a political group has taken the form of an indifferent life. His mistake was to imagine that this indifferent status of life would be tied to a world without politics.

44. What Schmitt did not foresee was that political processes could themselves produce humanity as an indifferent value, thereby offering up that indifference as the very ground of a political decision. This possibility is what Agamben's account of homo sacer reveals. The indifferent life of homo sacer, itself defined by its capture in the sovereign exception, serves as the very ground of the sovereign decision on the status of life. The basis of that indifferent life is our tradition's isolation of a "natural" element of life contrasted it with political life. That ancient separation has since grounded the Western tradition's valuation of life. Beginning with Aristotle's separation of the natural and the political, that distinction recurs in Hegel's derivation of consciousness from the master-slave encounter, in Heidegger's discovery of authentic existence in the encounter with the possibility of death, and even in Arendt's consistent dismissal of a life concerned with necessity. Schmitt's own commitment to the political results from his certainty that only in this sphere can the value of life be confronted and determined. (Meier 1998:26-64). Each thinker defines life as meaningful only insofar as it proves capable of transcending a life defined as non meaningful.

45. What Agamben makes clear is that these distinctions never simply suppress or exclude natural life. They incorporate it as the excluded ground of political life. That excluded life does not disappear, but remains present as the excepted ground of politics. The Western tradition now appears grounded in bare life, the hybrid category that results from the separation and mixture of natural and political life. Only on this basis can Agamben insist the "fundamental categorial pair of Western politics is not that of friend/enemy but that of bare life/political existence, *zoe*/*bios*, exclusion/inclusion" (1998: 8). Given the origins of our tradition, the twentieth century's discovery of a category of "life unworthy of life," is, if not tantamount to the Aristotelian distinction of natural and political, not outside it either. As Schmitt recognized in the context of eighteenth century debates over the status of humanity, the division of the human and the inhuman could be traced back to Aristotle (2003: 104). [19]

46. The most visible political expression of this schism appears in the main object of modern politics: the sovereign people who once grounded nation-state sovereignty.

As soon as the sovereign people appeared, Ranciere notes, "so does its name sake (which it in no way resembles): denial or derision of sovereignty, that pre-political or beyond-political people known as the population or populace -- a toiling, suffering population, the ignorant masses, the rabble, chained or unchained, whose existence undermines or contradicts the attainment of sovereignty." (80-81). Agamben remarks on the same phenomena. "[I]n the concept of people we can easily recognize the conceptual pair identified earlier as the defining category of the original political structure: naked life (people) and political existence (People), exclusion and inclusion, *zoe* and *bios*. The concept of people always already contains within itself the fundamental bio-political fracture . . ." (2000: 20.1-21.2). In contemporary politics, the same fracture appears within humanity. If humanity appears at first to include all, it turns out ultimately to divide the secure and the endangered, the empowered and the rabble.[20]

47.   Agamben's account of the emergence and development of our tradition's definition of politics is useful precisely because it can help us account for the paradoxical effects of apparently inclusive and beneficial categories. The concepts of bio-sovereignty and homo sacer provide us with the tools to understand a power and a life of ambiguous character. Bio-sovereignty, structured by the exception rather than law, is of a different order than liberal power. It is grounded not in a life or set of rights outside of itself, which it is compelled to respect and protect, but in the incorporation of life within its field of power. The basis of bio-sovereignty in the incorporation of life means its relation to humanity is neither one of simple support, nor simple opposition. The rights of humanity are as contingent as the rights the people of the nation-state were once ascribed. Human life, like the life of the nation-state citizen, "is kept safe and protected only to the degree to which it submits itself to the sovereign's (or the law's) right of life and death. " (Agamben 2000: 4.5).

VI. Whatever Being: Life Beyond Sovereignty

48.   Can we imagine another form of humanity, and another form of power? The bio-sovereignty described by Agamben is so fluid as to appear irresistible. Yet Agamben never suggests this order is necessary. Bio-sovereignty results from a particular and contingent history, and it requires certain conditions. Sovereign power, as Agamben describes it, finds its grounds in specific coordinates of life, which it then places in a relation of indeterminacy. What defies sovereign power is a life that cannot be reduced to those determinations: a life "that can never be separated from its form, a life in which it is never possible to isolate something such as naked life. " (2.3). In his earlier *Coming Community*, Agamben describes this alternative life as "whatever being." More recently he has used the term "forms-of-life." These concepts come from the figure Benjamin proposed as a counter to homo sacer: the "total condition that is 'man'." For Benjamin and Agamben, mere life is the life which unites law and life. That tie permits law, in its endless cycle of violence, to reduce life an instrument of its own power. The total condition that is man refers to an alternative life incapable of serving as the ground of law. Such a life would exist outside sovereignty. Agamben's own concept of whatever being is extraordinarily dense. It is made up of varied concepts, including language and potentiality; it is also shaped by several particular dense thinkers, including Benjamin and Heidegger. What follows is only a brief consideration of whatever being, in its relation to sovereign power.

49.   "Whatever being," as described by Agamben, lacks the features permitting the sovereign capture and regulation of life in our tradition. Sovereignty's capture of life has been conditional upon the separation of natural and political life. That separation has permitted the emergence of a sovereign power grounded in this distinction, and empowered to decide on the value, and non-value of life (1998: 142). Since then, every further politicization of life, in turn, calls for "a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only 'sacred life,' and can as such be eliminated without punishment" (p. 139).

50.   This expansion of the range of life meriting protection does not limit sovereignty, but provides sites for its expansion. In recent decades, factors that once might have been indifferent to sovereignty become a field for its exercise. Attributes such as national status, economic status, color, race, sex, religion, geo-political position have become the subjects of rights declarations. From a liberal or cosmopolitan perspective, such enumerations expand the range of life protected from and serving as a limit upon sovereignty. Agamben's analysis suggests the contrary. If indeed sovereignty is bio-political before it is juridical, then juridical rights come into being only where life is incorporated within the field of bio-sovereignty. The language of rights, in other words, calls up and depends upon the life caught within sovereignty: homo sacer.

51.   Agamben's alternative is therefore radical. He does not contest particular aspects of the tradition. He does not suggest we expand the range of rights available to life. He does not call us to deconstruct a tradition whose power lies in its indeterminate status.[21] Instead, he suggests we take leave of the tradition and all its terms. Whatever being is a life that defies the classifications of the tradition, and its reduction of all forms of life to homo sacer. Whatever being therefore has no common ground, no presuppositions, and no particular attributes. It cannot be broken into discrete parts; it has no essence to be separated from its attributes; and it has no common substrate of existence defining its relation to others. Whatever

being cannot then be broken down into some common element of life to which additive series of rights would then be attached. Whatever being retains all its properties, without any of them constituting a different valuation of life (1993: 18.9). As a result, whatever being is "reclaimed from its having this or that property, which identifies it as belonging to this or that set, to this or that class (the reds, the French, the Muslims) -- and it is reclaimed not for another class nor for the simple generic absence of any belonging, but for its being-*such*, for belonging itself." (0.1-1.2).

52.　　　Indifferent to any distinction between a ground and added determinations of its essence, whatever being cannot be grasped by a power built upon the separation of a common natural life, and its political specification. Whatever being dissolves the material ground of the sovereign exception and cancels its terms. This form of life is less post-metaphysical or anti-sovereign, than a-metaphysical and a-sovereign. Whatever is indifferent not because its status does not matter, but because it has no particular attribute which gives it more value than another whatever being. As Agamben suggests, whatever being is akin to Heidegger's Dasein. Dasein, as Heidegger describes it, is that life which always has its own being as its concern -- regardless of the way any other power might determine its status. Whatever being, in the manner of Dasein, takes the form of an "indissoluble cohesion in which it is impossible to isolate something like a bare life. In the state of exception become the rule, the life of *homo sacer*, which was the correlate of sovereign power, turns into existence over which power no longer seems to have any hold" (Agamben 1998: 153).

53.　　　We should pay attention to this comparison. For what Agamben suggests is that whatever being is not any abstract, inaccessible life, perhaps promised to us in the future. Whatever being, should we care to see it, is all around us, wherever we reject the criteria sovereign power would use to classify and value life. "In the final instance the State can recognize any claim for identity -- even that of a State identity within the State . . . What the State cannot tolerate in any way, however, is that the singularities form a community without affirming an identity, that humans co-belong without a representable condition of belonging" (Agamben 1993:85.6). At every point where we refuse the distinctions sovereignty and the state would demand of us, the possibility of a non-state world, made up of whatever life, appears.

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Notes

[1]Others have emphasized the negative effects of the post-world war II investment in human rights. The cumulative result of the twentieth centuries efforts to address human rights "have led in practice to disaster" (Ree 1998:77); "Humanitarian assistance at the end of the millennium is synonymous with neither protection, in the legal sense, nor solutions to displacement" (Hyndman 2000: 4). See also Derrida, (1985:96).

[2]Scholars influenced by Kantian cosmopolitanism emphasize the genuine emergence of a cosmopolitan community of humanity (Robbins 1998: 2; Linklater 1998: 116).

[3]Fitzgerald details the ways in which governmentality offers a response to the "double bind" Agamben claims Foucault did not develop. Fitzgerald also reminds us

that sovereignty did not disappear from Foucault's work insofar as he portrays sovereignty and biopower as heterogeneous fields of power playing off one another (2001:para 13). Thomas Dumm too emphasizes the incommensurate nature of sovereign power and disciplinary power (1996: 86).

[4]Andreas Kalyvas, arguing against interpretations of Schmitt's sovereignty as irrational decisionism, portrays the capacity to institute a new order as democratic (2000:350). The treatment of sovereignty as self grounding law is similar to Derrida's presentation of law as an act justified by no prior ground in the "Force of Law" (1992). However, his own reading of that moment as a site for the ethical decision of the individual has little in common with Schmitt. As Strong reminds us, the sovereign decision was not one any individual might have (Strong 1996: xx).

[5]Norris offers this depiction of sovereignty on the basis of Schmitt's analysis, not Agamben's. In *Political Theology*, Schmitt himself offers two differing inflections of sovereign power. The first presents sovereign power as the decision on the exception: "Sovereign is he who decides on the exception" (1985:5). The discussion of that definition, while noting such a decision can never be bound in advance, emphasizes the decision on a specific exception. Several pages later, Schmitt offers an expanded view of sovereign power, now presented as the power of the sovereign as the one who "produces and guarantees the situation in its totality" (p.13). Insofar as Agamben emphatically develops the latter, the status of sovereignty as the limit, while present in Schmitt, appears more visible in Agamben's clearer separation between sovereignty as a decision on the exception, and sovereignty as having the structure of the exception.

[6]A similar point is made by Meier, who observes that the authority of the political unit is revealed "by the dire emergency; not on the basis of substantial characteristics" (1998:36). Norris also argues Schmitt's commitment to the dependence of all politics on the sovereign decision undermines the substantive qualities of whatever content the sovereign supposedly addresses in the decision (2000: para 32). Schmitt himself does not exactly disagree: "every concrete juristic decision contains a moment of indifference from the perspective of content , because the juristic decision is not traceable in the last detail to its premises and because the circumstance that requires a decision remains an independently determining moment" (1985: 30). As I will suggest, the acuity of such criticisms can also be read as confirming the force of sovereignty.

[7]This description, applying Schmitt to Hobbes, can be contrasted with Foucault's account of Hobbes, which follows the liberal model. For Foucault, Hobbes's project "is the distillation of a single will--or rather, the constitution of a unitary, singular body animated by the spirit of sovereignty--from the particular wills of a multiplicity of individuals" (1980:97).

[8]Fitzgerald has examined in detail the historical and referential inconsistencies in Agamben's use of bare life (2001: sec 4-6).

[9]This portrait accords with the more empirically oriented studies of the development of the modern state. Charles Tilly portrays the process of European state formation as a kind of "racket" in which the state protects individuals from dangers they are exposed to only as a result of the presence of state power (Tilly 1985)

[10]See Norris for additional commentary on the inconsistent use of bare life and *zoe* (2002: fn 17).

[11]This is the language Norris uses to describe Schmitt's concept of sovereignty. "Schmitt's sovereign is a creature of the border" (2000: Sec 18).

[12]In some cases that complicity is exceptionally perverse, as in Gourevitch's account of the role refugee camps and humanitarian workers played in serving as havens for the Hutu "genocidaires" fleeing the country they had once ruled (Gourevitch 1998 :162-168).

[13]Bandow underscores the obvious effect of such actions. "If Kosovo provides an exception to traditional rules, then traditional rules have ceased to exist and any state can justify intervening anywhere at anytime" (2000: 41). From a different standpoint, Crowley argues that the Kosovo crisis expresses an "ambiguous relation" to sovereignty insofar as peace resulted not from the reemergence of a state monopoly on force, but from the renunciation of such claims (2001: 77-80).

[14]Arendt's own remarks on the exception and the police are worth noting. "The clearer the proof of their inability to treat stateless people as legal persons and the greater the extension of arbitrary rule by police decree, the more difficult it is for states to resist the temptation to deprive all citizens of legal status and rule them with an omnipotent police " (1973: 290).

[15]Negri and Hardt offer one description of this process. "Today military intervention is progressively less a product of decisions that arise out of the old international order or even U.N. structures. More often it is dictated unilaterally by the United States, which charges itself with the primary task and then subsequently asks its allies to set in motion a process of armed containment and/or repression of the current enemy of Empire" (2000: 37).

[16]As Norris points out, this extensiveness of the sovereign decision on the border is missed by some of Schmitt's readers. He offers Chantal Mouffe as an example. On Mouffe's reading, "Schmitt's 'distinction between an us and a them is not really politically constructed; it is merely a recognition of already existing borders'"(Norris 2000: paragraph 32); the quote is from Mouffe (1998, 171). McCormick also treats the decision as substanceless (1997: 218-219), and the content of the people's will as substanceless (p. 245).

[17]Meier's theological reading emphasizes the ultimate grounding of the political for Schmitt in faith and the truth of faith. That focus on faith is explicitly countered by Norris's emphasis on the secular dimensions of Schmitt (Norris 2000). The

independence of the friend-enemy relation from any particular content of location is also noted by Bockenforde (1998: 38).

[18]Jacques Ranciere locates this development within early modernity. On his account, Hobbes's premise of state of nature equality in Leviathan recognizes the absence of any natural criteria for inequalities of power, exposing sheer equality as the very basis of politics (1999: 79; 123-127).

[19]Aristotle, as Agamben recognizes, does attribute some value and pleasure to natural life (1998:11). Norris gives a nuanced account of the impossibility of reducing philosophers' thought to the results of such distinctions (2002:53-54).

[20]Andrew Linklater observes that globally, people are divided between those whose capacity to exercise citizenship matters, and those for whom the category of citizenship has little meaning (1998:119).

[21]While Agamben credits Derrida with recognizing the indeterminacy of the tradition (1998: 54), he argues Derrida's focus on undecidability risks remaining within the prison of such indeterminacy (1999: 111).

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